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May 31, 2000

David L. Meyer, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: Proposed New Appendix to Standard Review Plan (NUREG-0800), Chapter 9, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance" (65 Fed. Reg. 19030)

Dear Mr. Meyer:

This letter provides the comments of the Nuclear Utility Backfitting and Reform Group ("NUBARG")¹ on the U.S. Nuclear Regulatory Commission ("NRC") proposed new appendix to the Standard Review Plan ("NUREG 0800"), Chapter 9, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance," published in the *Federal Register* on April 10, 2000. 65 Fed. Reg. 19030. The proposed guidance explains how the NRC Staff will use risk information "for those rare instances where license amendment requests appear to meet regulatory requirements but raise significant risk concerns due to some special circumstances associated with the request." NUBARG has the following two major concerns with the failure of the proposed guidance to incorporate the backfit criteria in 10 C.F.R. 50.109:

¹ NUBARG is a consortium of utilities, operating a substantial number of U.S. nuclear power reactors. NUBARG was formed in the early 1980s and actively participated in the development of the NRC's backfitting rule in 1985. NUBARG has subsequently monitored the NRC's implementation of the backfitting rule.

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1. The New Guidance Should Require the NRC Staff to Address the Backfitting Implications.

Although the NRC has concluded that the backfit rule does not apply to this proposal because license amendment requests are voluntary, NUBARG has previously commented that the NRC's adoption of new criteria for the evaluation of a license amendment request without considering its backfitted impact is contrary to the intent of the backfit rule. The Commission adopted the backfit rule to provide regulatory certainty. We continue to believe that a licensee expectation of regulatory certainty includes consistency in the acceptance criteria for license amendment requests. If an amendment request maintains the plant within its licensing and design basis and meets regulatory requirements, the amendment request should be approved within the existing regulatory framework.

The NRC Staff should not be authorized to introduce new acceptance criteria and requirements simply because a licensee requests a license amendment. To treat license amendment requests as "voluntary" ignores the critical role of license amendments as an essential element of the longstanding regulatory process for enabling plants to meet their Technical Specifications. The large number of license amendments on each and every plant's docket shows that license amendments are more than just "voluntary" and are an intrinsic part of the ongoing regulatory process which should be accorded regulatory certainty.

Therefore, the imposition of acceptance criteria beyond a plant's existing licensing and design bases constitutes a backfit. If the NRC Staff believes that the license amendment request could create a situation where adequate protection is not assured, the backfitting rule includes provisions and a process for taking regulatory action. 10 C.F.R. § 50.109(a)(5). As noted in the proposed guidance, the NRC Staff would "assume the burden of demonstrating that the presumption of adequate protection is not supported by the bases for the existing staff positions despite the fact that currently specified regulatory requirements are met." 65 Fed. Reg. 19030, at 19031. Accordingly, the proposed guidance should include provisions for the NRC Staff to follow the backfitting rule when new requirements in the form of acceptance criteria are proposed to be imposed on a licensee, even though the licensee has initiated the license amendment request.

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2. The Guidance Should Include Objective Criteria to Limit the Situations in Which a License Amendment Request That Would Otherwise Be Acceptable According to a Plant's Design Basis, Licensing Basis, and NRC Regulations, Could Be Rejected if the Licensee Fails (i.e., Elects Not) to Respond to an Information Request From the NRC Staff.

The potential for summarily denying a license amendment for not responding to a burdensome request for information and analyses requested by the NRC, provides the NRC Staff with substantial leverage to force licensees to conduct expensive analyses for accidents outside a plants' design bases. This is just the undisciplined kind of regulatory interaction based upon a Staff reviewer's opinion which the backfit rule was adopted to prevent. We are concerned that the proposed guidance which provides only for management concurrence in an information request does not provide a transparent process subject to suitable objective criteria. Accordingly, NUBARG recommends that in situations where the Staff has determined that "special circumstances" exist, a review similar to the process for an information request through a Generic Letter be imposed. The process may include, for example, review by a panel established to ensure that the requested information does not unnecessarily impose a burden on a licensee without adequate justification by the NRC Staff that such information is needed to review the license amendment request. Without such a disciplined process, NUBARG is concerned that NRC Staff reviewers may request more information than is necessary before approving a license amendment request.

We appreciate the opportunity to comment on the proposed guidance. If you have any questions concerning NUBARG's comments, please contact us.

Sincerely,

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Sheldon L. Trubatch
Patricia L. Campbell

Counsel to NUBARG

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