

## **NON-CONCURRENCE PROCESS COVER PAGE**

The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all employees to promptly raise concerns and differing views without fear of reprisal and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission.

Employees are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis. If informal discussions do not resolve concerns, employees have various mechanisms for expressing and having their concerns and differing views heard and considered by management.

Management Directive (MD) 10.158, "NRC Non-Concurrence Process," describes the Non-Concurrence Process (NCP).

The NCP allows employees to document their differing views and concerns early in the decision-making process, have them responded to (if requested), and include them with proposed documents moving through the management approval chain to support the decision-making process.

NRC Form 757, "Non-Concurrence Process," is used to document the process.

Section A of the form includes the personal opinions, views, and concerns of a non-concurring NRC employee.

Section B of the form includes the personal opinions and views of the non-concurring employee's immediate supervisor.

Section C of the form includes the agency's evaluation of the concerns and the agency's final position and outcome.

NOTE: Content in Sections A and B reflects personal opinions and views and does not represent the official agency's position of the issues, nor official rationale for the agency decision. Section C includes the agency's official position on the facts, issues, and rationale for the final decision.

1. Was this process discontinued? If so, please indicate the reason and skip questions 2 and 3:

Process was not discontinued

2. At the completion of the process, the non-concurring employee(s):

☐ ☐ e ☐ ☐ ☐

3. For record keeping purposes:

This record has been reviewed and approved for public dissemination.

<b>NRC FORM 757</b> (06-2019) NRC MD 10.158		<b>U.S. NUCLEAR REGULATORY COMMISSION</b>		<b>1. NCP Tracking Number</b> NCP-2025-003
<b>NON-CONCURRENCE PROCESS (Continued)</b>				<b>Date</b> 2025-04-16
<b>Section A – To Be Completed by Non-Concurring Employee</b>				
<b>2. Title of Subject Document</b> U.S. NUCLEAR REGULATORY COMMISSION RESPONSE TO REQUEST FOR LEGAL INTERPRETATION TO SUPPORT BWRX-300 SAFETY STRATEGY LICENSING TOPICAL REPORT REVIEW			<b>3. ADAMS Accession Number</b>	
<b>4. Document Signer</b> Michele Sampson - DIRECTOR, DIV NEW AND RENEWED LIC.		<b>5. Document Signer's Office</b> DNRL		<b>6. Document Signer's Email</b> Michele.Sampson@nrc.gov
<b>7. Name of Non-Concurring Employees</b> Santosh Bhatt - SENIOR NUCLEAR ENGINEER; Ryan Nolan - SENIOR NUCLEAR ENGINEER; Rebecca Patton - BRANCH CHIEF		<b>8. Non-Concurring Employee Offices</b> UTB3/DANU, SNRB/DSS		<b>9. Employee Emails</b> Santosh.Bhatt@nrc.gov; Ryan.Nolan@nrc.gov; Rebecca.Karas@nrc.gov
<b>10. Non-Concurring Employee's Role for the Subject Document</b> Document Contributor				
<b>11. Name of Non-Concurring Employee Supervisors</b> Greg Oberson - BRANCH CHIEF; Rebecca Patton - BRANCH CHIEF; Vic Cusumano - DEP. DIR., DIVISION OF SAFETY SYSTEMS		<b>12. Non-Concurring Employee Supervisor Offices</b> DANU, DSS		<b>13. Supervisor Emails</b> Greg.Oberson@nrc.gov; Rebecca.Karas@nrc.gov; Victor.Cusumano@nrc.gov
<b>14.</b> I would like my non-concurrence considered and would like a written evaluation in Sections B and C.				
<b>15. When the process is complete, I would like management to determine whether public release of the NCP Form (with or without redactions) is appropriate (Select "No" if you would like the NCP Form to be non-public):</b> Yes				
<b>16. Reasons for the Non-Concurrence, Potential Impact on Mission, and the Proposed Alternatives</b> See the attached document.				
<b>17. Submitted By / Submitted On</b> Santosh Bhatt - SENIOR NUCLEAR ENGINEER; Ryan Nolan - SENIOR NUCLEAR ENGINEER; Rebecca Patton - BRANCH CHIEF				

