

The following is the official transcript in its entirety. However, this note is attached to notify the reader that the transcript has not been edited to provide accurate representation of the participants and their statements. For example, the CRGR member, Gary Holahan is cited as a participant but in fact, it was Mr. Charles Ader acting as his alternate. Furthermore, the CRGR alternate Bruce Boger, acting for Jack Grobe is quoted as saying that he is, "sitting in for Jack Groden."

**Official Transcript of Proceedings**  
**NUCLEAR REGULATORY COMMISSION**

Title: Public Meeting to Obtain Stakeholder  
Comments on NRC Backfit Controls

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
COMMITTEE TO REVIEW GENERIC REQUIREMENTS

Thursday, March 29, 2007

The Committee met in the Rockville Hilton, 1750  
Rockville Pike, Rockville, MD at 1:00 p.m.. Lance J.  
Rakovan, meeting facilitator, presiding.

PRESENT:

JAMES T. WIGGINS CRGR CHAIRMAN

BRUCE BOGER NRR

WILLIAM M. DEAN NSIR

THOMAS P. GWYNN RIV

GARY M. HOLAHAN NRO

ERIC J. LEEDS NMSS

GEORGE C. PANGBURN FSME

KATHRYN L. WINSBERG OGC

LANCE J. RAKOVAN OEDO

STAKEHOLDERS:

TOM HOUGHTON NEI

DAVE CULBERSON FCFF

A G E N D A

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James T. Wiggins

Lance J. Rakovan

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James T. Wiggins

Lance J. Rakovan

## P R O C E E D I N G S

(1:03:21 p.m.)

1  
2  
3 MR. RAKOVAN: Okay. I think we're going  
4 to go ahead and get started here. We've got a couple  
5 of panel members that I believe will be joining us  
6 soon, but we've got a few preliminary things that we  
7 can do before we get into the presentations. My name  
8 is Lance Rakovan. I am a Communications Assistant at  
9 the Nuclear Regulatory Commission, and I will be  
10 facilitating today's meeting.

11 The purpose of the meeting today is to get  
12 public comments on the existing Committee to Review  
13 Generic Requirements, or CRGR Process. Specifically,  
14 CRGR, its effectiveness in reviewing generic documents  
15 to assure staff compliance with the Backfit rule, or  
16 10 CFR 50.109, and the adequacy of staff  
17 documentation.

18 Just to give you an idea of what to expect  
19 today, if you look at the agenda, we're going to have  
20 three presentations by the gentlemen seated here at  
21 the table. We're going to allow a little bit of time  
22 for Q&A between CRGR and the presenters after each  
23 presentation. Once the three are done with their  
24 presentations, then we're going to basically open the  
25 floor up, if there's any comments or questions from

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1 the audience.

2 If you take a look at the back seats when  
3 you walked in, if you didn't get copies of  
4 presentations or an agenda, they are back there.  
5 There is also a sign-in sheet if you could go ahead  
6 and sign in, that gives us an idea of who is here  
7 today, and it also gives us the correct spelling of  
8 your name in case you come up to the microphone and  
9 make a comment.

10 Speaking of which, we do have a  
11 transcriber here today, so I'm going to ask that if  
12 you do make a comment, or if you do have something to  
13 say, make sure you say it into the microphone, try to  
14 make sure that only one person is talking at a time,  
15 and that way we can have a clean transcription of this  
16 meeting.

17 This is a Category II public meeting, so,  
18 again, per the agenda, we're going to focus primarily  
19 on the presentations and interaction between the  
20 people at the table first, and then we'll be going out  
21 to the audience.

22 Just a few things, if you could silence  
23 your cell phones or put them on vibrate so we don't  
24 have those kind of interruptions, that's always a  
25 great help. And I guess the next thing that we should

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1 probably do is just go and have the people at the  
2 table introduce themselves, so let's go ahead and  
3 start at the end.

4 MR. GWYNN: Hi, my name is Pat Gwynn. I'm  
5 the Deputy Regional Administrator for NRC's Region 4  
6 offices in Arlington, Texas. I'm the only member of  
7 the CRGR that's not a permanent member. The regional  
8 member rotates once every two years.

9 MR. WIGGINS: Good afternoon. My name is  
10 Jim Wiggins, and I'm the Chairman of CRGR currently,  
11 and currently the Deputy Office Director for the  
12 Office of Research until a week and a half, and then  
13 move over to the Deputy of NRR.

