

February 9, 2004

MEMORANDUM TO: Charles E. Ader, Chairman
Committee to Review Generic Requirements

FROM: Martin J. Virgilio, Director **/RA/**
Office of Nuclear Material Safety
and Safeguards

SUBJECT: REQUEST FOR REVIEW AND ENDORSEMENT OF NMSS POLICY
AND PROCEDURES LETTER 1-82, "10 CFR PART 70 BACKFIT
GUIDANCE"

The Division of Fuel Cycle Safety and Safeguards (FCSS) has developed the attached NMSS Policy and Procedures Letter (PPL) 1-82, "10 CFR Part 70 Backfit Guidance," and hereby formally requests the Committee to Review Generic Requirements (CRGR) review and endorsement. PPL 1-82 is Attachment 1 to this memorandum.

The purpose of this PPL is to provide guidance to the Nuclear Regulatory Commission (NRC) staff for implementing the backfit provisions in 10 CFR 70.76 (§70.76). As stated in the regulation, §70.76 becomes effective upon issuance of "staff guidance for the implementation of this section." This PPL 1-82 is intended to be that 'staff guidance.' Under the regulation, after issuance of this 'staff guidance,' the backfit protection would apply for all Part 70 requirements, except for Subpart H requirements. In order for the requirements of §70.76 to become effective for Subpart H requirements, the NRC also has to have approved a licensee's Integrated Safety Assessment (ISA) Summary.

NRC Management Directive (MD) 8.4, "NRC Program for Management of Plant-Specific Backfitting of Nuclear Power Plants," and PPL 1-53, "Gaseous Diffusion Plant Specific and Generic Backfit Management," establish guidance for NRC staff implementation of 10 CFR 50.109 and 10 CFR 76.76, respectively. These documents were used to develop PPL 1-82 because of similarities between the backfit requirements.

By memorandum dated May 1, 2003, NMSS offered the draft PPL 1-82 to the CRGR for its review with the request that the CRGR meeting be delayed until after the NMSS received and addressed public comments. On May 17, 2003, the CRGR responded by email, accepting NMSS' proposed approach. On June 11, 2003, NMSS published a solicitation of public comments in the Federal Register notifying stakeholders of a 30 day public comment period. During that period one public comment was received, from the Nuclear Energy Institute (NEI), dated July 11, 2003.

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In general, NEI welcomed the guidance because, “it assures that any new regulatory burdens imposed on licensees must first have been supported by a cost-benefit study that demonstrates ... costs of implementation ... are more than offset by a substantial increase provided in the overall protection of public health and safety.” However, they did suggest numerous changes, some of which were not accepted by the staff, for example: NEI suggested specific definitions of, and examples for, the terms ‘applicable staff position,’ ‘substantial increase,’ ‘overall protection,’ and ‘justified costs.’ They also suggested including qualitative and quantitative factors in assessing a ‘substantial increase,’ the concept of ‘tacit approval,’ and expanding the guidance to address both ‘facility-specific’ and ‘generic’ backfits (the staff disagreed with these comments). However, other comments were accepted by the staff such as: NEI suggested expanding the definition of backfitting to include ‘items relied on for safety’ as well as adding ‘case studies’ to assist the staff in determining when a backfit may be warranted. The details of those comments, and the staff’s responses, are contained in Attachment 2 to this memorandum.

Although substantial editorial changes have been made to accommodate the public comments and to improve readability, we do not believe that any of those changes belie guidance given in MD 8.4 and PPL 1-53 or have policy implications. We have noted in Attachment 3, item (iii) of our response to the CRGR Charter, Appendix C, the differences that exist between this and other agency backfit guidance. The Office of General Counsel has reviewed this package and has no legal objections.

Attachments:

1. NMSS Policy and Procedures Letter 1-82, “10 CFR Part 70 Backfit Guidance”
2. Public Comment Resolution Document, dated 11/05/2003
3. Response to CRGR Charter Appendix C

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*see previous concurrence

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