

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), <http://nrcweb.nrc.gov:8600/policy/directives/catalog/md10.158.pdf>.

The NCP allows employees to document their differing views and concerns early in the decision-making process, have them responded to (if requested), and attach them to 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 official factual representation 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.

At the end of the process, the non-concurring employee(s):

- ☐ Concurred
- ☒ Continued to non-concur
- ☐ Agreed with some of the changes to the subject document, but continued to non-concur
- ☐ Requested that the process be discontinued
- ☐ The non-concurring employee(s) requested that the record be non-public.
- ☒ The non-concurring employee(s) requested that the record be public.
- ☐ This record is non-public and for official use only.
- ☒ This record has been reviewed and approved for public dissemination.



NON-CONCURRENCE PROCESS

NCP-2016-010
NCP PM 5/20/16

SECTION A - TO BE COMPLETED BY NON-CONCURRING EMPLOYEE

TITLE OF SUBJECT DOCUMENT Nine Mile Point, Unit 1 - Issuance of Amendment Re:Adoption of TSTF-425		ADAMS ACCESSION NO. ML16081A256
DOCUMENT SIGNER Travis L. Tate		SIGNER TELEPHONE NO. 415-3901

TITLE Branch Chief	ORGANIZATION NRR/DOR/L.P.I-1
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NAME OF NON-CONCURRING EMPLOYEE(S) Tania Martinez-Navedo, Swagata Som, Sheila Ray, Roy Mathew, and Gurcharan Matharu	TELEPHONE NUMBER 415-6561
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TITLE Electrical Engineer (TMN) and Senior Electrical Engineers(rest)	ORGANIZATION NRR/DE/EEEB
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☐ DOCUMENT AUTHOR ☐ DOCUMENT CONTRIBUTOR ☒ DOCUMENT REVIEWER ☐ ON CONCURRENCE

NON-CONCURRING EMPLOYEE'S SUPERVISOR

Jacob Zimmerman

TITLE Branch Chief	ORGANIZATION NRR/DE/EEEB
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☒ I WOULD LIKE MY NON-CONCURRENCE CONSIDERED AND WOULD LIKE A WRITTEN EVALUATION IN SECTION B AND C.
☐ I WOULD LIKE MY NON-CONCURRENCE CONSIDERED, BUT A WRITTEN EVALUATION IN SECTIONS B AND C IS NOT NECESSARY.

WHEN THE PROCESS IS COMPLETE, I WOULD LIKE THE NCP FORM: ☒ PUBLIC ☐ NON-PUBLIC

REASONS FOR THE NON-CONCURRENCE, POTENTIAL IMPACT ON MISSION, AND THE PROPOSED ALTERNATIVES
(use continuation pages or attach Word document)

See attached.

SIGNATURE <i>Tania Martinez Navedo / Roy Mathew / Swagata Som / Sheila Ray</i>	DATE 5/18/16
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REASONS FOR THE NON-CONCURRENCE, POTENTIAL IMPACT ON MISSION, AND THE PROPOSED ALTERNATIVES

Background:

By letter dated May 12, 2015 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML15134A232), as supplemented by letters dated October 22, 2015, and November 17, 2015 (ADAMS Accession Nos. ML15295A396 and ML15321A253, respectively), Exelon Generation Company, LLC (Exelon, the licensee) submitted a request for changes to the Nine Mile Point Nuclear Station, Unit 1 (NMP1), Technical Specifications (TSs).

The licensee proposed to modify the NMP1 TSs by relocating specific Surveillance Requirement (SR) frequencies to a licensee-controlled program (i.e., the Surveillance Frequency Control Program (SFCP)) in accordance with Nuclear Energy Institute (NEI) 04-10, Revision 1 "Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies" (ADAMS Accession No. ML071360456). The licensee stated that the proposed change is consistent with the adoption of NRC approved Technical Specification Task Force (TSTF) Standard Technical Specifications Change Traveler TSTF 425, Revision 3, "Relocated Surveillance Frequencies to Licensee Control – RITSTF [Risk-Informed TSTF] Initiative 5b (ADAMS Accession No. ML090850642). The FR notice was published on July 6, 2009 (74 FR 31996), announced the availability of TSTF-425, Revision 3.