March 21, 2025 (Updated June 13, 2025)

FROM: Ryan Nolan, Senior Nuclear Engineer, SNRB/DSS  
Santosh Bhatt, Senior Nuclear Engineer, UTB3/DANU  
Rebecca Patton, Branch Chief, SNRB/DSS  
John Lehning, Senior Staff Engineer, SFNB/DSS

SUBJECT: Non-Concurrence on U.S. Nuclear Regulatory Commission Response to Request for  
Legal Interpretation to Support BWRX-300 Safety Strategy Licensing Topical Report  
Review

1.0 INTRODUCTION

This document provides the basis for the technical staff's non-concurrence on the letter  
authored by Division of New and Renewed Licenses (DNRL) in response to the GE-Hitachi  
(GEH) request for legal interpretation on whether ensuring [[

<sup>1, 2</sup>.]]

In general, the non-concurring staff fundamentally disagrees with the DNRL management's  
interpretation, which states that [[

]] The non-concurring staff believes that the letter contradicts the  
long-standing interpretation of [[

]]

---

<sup>1</sup> [[

]]

<sup>2</sup> [[

]]

The specific issues which resulted in this non-concurrence are documented in Section 4 below and include the following discrete areas:

- For [[  
]] has been consistently defined and interpreted to include a condition where the [[  
  
]]
- The precedent cited by GEH in its request does not support its position that the U.S. Nuclear Regulatory Commission (NRC) [[  
  
]]
- The interpretation provided in the DNRL-authored letter, is only based on the regulation's text and excludes consideration of other elements necessary for proper regulatory interpretation and is outside the process for providing a regulatory interpretation.
  - The letter inappropriately ignores consideration of the regulation's purpose, context, implementation, and numerous documents that already provide for clear long-standing interpretation of the subject regulations.
  - The DNRL-authored letter is contrary to the very recent regulatory decision [[  
  
]]
  - The interpretation that is provided in the DNRL-authored letter is missing context, and clarity, regarding what is necessary to demonstrate satisfaction of the safety-related [[  
]] and creates a conflict with other regulatory requirements that are relevant to the [[  
]]
  - The DNRL-authored letter constitutes a reinterpretation of the subject regulatory requirements. This letter process is inconsistent with the established laws, policies, the principles of good regulation, and results in a de-stabilizing effect on the industry. Such a reinteraction of existing regulation would require appropriate stakeholder involvement to ensure matters affecting public health and safety go through a transparent process which incorporates a wide range of viewpoints and is regarded by stakeholders as legitimate.

A detailed discussion of staff concerns is provided in Section 4.0 of this document while Section 5.0 provides acceptable alternative approaches while staying within the well-established regulatory framework.

## 2.0 NON-CONCURRING STAFF

The staff involved in this non-concurrence are identified below in Table 1, along with comments describing the portions of the document with which they agree (or disagree).

Table 1: Non-Concurring Staff and Portions of Agreement or Disagreement

Individual	Comments on Portions of Agreement or Disagreement
Santosh Bhatt	Agree in full
Rebecca Patton	Agree in full
Ryan Nolan	Agree in full
John Lehning*	Agree in full

\* Not part of the staff on the e-concurrence list. Contributed to development of the non-concurrence document.

### 3.0 BACKGROUND

By letter dated September 10, 2024, GE-Hitachi (GEH) requested clarification on whether ensuring [[

]]

GEH states in its letter that the BWRX-300 design [[

]]

In response to the request, the DNRL management instructed the technical staff to develop a response that states that the NRC staff considers [[

] This non-concurrence is on the DNRL management's response to the GEH request as the non-concurring staff believes the letter [[

] The non-concurring staff agrees that [[

]]

### 4.0 DISCUSSION OF STAFF CONCERNS

The non-concurring individual staff have identified significant concerns with the DNRL response letter and its underlying justification for the proposed legal interpretation that [[

]] Collectively, these set of concerns held by one or more of these individual staff are described in subsequent sections of this document

4.1 [[ ]]