14 MR. PANGBURN: Hi. I'm George Pangburn,  
15 and I'm currently the Deputy Director of NRC's Office  
16 of Federal and State Materials and Environmental  
17 Management Programs.

18 MR. LEEDS: Good afternoon. My name is  
19 Eric Leeds. I am the Deputy Director for the Office  
20 for Nuclear Material Safety and Safeguards.

21 MR. BOGER: Hi, I'm Bruce Boger. I am  
22 Associate Director in the Office of NRR. I'm sitting  
23 in for Jack Groden who is out today, who is the CRGR  
24 member.

25 MR. DEAN: Good afternoon. I'm Bill Dean.

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1 I'm the Deputy Director for NRC's Office of Nuclear  
2 Security Incident Response. I am one of the CRGR  
3 members.

4 MR. HOLAHAN: I take it we're doing  
5 introductions.

6 MR. RAKOVAN: Yes, excellent timing.

7 MR. ADER: I'm Charles Ader. I'm sitting  
8 in for Gary Holahan, Office of New Reactors.

9 MR. RAKOVAN: Okay. If we could have the  
10 gentlemen here at the table introduce themselves,  
11 please.

12 MR. HOUGHTON: My name is Tom Houghton.  
13 I'm the Director for Strategic Regulatory Programs at  
14 the Nuclear Energy Institute.

15 MR. CULBERSON: Dave Culberson, Chairman  
16 of the Fuel Cycle Facility Forum, and Vice President  
17 of Nuclear Safety Associates.

18 MR. LOCHBAUM: Dave Lochbaum, Director of  
19 the Nuclear Safety Project for the Union of Concerned  
20 Scientists.

21 MR. RAKOVAN: And, Kathryn, if you could  
22 introduce yourself since you came in while we were  
23 doing introductions.

24 MS. WINSBERG: Yes. I'm Kathryn Winsberg  
25 representing the Office of the General Counsel.

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1 MR. RAKOVAN: Thanks. Having done all  
2 that, I think we will go ahead and get started with  
3 the presentations. I think Jim Wiggins from the NRC  
4 has some material he'd like to go over, so I'm going  
5 to turn things over to Jim.

6 MR. WIGGINS: Yes. Thanks, Lance. Before  
7 we get started, I'd like to thank everyone for coming,  
8 and apologize for any upheaval. We found out the  
9 middle of last week that the hotel changed names, and  
10 we found out this morning that the hotel changed our  
11 venue to a different room in the hotel. And depending  
12 on what you looked at, you could get confused as to  
13 when it was supposed to start. The hotel thought we  
14 were starting at 1:30.

15 Now absent that, it seems like we  
16 recovered pretty well, so I think things will move  
17 pretty well going forward, but I'd like to thank  
18 people for coming. I'd like to thank the presenters  
19 ahead of time for taking the time to get ready for  
20 this, and put their presentations together early  
21 enough to make copies available so folks can follow it  
22 in their seats.

23 Another piece, just another administrative  
24 piece; we are here, as Lance said, to receive comment.  
25 The Committee to Review Generic Requirements is a

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1 serious activity. It needs to make sure that we --  
2 its principal purpose relates to regulatory  
3 stability. It's to make sure the agency follows the  
4 Backfit rule, probably, I guess, it's still the only  
5 regulation in 10 CFR that applies to the staff, and  
6 governs the staff's activities. So if we do this  
7 right, then we would be able to have a stable  
8 regulatory environment, which doesn't mean static, it  
9 means stable.

10 There are good changes. There are changes  
11 that need to be made, and those changes would be made  
12 after they're appropriately justified. Our job is to  
13 make sure that staff meets its threshold test for  
14 making industry make those changes.

15 Now, as you see, we have a transcriber  
16 here, and although it looks very official with these  
17 two panels, that's all for convenience. The principal  
18 presenter is at that panel, we wanted to face them so  
19 that we could see them. And the transcriber is not  
20 here to try to catch or trap people in statements,  
21 rather, it's a matter of convenience for us. We're  
22 here to get commentary. We're here to get questions  
23 and comments. Rather than sit here and worry about  
24 capturing your comments, we want to listen to you and  
25 interact with you, so we're transcribing it to capture

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1 the record in that regard.

