

March 08, 2001

Mr. Daniel F. Stenger, Esq.
Hopkins & Sutter
888 Sixteenth Street, N.W.
Washington, DC 20006-4103

SUBJECT: CRGR RESPONSE TO INDUSTRY COMMENTS MADE DURING NRC/NEI
LICENSING FORUM "CRGR BACKFIT BREAKOUT SESSIONS"

Dear Mr. Stenger:

The members of the Committee to Review Generic Requirements (CRGR) who attended the U.S. Nuclear Regulatory Commission (NRC)/Nuclear Energy Institute (NEI) Licensing Forum "CRGR Backfit Breakout Sessions" on November 2, 2000 found the feedback from the industry during those sessions well worthwhile. We also appreciate your letter of Dec. 28, 2000 (ADAMS Accession No. ML010180416), which made suggestions for improved operation of the CRGR.

The CRGR encourages stakeholder interactions and has, in the past, utilized plant visits and meetings with industry and other stakeholders to obtain feedback on the effectiveness of the backfitting process. We see great merit in continuing these interactions. The recent breakout sessions at the NRC/NEI Licensing Workshop were most helpful. We plan to continue holding public meetings, probably in the same time frame of either the Licensing Workshop, the Regulatory Information Conference, or the Water Reactor Safety Meeting to discuss backfit procedures and processes, and generic concerns.

We feel, however, that the CRGR meetings on proposed generic requirements should remain internal and closed to the public. The material reviewed is in most cases pre-decisional and the discussions with the staff are frank. Adjusting the nature of the meeting to a public meeting while protecting pre-decisional information would, in our view, impede the CRGR effectiveness. Because we value stakeholder comments on proposals before us, we will normally review proposed rules after public comments have been received so we can review them and the staff's resolution of them.

The CRGR does monitor the backfit processes in the Office of Nuclear Reactor Regulation (NRR) and NMSS to ensure they are responsive to Commission rules and regulations. However, the appeal process from individual plant actions is a responsibility of the program office involved. The appeal process was discussed in some detail in the Licensing Workshop Sessions. There was some indication that it is not always used. To this end, CRGR intends to be briefed on the backfit appeal processes now in place, and on how its availability has been communicated to licensees. We will consider this in our review of the backfitting process, as well as any implications for staff training. As part of that review, we are considering the extent to which NUREG-1409, "Backfitting Guidelines," may need to be updated. CRGR may audit

selected inspection guidance and results as a part of evaluating the overall backfit process under its Charter. However, we have determined that the responsibility for individual backfits and their appeals should remain with the program offices, unless there is an assignment by the Executive Director for Operations on a specific case.

Suggestions were also made that the CRGR evaluate whether it should review specific direction memos from NRR to licensing reviewers for potential backfits. NRR is currently updating their internal backfitting guidance; as part of our audit of the backfit process, we will examine the controls on such directives.

The question of how to apply the Backfit Rule in a voluntary, risk-informed regulatory approach has been raised. The Commission has recently indicated that a disciplined, meaningful, and scrutable process needs to be in place to justify any new requirements that result from the development of risk-informed, alternative versions of regulations. The Commission noted that just as any burden reduction must be demonstrated to be of little or no safety significance, any new requirement should be justifiable on some cost-benefit basis, and challenged the staff to establish such a criterion in a manner that adds fairness and equity without adding significant complexity. The response to this challenge will be reviewed by CRGR and will be available for public comment; this may be the proper venue for your concerns.

Questions were raised on the status of the "Plant Specific Backfit Audit Report" being prepared as part of the Office of Nuclear Regulatory Research's regulatory effectiveness effort. This audit report is currently undergoing an internal NRC review, which will be followed in the near future by a public review.

The CRGR would like to thank you and the industry participants for their candid exchange of views on these concerns, during our breakout sessions and in your communications. Specific examples of apparent inappropriate backfitting may help our evaluation of the adequacy of the backfit processes in the program offices. We look forward to more frequent discussions with stakeholders in the future to discuss the NRC's backfitting process.

Sincerely,

/RA/

Joseph A. Murphy, Chairman
Committee to Review Generic
Requirements

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D. Stenger, Esq.

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