When implemented, TSTF-425, Revision 3, relocates most periodic frequencies of TS surveillances to the SFCP, and provides requirements for the new SFCP in the Administrative Controls section of the TSs. All surveillance frequencies can be relocated except the following:

- Frequencies that reference other approved programs for the specific interval, such as the In-Service Testing Program or the Primary Containment Leakage Rate Testing Program;
- Frequencies that are purely event-driven (e.g., "each time the control rod is withdrawn to the 'full out' position");
- Frequencies that are event-driven, but have a time component for performing the surveillance on a one-time basis once the event occurs (e.g., "within 24 hours after thermal power reaching $\geq 95\%$ RTP" [rated thermal power]); and
- Frequencies that are related to specific conditions (e.g., battery degradation, age and capacity) or conditions for the performance of a surveillance requirement (e.g., "drywell to suppression chamber differential pressure decrease").

Staff from Probabilistic Risk Assessment Branch (APLA) in the Division of Risk Assessment (DRA) has the lead responsibility for this license amendment request (LAR). The Electrical Engineering Branch (EEEB) staff was requested by the Division of Operating Licensing Branch (DORL) staff to provide concurrence.

The licensee proposed to add the SFCP to TSs, Section 6, "Administrative Controls," Subsection 6.5.9, "Surveillance Frequency Control program." The SFCP describes the requirements for the program to control changes to the relocated surveillance frequencies. The TS Bases for each affected surveillance would be revised to state that the frequency is

controlled under the SFCP. The proposed changes to the Administrative Controls section of the TSs to incorporate the SFCP include a specific reference to NEI 04-10, Revision 1, as the basis for making any changes to the surveillance frequencies once they are relocated out of the TSs.

In a letter dated September 19, 2007 (ADAMS Accession No. ML072570267), the NRC staff approved Topical Report NEI 04-10, Revision 1, as acceptable for referencing in licensing actions to the extent specified and under the limitations delineated in NEI 04-10, Revision 1, and in the NRC staff's safety evaluation (SE) providing the basis for NRC acceptance of NEI 04-10, Revision 1.

This SE concluded "The NRC staff has reviewed the licensee's proposed relocation of specific surveillance frequencies to a licensee-controlled document, and controlling changes to these surveillance frequencies in accordance with a new program, the SFCP, identified in the Administrative Controls of TS. The SFCP and TS Section 6.0, Subsection 6.5.9 references NEI 04-10, Revision 1, which provides a risk-informed methodology using plant-specific risk insights and performance data to revise surveillance frequencies within the SFCP. This methodology supports relocating surveillance frequencies from TSs to a licensee-controlled document, provided those frequencies are changed in accordance with the NEI 04-10, Revision 1, which is specified in the Administrative Controls section of the TSs."

The NRC staff finds that the proposed implementing methodology satisfies the key principles of risk-informed decision making applied to changes to TSs as delineated in RG 1.177 and RG 1.174, in that:

- The proposed change meets current regulations;
- The proposed change is consistent with defense-in-depth philosophy;
- The proposed change maintains sufficient safety margins;
- Increases in risk resulting from the proposed change are small and consistent with the Commission's Safety Goal Policy Statement; and,
- The impact of the proposed change is monitored with performance measurement strategies.

The NRC staff, therefore, finds that this methodology is acceptable for referencing by licensees proposing to amend their TS to establish a SFCP provided that the conditions in Section 4.0 of this SE are satisfied." Section 4 of this SE provided limitations and conditions for Probabilistic Risk Assessment (PRA).

The EEEB staff normally uses SRP Section 8, Code of Federal Regulations (CFRs), and Regulatory Guides (RGs) and industry standards that are applicable to the current licensing basis of US operating fleet of nuclear plants. Accordingly, the EEEB staff used the specific documents applicable to NMP1 (current licensing basis) to review the proposed SE and associated amendment.

Issue:

The NMP1 amendment SE (ADAMS Accession No. ML16081A256) concludes that "The proposed licensee adoption of TSTF-425, Revision 3, and risk-informed methodology of NRC-approved NEI 04-10, Revision 1, as referenced in the Administrative Controls section of TSs, satisfies the key principles of risk-informed decision making applied to changes to TSs as delineated in RG 1.177 and RG 1.174, in that:

- The proposed change meets current regulations;
- The proposed change is consistent with defense-in-depth philosophy;
- The proposed change maintains sufficient safety margins;
- Increases in risk resulting from the proposed change are small and consistent with the Commission's Safety Goal Policy Statement; and
- The impact of the proposed change is monitored with performance measurement strategies.