2 We asked the panelists to come that are  
3 here to represent a diversity of opinion. We have  
4 industry for both reactors and fuel cycles  
5 represented, and Dave is here to represent the public  
6 at-large, or a private sector, or a non-licensee, at  
7 least, a non-license/non-government entity, so I  
8 appreciate them coming out to do that.

9 Now, with that, let me just go a short  
10 presentation about CRGR. For folks in the business,  
11 this is a lot of redundancy, and the slides have a lot  
12 of detail on it, only because we wanted to make sure  
13 people could take the slides away and read them, and  
14 see what the actual rules are that we're trying to  
15 work within. So, as I said, the purpose of the  
16 meeting is to provide a forum for stakeholders that  
17 are impacted by the Backfit rule, to discuss with CRGR  
18 how well the staff is exercising their obligations on  
19 that rule, and to give any clarifications we can about  
20 the rule, to obtain feedback from stakeholders, and  
21 get a better understanding of concerns that they may  
22 have.

23 We know there are concerns out there.  
24 This is an opportunity to air those concerns in a  
25 public setting so we can think about them, and make

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1 some changes, if they're appropriate. And we're also  
2 taking comments about whether you think there are  
3 improvements needed or enhancements that could be  
4 made, and how CRGR does its job mechanically, how the  
5 committee works.

6 Okay. Next slide is the primer on what's  
7 backfitting. It's a long slide. It's a modification  
8 that we are requiring to be made. Typically,  
9 licensees has a set of requirements. That's what  
10 they're asked to meet, that standard; although, as  
11 time goes by, things change. We need to change the  
12 standards, we need to make sure licensees adopt those,  
13 and adapt to those changes, but it needs to be done in  
14 a disciplined way. So, essentially, what you got is  
15 a backfit requires an analysis be done to make sure  
16 that the cost of the change is worthwhile, and  
17 reasonably offsets the benefit. It's really the other  
18 around way around, that there's a benefit that's  
19 commensurate with the cost.

20 Now there are a couple of exceptions to  
21 the need to do that type of an analysis. One is a  
22 compliance area, if a licensee needs to make a change,  
23 in order to come in compliance with an existing  
24 requirement, then a backfit can be managed without a  
25 detailed cost benefit analysis.

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1           Similarly, if it's a type of a backfit  
2           that bears on adequate protection; and, typically, an  
3           adequate protection related backfit looks like a rule  
4           making exercise, so that's how you see that. And,  
5           let's see, where's the last one. That's the two real  
6           exceptions. It's an adequate protection one where you  
7           redefine the level of protection that's necessary, or  
8           to compliance backfit.

9           Next slide is the role of CRGR. As I  
10          said, we're pretty much an agent for the Executive  
11          Director for Operations of the agency, the senior  
12          career individual in the NRC. And we are here to  
13          oversee the staff's conformance to the Backfit rule,  
14          whether in the reactor arena, it's 50.109. There's a  
15          similar rule in the fuel arena, which our fuel cycle  
16          representative will talk about.

17          The next slide is the scope of what we get  
18          into. It's new and revised requirements like  
19          regulations, generic correspondence, like generic  
20          letters mainly these days, regulatory guidance, REG  
21          Guides, regulatory guides, NUREG, standard review  
22          plans if there's a new staff position that is involved  
23          in any of this, and other things that we may select  
24          for review, or we may be asked to review.  
25          Technically, we could look at inspection procedures.

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1 That seldom happens, but we could.

2 You can see the last bullet. We also  
3 review selected nuclear materials and security items.  
4 Bill Dean is here representing NSIR, the office that  
5 would sponsor those. And Eric and George are here for  
6 their piece on this, too, on the materials.

7 Next slide. CRGR ensures that the  
8 administrative controls related to the generic backfit  
9 management practices are met. We are into -- it's a  
10 committee to review generic requirements. We're not  
11 a committee to get an appeal for a specific  
12 requirement, or a specific action. If a specific  
13 plant believes that a backfit is occurring to them, or  
14 if agency wants to apply a backfit to a single plant,  
15 that's a plant-specific backfit that's managed outside  
16 CRGR, but still under the guidelines of management  
17 directive on backfitting. You can look that up on our  
18 web, and you'll see there's a process that has to be  
19 followed before one of those things is imposed. And  
20 there's an appeal process all embedded in that. We  
21 are just -- this committee, as we stand right now,  
22 it's not in our charter to get involved in those  
23 things.