The definition of safety-related SSCs is provided in 10 CFR 50.2 and states:

*Safety-related structures, systems and components means those structures, systems and components that are relied upon to remain functional during and following design basis events to assure:*

*(1) The integrity of the reactor coolant pressure boundary*

*(2) The capability to shut down the reactor and maintain it in a safe shutdown condition; or*

*(3) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in § 50.34(a)(1) or § 100.11 of this chapter, as applicable.*

If an SSC meets the definition of safety-related, it is subject to certain special treatment requirements in accordance with the NRC regulations. [[

]] This definition and associated special treatment regulations ensure that SSCs that perform these functions have the highest quality and reliability due to their importance of protecting one or more fission product barriers. [[

]]

4.1.1 [[ ]]

[[

]]

[[

]], which states:

[[

]]

---

<sup>3</sup> [[ ]]

<sup>4</sup> [[

[[

]]

[[

]]

[[

]]

[[

]]

The DNRL-authored letter states, [[

]]

Additionally, [[

]]

[[

]]

This provides demonstration that the staff has already provided clear interpretation that [[

]]

#### 4.1.2 Legacy Documentation of [[\_\_\_\_\_]]

In the mid-to-late '70s and early '80s, the capability to

[[

]]

#### 1975 Letter to General Electric:

In 1975 the NRC issued a letter to GE providing [[

]]

//

(1) // ]]:

//

[[

]]

#### Generic Safety Issue Item [[\_\_\_\_\_]]:

Building upon the 1975 letter to GE, in 1978 a [[

]]

---

<sup>5</sup> [[  
<sup>6</sup> [[

]]



[[

]]:

“[[

]].” [emphasis added]

The updated guidance included “[[

]], has been consistently interpreted and applied.

Systematic Evaluation Program:

A review of precedents shows that NRC has been consistent in its definition of [[

]]:

“[[

]].” [emphasis added]

One of the many topics assessed during the SEP were [[

]] states that:

*“1) The design adequacy of the [[*

*]].*

*...3) That only [[*

*]].”*

The SEP evaluation explicitly confirmed that the [[

]] This definition [[

]] is consistent across NRC technical

evaluations for all SEPs.

10 CFR 50, Appendix R:

---

<sup>7</sup> [[

Within the same year the SEP evaluations were being performed by the staff, 10 CFR 50, Appendix R was promulgated. Appendix R includes [[

]]

The technical specifications include [[

]]

This point is further clarified in [[

]]:

“...[[

]]:

a. [[ ]];

b. [[ ]];

c. [[ ]]”

The [[

]]

#### 4.1.2 Summary

Based on the discussion provided above, the non-concurring staff reach the conclusion that [[ ]]

This conclusion is based on long-standing, and consistent, interpretation and implementation of [[ ]] over the last 50 years of performing licensing reviews.

#### 4.2 Precedents Mentioned in the GEH Request

In its letter to NRC dated September 10, 2024, for legal interpretation, GEH states that:

*“USNRC has previously approved the use of [[ ]]. The following examples are provided (note this is not an exhaustive list, as similar plants have received similar approvals):”*

The letter provides examples from [[ ]]

]].

The non-concurring staff reviewed the precedents listed in the GEH letter as well as other examples not cited in the letter and did not find any compelling precedents to support the statement that the NRC has [[ ]]

]]. The staff notes that there is a distinction between an [[ ]]

]]. The staff observed that in each case where the application or analysis appeared to [[ ]]

]].

Specific examples listed in the GEH letter are described below.

[[ ]]

The NRC staff reviewed the [[ ]]

]]:

“[[ ]]

]].”

[[ ]]

]].

Further, in its letter GEH claims that NRC staff approved use of the following [[ ]]:

- Selected [[ ]]
  - [[ ]]
- ]].

---

<sup>8</sup> [[ ]]  
<sup>9</sup> [[ ]]

]]

In Section [[ ]], the NRC staff states that:

*“However, the [[ ]]*

*]]” [emphasis added]*

The non-concurring staff notes that the [[ ]]

]]. This reclassification is based on [[ ]]

]] that:

*“For current operating BWRs, [[ ]]*

*]].”*

Contrary to GEH’s assertion, [[ ]]

]]:

*“[[ ]]*

*]].”*

Based on the results of the [[ ]]

]].