The regulation in 10 CFR 50.36(c) discusses the categories that will be included in TSs. The regulation in 10 CFR 50.36(c)(3) discusses the specific category of Surveillance Requirements and states: "Surveillance requirements are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met." Based on the above evaluation, the NRC staff concludes that with the proposed relocation of surveillance frequencies to a licensee-controlled document and administratively controlled in accordance with the TS SFCP, the licensee continues to meet the regulatory requirements of 10 CFR 50.36, and specifically in 10 CFR 50.36(c)(3), Surveillance Requirements."

In addition, the EEEB staff noted that the original SE (ADAMS Accession No. ML072570267) prepared by APLA staff (principal contributor) for approval of Topical Report (TR) NEI 04-10 methodology also did not have adequate regulatory and technical bases to conclude that all deterministic criteria are met. It should be noted that the TR SE was not reviewed by the Office of General Council (OGC) to determine whether there are any legal objections for adopting the proposed methodology to satisfy the current NRC applicable regulations. This could be a potential issue that NRC management should look into to see whether TRs are being approved without sufficient legal and technical bases. EEEB staff's position is that the approval of the proposed TS Amendment 222 to Facility Operating License No. DPR-63 for NMP1, since the APLA staff evaluation did not provide sufficient technical and regulatory bases (deterministic) to show that the changes proposed in the license amendment are adequate to ensure public health and safety and all applicable regulatory requirements are met as discussed below. The EEEB staff also notes that there are no regulatory requirements which require that the NRC staff must approve these license amendment (plant-specific licensing action) simply because staff approved a TR.

The SE, in general, is written based on risk-based principles rather than risk-informed principles that complement the deterministic principles. This approach tends to ignore the NMP1 current licensing basis, regulatory requirements, defense in depth, and safety margins. This is not consistent with the Commission's PRA Policy statement and deterministic principles stated in RG 1.177 and RG 1.174. It also does not meet the requirements for Electrical Power Systems. The plant can operate safely only if it operates within the established design bases and licensing basis and within accident analyses assumptions including TS limiting conditions for Operation (LCO).

REASONS FOR THE NON-CONCURRENCE

The surveillance frequencies specified in Section 3.8 for AC and DC Electric Power Systems of the current NMP1 TSs are being revised in accordance with the Surveillance Frequency Control Program specified in TR NEI 04-10 and TSTF. In addition, there are no backstops provided in the TS SFCP to limit the frequency interval for SSCs to demonstrate SSCs can perform their intended design safety functions. The EEEB staff determined that the revised surveillance

frequency, if implemented, would violate the current licensing and design basis for NMP1. This is because neither the staff SE nor the industry documents provided sufficient regulatory and technical bases to conclude that the proposed change meets the current regulations; consistent with defense-in-depth philosophy; and maintains sufficient safety margins.

The staff has approved several plant-specific licensing actions based on Risk-Managed Technical Specifications (RMTS) 5B and TSTF-425 methodology. Recently, EEEB staff noted that one of the licensees' who implemented the NRC approved SFCP program, changed the surveillance frequency of emergency diesel generators (EDGs).

Exelon plants have amended their licensing basis to move TS SR into owner controlled documents in accordance with TSTF-425, Revision 3. Some of the plants have now embarked on extending the intervals between successive surveillances based on PRA results. In January 2015, Limerick engineers requested information from Institute of Electrical and Electronic Engineers (IEEE) subcommittee, responsible for EDGs, to provide technical basis for the current surveillance requirement of 18-24 months for validating EDG performance capabilities. The management at the plant wanted to make economic changes to surveillances that could be extended. The IEEE members agreed that the testing interval for EDGs (18-24 months) was prudent and good practice based on operating experience but could not provide technical or regulatory basis for the periodicity. The Exelon plants have extended surveillance frequencies based on their current licensing basis, based on TSTF 425 and TR NEI 04-10, without NRC approval.