24 And the last slide is one of the questions  
25 that we wanted to ask, aside from getting comment on

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1 how you think we're doing. A question has arisen in  
2 at least some of our minds with regard to how should  
3 CRGR operate going forward. Right now, we are in a --  
4 essentially review everything that's within scope,  
5 and that's the type of process. So all the things we  
6 showed in our earlier slide, the types of stuff we  
7 look at, generic letters, things like that, regulatory  
8 guides - we just finished the program. We updated 29  
9 regulatory guides in a short period of time. CRGR had  
10 a role in each of those activities, which we either do  
11 a review, or there's a process we get a review waived.  
12 There's a waiver process that runs.

13 Our question is, is that where we ought to  
14 be, or do we want to be more selective? Should we  
15 operate on an as-needed basis; meaning, if an office  
16 director requests a CRGR review, or the EDO requests  
17 one, we do it. If industry believes a backfit  
18 occurred, we might review, that would be something  
19 that would trigger a CRGR review. Or should we  
20 continue largely as-is, which is as I've described, or  
21 should we even enhance our role, which might be worth  
22 thinking about given the era that we're about ready to  
23 enter in, at least on reactor plants, so that's  
24 basically CRGR in a nutshell, and what we're here to  
25 do in this meeting. So unless there's any clarifying

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1 questions about what the meeting is about, maybe the  
2 best thing to do would be to go right to the panel and  
3 start the discussion. So first of - seeing nothing  
4 right now, first up is Tom Houghton from NEI, who will  
5 give a presentation, and we might have some questions  
6 after that.

7 MR. HOUGHTON: Okay. Thank you, Jim.

8 We very much appreciate the opportunity to  
9 come and speak to you today, and for industry and  
10 other stakeholders, some of the folks that came with  
11 me today, John McCann from Entergy, Pam Cowen from  
12 Exelon, Ed Weinkam from NMC, Lou George from Southern,  
13 Don Woodland from THU, and some of my fellow NEI folks  
14 are here today. And if I missed any, Gary Vine from  
15 EPRI, so we wanted to let you know it's not an NEI  
16 show, it's industry comments.

17 When we learned that the CRGR was being  
18 reconstituted and you were going to have this meeting,  
19 we went out and polled out industry, and asked for  
20 comments and ideas. We also talked to some former  
21 commissioners, and former EDO, former Senior CRGR  
22 members, and asked for some of their thoughts, as  
23 well, so we tried to gather in some opinions.

24 Our purpose here today is not to complain.  
25 Okay? I think there were a lot of presentations at

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1 the ANS meeting on Amelia Island, and it's not our  
2 goal today to go back and revisit all that. We want  
3 to look for recommendations, and look forward. That's  
4 our goal today.

5 Next slide. The topics, general topics I  
6 want to cover today are common goals that NRC and its  
7 stakeholders have, a little bit about backfitting and  
8 CRGR highlights. I won't repeat everything you said,  
9 Jim. There's no point in that. Why we think change  
10 is needed, and focus on where we think -- why there is  
11 a need for change. Then really, an idea, well, what  
12 would an effective CRGR look like, and what might be  
13 the attributes of that CRGR if it was everything we  
14 all wanted it to be, and then some recommendations  
15 that we have on getting towards that effective CRGR.  
16 So that's where I want to go today.

17 First off, I'm sure you recognize these  
18 from the NRC Strategic Plan - Safety Security,  
19 Openness, Effectiveness, and Excellent, and you can't  
20 get better than that in terms of goals and where we  
21 want you to be. We absolutely support the safety  
22 goal, safety, security, and all these three other  
23 means of improving effectiveness.

24 We would add predictability and stability,  
25 next slide. And just a quote - I'm sure everybody

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1 heard the Chairman at the RIC talking about a strong,  
2 credible, consistent regulator, quoting James Madison,  
3 "Stability and predictability would inspire general  
4 prudence in industry, give a regular course to the  
5 business of society", so we echo that, as well as  
6 goals of where we're going.