Further, in response to [[ ]]

]]:

*“[[ ]]*

*]]*

---

<sup>10</sup> [[ ]]

]].

[[

]]

GEH did not add [[

]].

[[\_\_\_\_\_]]

[[

]].

The non-concurring staff reviewed the precedent and found that [[  
]] states:

*“Although certain [[*

*]]. [emphasis added]*

*For example, [[*

*]].”*

This is consistent with NRC staff finding in [[

]].

[[\_\_\_\_\_]]

For [[

]]. It states that:

*“Table [[*

*]]*

[[

]].

Among these [[

]].”

It must be noted that [[

]] and states that:

“The focal point of [[

]].”

This is consistent with NRC staff finding in other precedents where [[

]].

#### Pre-application Feedback

The non-concurring staff notes that the issue of [[

]. The NRC staff has consistently provided feedback that these [[  
as described in existing policy papers, as well as the documented licensing history. The  
NRC position on this issue has been clearly documented and communicated to GEH

[[ ]].

]]

#### 4.3 DNRL Management Decision and Associated Issues

By an

[[

]] provided description on approach and reasons for the decision.

Based on the directions provided in [[ ]], as well as the subsequent discussions held with  
DNRL management and other technical staff who support the DNRL management position, the

---

<sup>11</sup> [[ ]]

<sup>12</sup> [[ ]].

<sup>13</sup> [[ ]].

non-concurring staff believe that the suggested legal interpretation provided does not properly take into account the clearly communicated definition of what constitutes [[

]].

The non-concurring staff notes that [[

]] are required to have the highest quality and reliability.

While the [[

noted that [[ ]]. It must be

plain language, by applying the DNRL management interpretation, the [[ ]]. So, in

]]. This is contrary to the existing plant operating experience as well as the established legal definition.

Another important element of this non-concurrence is that the DNRL management position provided in its letter is contrary to the most recent regulatory interpretation of [[

]]. In response to the staff differing view, NRC management assessed the regulatory criterion provided in [[

management decision states ([[ ]]) Specifically, the

“I don’t find that [[ ]]. In the case of an

[[

\_\_\_\_\_] ]].” [emphasis added]

The final SER ([[ ]]), which implements this determination, further clarifies this decision:

“While the [[

]].”

This determination is consistent with the non-concurring staff’s position provided in this document that [[

\_\_\_\_\_] ]. However, the DNRL management position in its letter to GEH provides a different and contradictory interpretation from the position provided during the [[ \_\_\_\_\_ ]].

Further, the DNRL management’s response to GEH creates uncertainty with regards to its application. The letter states:

“[[

\_\_\_\_\_] ].”

However, it provides no explanation for [[

\_\_\_\_\_] ].” In addition, the change in regulatory position provided in the letter creates conflict with other regulatory requirements. For example, the [[

\_\_\_\_\_] ]. This regulatory contradiction now creates a disconnect with [[

\_\_\_\_\_] ].

Finally, the non-concurring staff believe that the DNRL management’s response reinterprets the long-standing and well-documented interpretation that that the [[

\_\_\_\_\_] ]. While the Commission delegates to the NRC staff the conduct of many routine licensing activities, to be performed in accordance with its established regulations, the NRC staff is not authorized to change or reinterpret regulations. A reinterpretation of existing regulation would require compliance with the Administrative Procedure Act and including, among other things, notice to the Federal Register and appropriate stakeholder involvement to

---

<sup>14</sup> [[

]]



ensure matters affecting public health and safety go through a transparent process which incorporates a wide range of viewpoints and is regarded by stakeholders as legitimate.

The non-concurring staff believe that the DNRL management's response provides substantial relaxation of well-established regulatory requirements. According to NUREG-1409,<sup>15</sup> when a requirement is relaxed the NRC must ensure the new framework provides for the adequate protection of the public health and safety and the common defense and security; "typically, this means that the alternative approach has either no decrease in safety or security or, if there is a decrease, it is very small." The non-concurring staff note that relying on [[

]], calls into question whether adequate protection of public health and safety is provided. Non-concurring staff do not have any basis for believing that the DNRL management performed this assessment.