Regulatory Requirements and Guidance

- General Design Criterion (GDC)-17, "Electric power systems," in Appendix A to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," requires that nuclear power plants have an onsite electric power system and an offsite electric power system to permit the functioning of structures, systems, and components (SSCs) important to safety. The safety function of each system (assuming the other system is not functioning) is to provide sufficient capacity and capability to assure that (1) fuel design limits and design conditions of the reactor coolant boundary are not exceeded as a result of anticipated operational occurrences (AOOs), and (2) the core is cooled and containment integrity and other vital functions are maintained in the event of postulated accidents.

The onsite electric power supplies (including the batteries) and the onsite electric distribution system are required to have sufficient independence, redundancy, and testability to perform their safety functions, assuming a single failure. Electric power from the transmission network to the onsite electric distribution system is required to be supplied by two physically independent circuits designed and located so as to minimize the likelihood of their simultaneous failure. Each of these circuits are required to be designed to be available in sufficient time following a loss of all onsite AC power supplies and the other offsite electric power circuit, to assure that fuel design limits and design conditions of the reactor coolant pressure boundary are not exceeded. One of these circuits is required to be available within a few seconds following an accident to assure that core cooling, containment integrity, and other vital safety functions are maintained. In addition, GDC-17 requires provisions to minimize the probability of losing electric power from the remaining electric power supplies as the result of loss of power from the unit, the offsite transmission network, or the onsite power supplies.

- GDC 18, "Inspection and testing of electric power systems, " requires that Electric power systems important to safety shall be designed to permit appropriate periodic inspection and testing of important areas and features, such as wiring, insulation, connections, and switchboards, to assess the continuity of the systems and the condition of their components. The systems shall be designed with a capability to test periodically (1) the operability and functional performance of the components of the systems, such as onsite power sources, relays, switches, and buses, and (2) the operability of the systems as a whole and, under conditions as close to design as practical, the full operation sequence that brings the systems into operation, including operation of applicable portions of the protection system, and the transfer of power among the nuclear power unit, the offsite power system, and the onsite power system.
- Paragraph 50.36(c)(3) of 10 CFR requires that TSs include surveillances which are requirements relating to test, calibration, or inspection to assure that necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that the limiting conditions for operation will be met.
- Criterion III, "Design Control," and Criterion XI, "Test Control," of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," to 10 CFR Part 50 require that (1) measures be provided for verifying or checking the adequacy of design through design reviews, the use of alternative or simplified calculational methods, or the performance of a suitable testing program and (2) a test program be established to ensure that systems and components perform satisfactorily and that the test program include operational tests during nuclear power plant operation.
- The Standard Technical Specifications (NUREGs 1430-1434) define "operable/operability" as follows:

A system, subsystem, train, component, or device shall be OPERABLE or have OPERABILITY when it is capable of performing its specified safety functions, and when all necessary attendant instrumentation, controls, normal or emergency electrical power, cooling and seal water, lubrication and other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support function(s).

In order to be considered operable, structures, systems and components (SSC) must be capable of performing the safety functions specified by its design, within the required range of design physical conditions, initiation times, and mission times. In addition, TS operability considerations require that SSCs meet all surveillance requirements (as specified in Surveillance Requirement (SR)). A SSC that does not meet a SR must be declared inoperable. For operability determination purposes, the mission time is the duration of SSC operation that is credited in the design basis for the SSC to perform its specified safety function.

In addition, the staff acceptance of electric power system surveillance requirements are based on plant-specific licensing documents and NRC guidance documents such as RG 1.9, "Application, and Testing of Safety-Related Diesel Generators in Nuclear Power Plants," RG 1.118, "Periodic Testing of Electric Power and Protection Systems," RG 1.129, "Maintenance, Testing, and Replacement of Vented Lead-Acid Storage Batteries for Nuclear Power Plants."

EEEB Staff Review:

The Commission states in its PRA policy Statement that:

“The use of PRA technology should be increased in all regulatory matters to the extent supported by the state-of-the-art in PRA methods and data and in a manner that complements the NRC’s deterministic approach and supports the NRC’s traditional defense-in-depth philosophy.”

Based on review of the SE, the EEEB staff concludes that neither the licensee nor the staff has provided reasonable technical and regulatory bases to conclude that:

- The proposed change meets current regulations;
- The proposed change is consistent with defense-in-depth philosophy;
- The proposed change maintains sufficient safety margins;

Therefore, the EEEB staff concludes that the licensee did not provide adequate assurance that the extended surveillance frequency specifically for electrical power systems could be utilized while maintaining adequate protection of public health and safety and common defense and security.