7 Next slide. The Backfitting rule,  
8 probably the exact same words you had on the slide.  
9 We would - as you said, Jim, it's one of those rare  
10 Part 50 rules that directs the staff to take actions.  
11 And if you go back and think about why this rule came  
12 into place in, I guess it was 1985, we had this  
13 significant emotional event of TMI. We had a whole  
14 series of regulations and proposed positions. I just  
15 pulled this out of my head, 0660, a couple of inches  
16 thick each one, with all kinds of recommendations;  
17 0737. And I think by the time 1985 came, there was a  
18 feeling that we really needed to have a structure, and  
19 a method to look at cost benefit, and what was really  
20 important, what was really safety significant to do.  
21 And that was the impetus for it, and we really see  
22 that that needs to be foremost in the mind as to what  
23 the purpose is of the CRGR on the Backfit, is to go  
24 after that purpose.

25 Next slide. There are the exceptions. I

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1 won't go into those. Jim covered those very well.  
2 The next slide, I did want to bring up a quotation  
3 from the Statement of Considerations for the rule.  
4 You can see that underlined part there. "It should be  
5 noted that new or modified interpretations of what  
6 constitutes compliance would not fall within the  
7 exception, would require backfit analysis, an  
8 application of the standard." We think those are  
9 important words to ponder in the Statement of  
10 Considerations here as we go forward. And we'll have  
11 some recommendations where we think -- where we want  
12 to talk about what could be done so that we get on a  
13 common wavelength of what we mean.

14 The next page is a couple of quotes from  
15 the Regulatory Analysis, which we would say is key to  
16 good decision making, because that's what you all are  
17 doing, is you're making decisions on generic  
18 requirements going forward, and whether they ought to  
19 be implemented or not. Call it what it says here,  
20 "Complete disclosure of relevant information  
21 supporting a regulatory decision." We'll have a  
22 recommendation on how that might be better achieved.  
23 And the bottom of the second quote, "Systematic and  
24 disciplined process that is also open and transparent  
25 in arriving at decisions", and I'm sure you wouldn't

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1 disagree with any of that.

2 We were talking over this morning with the  
3 group what I was going to say today, and I won't say  
4 nearly as much as they wanted me to say, or as well,  
5 but the point that was brought out was, we have to  
6 follow the 50.59 process when we're deciding what we  
7 want to do about a modification or change. And the  
8 process itself, while it's a lot of work to go  
9 through, helps us to be able to make the right  
10 decision on a 50.59 choice. And we think that the  
11 regulatory analysis is analogous for you in your  
12 ability to really look at the whole gamut of what's  
13 involved with the Backfit decision.

14 Next page - the charter. And, Jim, you  
15 did that again. I think the most important point for  
16 us is that CRGR reports directly to the EDO. And you  
17 have the authority and responsibility to ensure that  
18 the regulation is being followed, so you have a heavy  
19 responsibility, I think, here, and one that it's  
20 important to carry out, and that should be viewed by  
21 the staff as the champions of the Backfit rule.

22 Next slide. "Other Requirements -  
23 ensuring licensees are informed of changes to the  
24 program." While you don't cover the inner workings  
25 and hidden mechanisms going on in the offices, you do

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1 have the responsibility for looking at -- I'm sorry.  
2 Get to that. You do have requirements for reviewing  
3 various activities. Next page.

4 My point that I was starting to make was  
5 that you have a responsibility of looking at  
6 administrative controls, which includes training and  
7 the procedures that are done in the offices. Training  
8 was a big issue brought up in a number of sessions at  
9 the RIC, hearing from people about the importance for  
10 new people, and the training that goes on. And one of  
11 the things that we would suggest is looking at what is  
12 the training that goes on for people. A lot of folks  
13 are new, and I'm wondering what type of training  
14 people get, and what type of expectations there are  
15 for both generic and plant-specific Backfit, so  
16 they're separate management directors for them, but I  
17 think that's very important.

18 Finally, holding periodic meetings with  
19 stakeholders, possibly visiting plants. I think  
20 that's important for the CRGR to be able to get close  
21 to the stakeholders, and hear what they have to say.

22 So moving on from that, next slide. Why  
23 change is needed? So far, we've talked about what's  
24 on paper in terms of expectations and requirements of  
25 CRGR. I think CRGR is critically important to the

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1 regulatory process, and it's the perception of  
2 industry that that role has been diminished over the  
3 last X number of years, that it's not what it once  
4 was.

5 Many people are entering industry and NRC,  
6 and don't understand the requirements. I think  
7 changes -- that's another reason why change is needed.  
8 We've had a loss of regulatory historians, I would  
9 say, in two senses. One, in the sense of what is  
10 backfitting, and what does it mean, and why did we  
11 have it, and why is it important? And secondly, in  
12 terms of the institutional knowledge on specific  
13 regulatory positions. The people are gone or going,  
14 or forgot what we went through when we developed a lot  
15 of positions. And so it's important that we be able  
16 to have a process, as I said like 50.59, that allows  
17 us to be able to verify what we're doing when we want  
18 to make changes.