#### 4.4 Industrywide Impacts of Regulatory Reinterpretation

The proposed DNRL management decision to reinterpret existing regulations [[

]] appears likely to have broad impacts across the existing fleet of operating reactors. DNRL management does not appear to have documented an assessment to provide assurance that the industrywide impacts of its regulatory reinterpretation would be acceptable.

As discussed above, at the present time, to the best knowledge of the non-concurring staff, operating reactors generally [[

]].

Not only is [[

]].

Such uniform regulatory treatment of [[

]].

When a regulation is reinterpreted, that reinterpretation will generally affect all entities subject to the regulation. When regulatory reinterpretations are addressed through an appropriate process (i.e., rulemaking), the process provides for the acknowledgment and assessment of such generic impacts through cost-benefit analysis. On the other hand, when a reinterpretation with

---

<sup>15</sup> [[

]]

significant generic impacts is conducted via plant-specific letter, it becomes difficult to openly acknowledge these impacts, let alone assess them, despite their potential safety significance.

Therefore, to assure adequate protection of public health and safety, prior to issuing a response letter to GEH containing a generic regulatory reinterpretation that can reasonably be expected to have significant repercussions across the entire fleet of currently operating nuclear reactors, the agency should engage in a systematic process to evaluate fully the costs and benefits of [[ ]]. Furthermore, any generic regulatory reinterpretations should be undertaken in accordance with the agency's formal rulemaking process.

#### 4.5 Inconsistent with Principles of Good Regulation

In the [[ ]], the DNRL management stated the following in support to the proposed interpretation:

*"However, following the principles of good regulation, we must focus on what the regulation requires in our response to the question."*

However, based on the approach used for the legal interpretation, the non-concurring staff believes the DNRL management decision is inconsistent with the principles of good regulation of efficiency, clarity and reliability.

**Efficiency:** This principle states that licensees are entitled to the best possible management of regulatory activities. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. In this case, to develop a reinterpretation of a rule without a valid technical or regulatory basis that has the potential to set a precedent with unknown ramifications when clear alternatives are already available through a well-established regulatory process to accomplish the desired goal indicates a failure to effectively manage regulatory activities. A smooth, efficient regulatory process involves the application of the clearly defined regulations and the readily available approaches for seeking exemptions. The current decision does not rely on valid technical justifications or regulatory basis. It further neglects previous Commission papers on the issue and well-established precedents.

**Clarity:** This principle means that agency positions should be readily understood and easily applied. The basis behind DNRL management decision is not well presented, as discussed in sections above, whereby the staff found the decision to lack sufficient and defensible technical and regulatory basis.

**Reliability:** This principle states that the regulations should be perceived to be reliable and not unjustifiably in a state of transition, and that regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes. The DNRL management's response is not consistent with the previous Commission papers and licensing actions on the issue and the well-established precedents. The non-concurring staff believes the DNRL management's

---

<sup>16</sup> See Footnote 13

response reinterprets the long-standing and well-documented interpretation without appropriate stakeholder involvement, hence putting the reliability aspect of the regulation into question.

The DNRL management's decision on this legal interpretation sets an inappropriate precedent that the requirements of regulations can be reinterpreted and relaxed without ensuring the new framework provides for the adequate protection of the public health and safety and the common defense and security. The non-concurring staff believes such actions are harmful to agency safety culture.

Furthermore, any generic regulatory reinterpretations should be undertaken in accordance with the agency's formal rulemaking process.

## 5.0 ACCEPTABLE ALTERNATE OPTIONS

The non-concurring staff believes that [[

]].


However, the non-concurring staff note there are acceptable alternatives. For example, applicants could pursue [[

]]. Alternately, applicants could seek regulatory exemptions to [[

In the non-concurring staff's view these approaches would be consistent with established laws, policies, the principles of good regulation.