Safety is the fundamental regulatory objective, and compliance with NRC requirements plays a fundamental role in giving the NRC confidence that safety is being maintained. NRC requirements, including technical specifications, other license conditions, orders, and regulations, have been designed to ensure adequate protection--which corresponds to "no undue risk to public health and safety" through acceptable design, construction, operation, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid.

The Commission’s policy on PRA (“Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities,” dated August 16, 1995), states the following:

Defense-in-depth is a philosophy used by the NRC to provide redundancy for facilities with “active” safety systems, e.g. a commercial nuclear power [plant], as well as the philosophy of a multiple-barrier approach against fission product releases.

An instructive discussion of the defense-in-depth philosophy also appears in director’s decisions relating to a petition on Davis-Besse (FirstEnergy Nuclear Operating Company (Davis-Besse Nuclear Power Station, Unit 1), DD-03-3, 58 NRC 151, 163 (2003)).

The decision described defense-in-depth as encompassing the following requirements:

- (1) require the application of conservative codes and standards to establish substantial safety margins in the design of nuclear plants;
- (2) require high quality in the design, construction, and operation of nuclear plants to reduce the likelihood of malfunctions, and promote the use of automatic safety system actuation features;
- (3) recognize that equipment can fail and operators can make mistakes and, therefore, require redundancy in safety systems and components to reduce the chance that malfunctions or mistakes will lead to accidents that release fission products from the fuel;

- (4) recognize that, in spite of these precautions, serious fuel-damage accidents may not be completely prevented and, therefore, require containment structures and safety features to prevent the release of fission products; and
- (5) further require that comprehensive emergency plans be prepared and periodically exercised to ensure that actions can and will be taken to notify and protect citizens in the vicinity of a nuclear facility.

Based on the above safety principles, the EEEB staff performed the NMP1 SE concurrence review. The staff concluded that the proposed changes to the NMP1 TS regarding surveillance frequencies of AC and DC electric power systems in accordance with the TS SFCP, would not satisfy the regulatory requirements specified above and the NMP1 licensing basis for electric power systems.

Conclusions:

Section 182 of the Atomic Energy Act as implemented by 10 CFR 50.36 requires that those design features of the facility which, if altered or modified, would have a significant effect on safety, be included in technical specifications required by 10 CFR 50.36. TSs are to be derived from the analyses and evaluation included in the safety analysis report. They establish, among other things, performance levels of equipment required for safe operation of the facility. The current licensing basis for electric power systems for NMP1 is in accordance with GDC 18, RG 1.93, and acceptance criteria provided in SRP Chapter 8. Therefore, the proposed NMP1 TS for Electric Power System changes do not meet the current regulatory requirements and staff requirements for electric power systems, based on deterministic criteria of preventing loss of safety functions of electric power systems and operating within the current licensing bases requirements. In addition, the EEEB staff concludes that the licensee did not demonstrate the proposed TS SFCP would continue to meet the surveillance requirements specified in its current licensing basis.

POTENTIAL IMPACT ON MISSION

The NRC mission to protect public health, safety, and the environment is directly affected by approving the proposed license amendment for NMP1 using the RMTS 5b methodology because the regulatory requirements, safety margins, and defense in depth for demonstrating the safety functions are compromised (licensing and oversight for reactors).

PROPOSED ALTERNATIVES

Option 1

Delete changes to the surveillance frequencies based on TS SFCP for all applicable TS Section 3.8 from Amendment No. 222. In addition, DORL should ensure that the TS SFCP does not affect changes to other TS system current licensing basis.

Option 2

Since most of the TS systems are affected, approval of the Topical Report (RMTS 5B) should be withdrawn based on not meeting the current regulatory requirements and NRC deterministic design criteria. The staff also notes that a similar risk-informed approach is taken for RMTS 4B (changing completion times) licensing actions. This TR methodology and the staff evaluations also do not support the deterministic criteria and detailed analysis to confirm that equipment reliability is maintained consistent with plant's design basis and accident analyses assumptions. Although TR for RMTS 4B is not within the scope of this NCP, it should be withdrawn so that staff does not take non-conservative plant-specific licensing actions.