<b>NRC FORM 757</b> (06-2019) NRC MD 10.158		<b>U.S. NUCLEAR REGULATORY COMMISSION</b>		<b>1. NCP Tracking Number</b> NCP-2025-003
<b>NON-CONCURRENCE PROCESS (Continued)</b>				<b>Date</b> 2025-04-16
<b>Section B – To Be Completed by Non-Concurring Employee's Supervisor</b>				
<b>2. Title of Subject Document</b> BWRX-300 GEH Legal Interpretation to Support LTR Review			<b>3. ADAMS Accession Number</b>	
<b>4. Name of Non-Concurring Employee's Supervisor</b> Greg Oberson	<b>5. Non-Concurring Employee's Supervisor Email</b> greg.oberson@nrc.gov		<b>6. Office</b> NRR	
<b>7. Comments for the NCP Reviewer to Consider</b> I have no responsibility for this document. The employee is on a matrix assignment under a different supervisor. However, I support the employee's participation in the process.				
<b>8. Reviewed By / Reviewed On</b>  Greg Oberson, 4/21/25				

<b>NRC FORM 757</b> (06-2019) NRC MD 10.158		<b>U.S. NUCLEAR REGULATORY COMMISSION</b>		<b>1. NCP Tracking Number</b> NCP-2025-003
<b>NON-CONCURRENCE PROCESS (Continued)</b>				<b>Date</b> 2025-04-16
<b>Section B – To Be Completed by Non-Concurring Employee’s Supervisor</b>				
<b>2. Title of Subject Document</b> BWRX-300 GEH Legal Interpretation to Support LTR Review			<b>3. ADAMS Accession Number</b>	
<b>4. Name of Non-Concurring Employee’s Supervisor</b> Rebecca Patton	<b>5. Non-Concurring Employee’s Supervisor Email</b> Rebecca.Karas@NRC.GOV		<b>6. Office</b> NRR	
<b>7. Comments for the NCP Reviewer to Consider</b> I am one of the non-concurrers also and agree with the non-concurrence.				
<b>8. Reviewed By / Reviewed On</b>				

<b>NRC FORM 757</b> (06-2019) NRC MD 10.158		<b>U.S. NUCLEAR REGULATORY COMMISSION</b>		<b>1. NCP Tracking Number</b> NCP-2025-003
<b>NON-CONCURRENCE PROCESS (Continued)</b>				<b>Date</b> 2025-04-16
<b>Section B – To Be Completed by Non-Concurring Employee’s Supervisor</b>				
<b>2. Title of Subject Document</b> BWRX-300 GEH Legal Interpretation to Support LTR Review			<b>3. ADAMS Accession Number</b>	
<b>4. Name of Non-Concurring Employee’s Supervisor</b> Victor Cusumano	<b>5. Non-Concurring Employee’s Supervisor Email</b> Victor.Cusumano@nrc.gov		<b>6. Office</b> NRR	
<b>7. Comments for the NCP Reviewer to Consider</b> I read and understand the non-concurrence.				
<b>8. Reviewed By / Reviewed On</b>  <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;"> <b>VICTOR CUSUMANO</b> </div> <div style="text-align: center;">  <p>Digitally signed by VICTOR CUSUMANO Date: 2025.04.22 15:34:29 -04'00'</p> </div> </div>				

<b>NRC FORM 757</b> (06-2019) NRC MD 10.158		<b>U.S. NUCLEAR REGULATORY COMMISSION</b>		<b>1. NCP Tracking Number</b> NCP-2025-003
<b>NON-CONCURRENCE PROCESS (Continued)</b>				<b>Date</b> 2025-04-16
<b>Section C – To Be Completed by NCP Coordinator</b>				
<b>2. Title of Subject Document</b> BWRX-300 GEH Legal Interpretation to Support LTR Review			<b>3. ADAMS Accession Number</b> ML24255A092	
<b>4. Name of NCP Coordinator</b> Manny Sayoc	<b>5. NCP Coordinator's Email</b> Emmanuel.Sayoc@nrc.gov		<b>6. Office</b> NRR	
<b>7. Agreed Upon Summary of Issues</b> See Section C attachment				
<b>8. Evaluation of Non-Concurrence and Rationale for Decision</b> See Section C attachment				
<b>9. Coordinated By / Coordinated On</b> Manny Sayoc			2025-07-14	
<b>10. Approved By / Approved On</b> Greg Bowman			2025-07-14	

## NCP-2025-003 - Summary of Issues

These Summary of Issues (SOI) are for the DNRL's U.S. NRC Response to Request for Legal Interpretation to Support BWRX-300 Safety Strategy Licensing Topical Report Review (the DNRL signed letter).

### 1. **ISSUE: Whether or not** [[

]]

a. Non-Concurrence Position: ensuring [[  
]].

i. The non-concurring staff note an alternate measure [[

]].

ii. For [[

]].

iii. [[

]] This policy did not  
change the regulatory interpretation and implementation that the [[

]].

iv. Based on a holistic reading of [[

]].

1. [[

]].

b. Non-Concurrence Position: In accordance with NRC's long-standing interpretation [[

]]



i. The concurring staff position that [[

]].

ii. The [[

]].

iii. [[

]];

iv. A [[

]].

v. Updated [[

]] has

been consistently interpreted and applied.

vi. The NRC technical evaluation for [[

]].

vii. Precedents: [[

]].

1. [[

]].

- [[  
]].
2. [[  
]].
- viii. Pre-application Feedback - the issue of [[  
]]. The NRC staff  
has consistently provided feedback that [[  
, as  
described in existing policy papers, as well as the documented licensing  
history.
- ix. Not only is [[  
]].
- x. Concurring staff decision is inconsistent with the principles of good regulation of efficiency, clarity and reliability.
1. Efficiency: to develop a reinterpretation of a rule without a valid technical or regulatory basis that has the potential to set a precedent with unknown ramifications when clear alternatives are already available through a well-established regulatory process to accomplish the desired goal indicates a failure to effectively manage regulatory activities.
  2. Clarity: The basis behind the concurring staff decision is not well presented lacks sufficient and defensible technical and regulatory basis.
  3. Reliability: The concurring staff response is not consistent with the previous relevant Commission papers, licensing actions, and well-established precedents, and reinterprets long-standing and well-documented interpretation without appropriate stakeholder involvement.

## **2. Generic Implications (according to Non-Concurring staff)**

- a. Applying the concurring staff position, [[  
]] This is contrary to the existing plant operating experience as well as the established legal definition.
- b. The concurring staff position provided in the letter conflicts the recent regulatory interpretation provided during the [[  
]].
- c. Concurring staff's response creates uncertainty with regards to its application, and has potential to create a disconnect with [[  
]].

- d. Any generic regulatory reinterpretations should be undertaken in accordance with the agency's formal rulemaking process, which provides for the acknowledgement and assessment of such generic impacts through cost-benefit analysis. A reinterpretation of existing regulation would also require compliance with the Administrative Procedure Act and including notice to the Federal Register and appropriate stakeholder involvement to ensure matters affecting public health and safety go through a transparent process which incorporates a wide range of viewpoints and is regarded by stakeholders as legitimate.
- e. DNRL-authored response provides substantial relaxation of well-established regulatory requirements, and they would need to perform this assessment and to provide assurance that the industrywide impacts of its regulatory reinterpretation would be acceptable, per NUREG-1409.
- f. DNRL-authored response sets an inappropriate precedent that the requirements of regulations can be reinterpreted and relaxed without ensuring the new framework provides for the adequate protection of the public health and safety and the common defense and security. The non-concurring staff believes such actions are harmful to agency safety culture.

### **3. Alternative Options for Applicants (according to Non-Concurrence staff)**

- a. Pursue relaxation of [[  
]].
- b. Seek regulatory exemptions to applicable [[  
]], or
- c. Develop an alternate figure of merit, [[  
]].

### **4. Action taken to address the non-concurrence (per MD 10.158 section III.I.7)**

- a. Multiple meetings occurred between the non-concurring staff and DNRL management and its representative in an attempt to reach resolution.
- b. The non-concurring staff provided recommended changes to the DNRL signed letter and were considered by DNRL management.
- c. OGC provided comments.