Option 3

Deny the amendment based for not meeting the deterministic criteria and current regulatory requirements.

NON-CONCURRENCE PROCESS

NCP-2016-010

SECTION B - TO BE COMPLETED BY NON-CONCURRING EMPLOYEE'S SUPERVISOR

TITLE OF SUBJECT DOCUMENT

Nine Mile Point, Unit 1 - Issuance of Amendment Re: Adoption of TSTF-425

ADAMS ACCESSION NO.

ML16081A256

NAME

Jacob Zi. Zimmerman

TITLE

Branch Chief

TELEPHONE NUMBER

415-1220

ORGANIZATION

NRR/DE/EEEB

COMMENTS FOR THE NCP REVIEWER TO CONSIDER (use continuation pages or attach Word document)

I agree with the comments, logic, and reasoning by the Electrical Engineering Branch (EEEB) staff expressing their concerns with approving the Nine Mile Point, Unit 1 license amendment request (LAR) to relocate most periodic frequencies of Technical Specification surveillances to the Surveillance Frequency Control Program (SFCP) for AC and DC electric power systems.

My recommendation to the NCP Reviewer is to seriously consider the concerns of the EEEB staff and withhold approval of the Nine Mile Point, Unit 1 LAR and other similar LARs until all issues are appropriately addressed.

SIGNATURE



DATE

5/26/16

NON-CONCURRENCE PROCESS

NCP-2016-010

SECTION C - TO BE COMPLETED BY NCP COORDINATOR

TITLE OF SUBJECT DOCUMENT

Nine Mile Point, Unit 1 - Issuance of Amendment Re: Adoption of TSTF-425

ADAMS ACCESSION NO.

ML16081A256

NAME

Kimberly Green

TITLE

Senior Project Manager

TELEPHONE NUMBER

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ORGANIZATION

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AGREED UPON SUMMARY OF ISSUES (use continuation pages or attach Word document)

Please see attached document

EVALUATION OF NON-CONCURRENCE AND RATIONALE FOR DECISION (use continuation pages or attach Word document)

Please see attached document

TYPED NAME OF NCP COORDINATOR

Kimberly Green

TITLE

Senior Project Manager

ORGANIZATION

NRR/DORL/LPL3-1

SIGNATURE--NCP COORDINATOR



DATE

5/26/16

TYPED NAME OF NCP APPROVER

Eric J. Benner



TITLE

Deputy Director

ORGANIZATION

NRR/DORL

SIGNATURE--NCP APPROVER



DATE

5/26/16

NCP-2016-010 Section C

As the NCP Approver, I have read and considered the submission from EEEB staff. Prior to discussion of the issues, I would like to acknowledge the work of the EEEB staff and recognize that it is good that they are exercising their ability to register their concerns through the NRC's non-concurrence process.

Summary of Issues

The EEEB staff is objecting to the issuance of the amendment to the Nine Mile Point (NMP) license to implement TSTF-425 (Risk-Informed Surveillance Frequencies). The EEEB Non-concurrence has four core objections to the proposed license amendment request (LAR):

1. The proposed amendment would modify the NMP Technical Specifications (TSs) in a manner that doesn't meet the current licensing basis of NMP and NRC regulatory requirements. Specifically, General Design Criterion (GDC) 17, GDC 18, 10 CFR 50.36(c)(3), and 10 CFR Appendix B Criterion III.
2. The Topical Report (TR) Safety Evaluation (SE) was not reviewed by the Office of the General Counsel (OGC).
3. There are no backstops provided for the Surveillance Requirement (SR) frequencies that would be relocated to the licensee controlled document.
4. The proposed amendment is risk-based, not risk-informed.

Evaluation of Non-Concurrence

The objections raised in this non-concurrence are identical to those raised by EEEB staff during the NRC review of a TSTF-425 LAR for the Perry Nuclear Power Plant, Unit 1 (NCP-2015-012). The non-concurrence, including the NRC's response to the non-concurrence is available under Agencywide Documents Access and Management System Accession No. ML16033A197. As no new issues have been raised by the current non-concurrence, nor has additional technical justification for the issues been provided, I find that the previous resolution of the issues remains valid. Thus, the NRC staff should proceed with issuance of the LAR.