## Evaluation of Non-Concurrence and Rationale for Decision

I'd like to start off by thanking the non-concurring staff for raising the issues described in Section A and the additional analysis provided by their supervisors in Section B. In reviewing this non-concurrence, I had the benefit of assessment from a technical expert from the NRC's Office of Nuclear Regulatory Research. I'd also like to thank him for his support in ensuring technical and regulatory rigor in our conclusion. Finally, I'd like to thank staff and management from the NRC's Office of General Counsel, who reviewed our response letter to GEH to ensure it is consistent with applicable laws and regulations.

As we seek to modernize our regulatory processes and apply risk-informed approaches to reduce unnecessary conservatisms in our licensing decisions, robust and candid dialogue on licensing decisions is essential to meeting our public health and safety mission in an effective and efficient manner, consistent with the Principles of Good Regulation and the NRC's recently updated mission statement. The perspectives provided by the non-concurring staff and those who supported my review of their concerns are critical to ensuring a strong, technically defensible regulatory position.

The submitters have raised several issues in their nonconcurrence, specifically associated with:

1. The [[  
  
]];
2. The precedents mentioned in the GEH request;
3. Management decision and associated issues;
4. Industrywide impacts of regulatory reinterpretation; and
5. Consistency with the Principles of Good Regulation

My evaluation of each of these issues is discussed below.

1. [[\_\_\_\_\_]]

The primary issue discussed in the non-concurrence is difference in interpretation of [[

]],

[[

]].

I have also conducted a thorough review of the regulatory history [[

protection of public health and safety. ]] may provide comparable

Despite the definition of [[

]]

---

<sup>1</sup> [[

[[  
[[

]]. The NRC has long held the position that

]]. These additional provisions provide assurance that [[

].

Therefore, as noted in the letter, [[

]].

The submitters have also noted similarities between this issue and the resolution of previous nonconcurrence [[

]].

Further, as noted in my decision to [[ ]] the decision was based on the specific circumstances that existed in the [[ ]] and should not be considered to establish precedence for similar issues in other reviews.

## 2. Precedents Mentioned in the GEH Request

The disposition of this issue does not require a detailed review of prior licensing precedents. Instead, my review focused on what the regulations require. Applicants and licensees can have many reasons for using acceptance criteria that are more restrictive than allowed by regulations. This may streamline the application process, result in simpler operational programs, or have other economic or process advantages. These factors do not prevent an applicant from using the full flexibilities afforded by our regulatory framework. Therefore, my review focused on what was required to meet the regulations, rather than an assessment of past precedents.

### 3. Management Decision and Associated Issues

The essence of this issue appears to be a concern that management in the Division of New and Renewed Licenses (DNRL) failed to adequately consider the submitters positions and perspectives related to “safe shutdown.” As discussed in the disposition of the first issue, I find that DNRL management appropriately considered regulatory requirements, including the regulatory history associated with those requirements. I do not view my decision as a relaxation of well-established regulatory requirements. Instead, this decision provides the full flexibilities afforded by our regulatory framework while still maintaining our public health and safety mission.

### 4. Industrywide Impacts of Regulatory Reinterpretation

My decision is based on a thorough consideration of the NRC’s regulatory framework and other supporting information. While many licensees have opted to [[

]], I find that additional flexibilities are available in the regulations. Future licensing actions will be reviewed and considered on their own merits consistent with our regulatory framework.

### 5. Consistency with the Principles of Good Regulation

The submitters have stated that the DNRL decision is inconsistent with the Principles of Good Regulation, notably efficiency, clarity, and reliability. I find that, by basing my decision on a thorough consideration of the NRC’s regulatory requirements and associated rulemaking history, it is fully consistent with the Principles of Good Regulation.

### Conclusion

For the reasons discussed above, I have concluded that [[

]]. Therefore, based on my careful review of the information provided in Sections A and B, the agreed upon summary of issues, and evaluation of the associated regulatory requirement, I have concluded that no change to the letter to GEH on the BWRX-300 request for clarification is needed.