19 We have a perception that informal  
20 backfitting occurs outside of CRGR purview. An  
21 example of that might be in inspection findings, or  
22 license amendment request. And it's also our  
23 perception that sometimes a desire, a worthwhile  
24 desire to improve a regulatory position may trump the  
25 backfitting requirements; in other words, gee, this is

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1 a really good change that we ought to make, or maybe  
2 the position ought to have said this, and so we'll do  
3 it. And the backfitting process may not get the  
4 importance that it needs when that desire goes  
5 forward.

6 Next page. We feel that the staff often  
7 has a broader interpretation of exceptions than we  
8 believe is appropriate, and we think that CRGR has a  
9 role in helping clarify, and assisting in that  
10 compliance area.

11 New interpretations we know are imposed on  
12 individual licensees. It happens, and it's difficult  
13 -- it's often difficult for licensees to submit a  
14 formal response when there are - "Time, tide, and  
15 formation wait for no man". Okay? And if you need to  
16 get something done, you may agree to do something that  
17 you think is a backfit to move forward. Let's see. We  
18 do have a feeling that NRC's ability to implement the  
19 Backfitting rule is currently not where you would want  
20 it to be. Next page.

21 So having said all that, what does an  
22 effective CRGR look like? And we sort of said, well,  
23 it's a good way going forward is to say what would be  
24 the attributes? And this would -- what's the  
25 challenge that you want to get to to make your CRGR an

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1 organization that you're proud of, and that you feel  
2 is supporting the rules?

3 First of all, we would see CRGR being  
4 recognized by the staff as the regulator of the  
5 regulator. Okay? Some people call that who would  
6 watch the watchman? Okay. Or if you went back to  
7 your Latin class, "Quis Custodiat custodes", who's  
8 watching the watchman. Okay. And I think that's an  
9 important role for you all to think of yourselves in.

10 Secondly, scope of review. We feel that  
11 the CRGR doesn't just look at the top level rules, and  
12 generic letters, but it also looks a little closer at  
13 RISS, and in the charter is, I think, a requirement to  
14 look occasionally at some specific -- look lower at  
15 activities that are going on. Okay? So a scope of  
16 review I think would be broader, if only on a sampling  
17 basis.

18 Credible, robust reviews, clear  
19 expectations for the staff. It's very hard for  
20 somebody to do their job right, unless they have clear  
21 expectations on what they need to do. I'll get into  
22 that in a minute. Demanding critical reviews. You  
23 all set the standard for what the staff brings to you,  
24 and that's an important role, in being able to ensure  
25 that what you get is a good quality product. And if

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1 it's not, that you send them back to bring you a good  
2 product.

3 Stakeholders actively engaged - I think  
4 nothing helps so much in all our regulatory processes  
5 as getting stakeholders involved, not in your final  
6 decision, because that's your decision, but certainly  
7 getting them involved to be able to point out where  
8 there might be a weakness, or where things could be  
9 improved. And I mean all the stakeholders, too.

10 Documented publicly available information  
11 that supports decision making, and transparent and  
12 consistent decisions, which harkens back to a couple  
13 of things we said before. So in our minds, that would  
14 be - if you were looking at well, where do we want to  
15 go? Those would be the types of things that we would  
16 see as the attributes that you would have. Okay?

17 What are some recommendations for things  
18 we can do about -- that we would recommend that you  
19 might do? The first, and I've got them in a couple of  
20 categories here. Go on to the next slide, please.  
21 The first one is self-assessment. Self-assessment, as  
22 you tell us, and as we know is critical to self-  
23 improvement. I mean, you can't improve unless you can  
24 self-assess.

25 We'd recommend, perhaps, that you might

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1 want to have a third party involved in doing a self-  
2 assessment, maybe as part of your team of looking.  
3 That might involve former CRGR members, or retired NRC  
4 managers, or a consultant who's good at process  
5 control. Those might be helpful to you in bringing  
6 some fresh eyes in looking at what you're doing.

7 Review the history, the Statement of  
8 Considerations, et cetera. Select some packages, do  
9 some test cases of recent activities that may have  
10 gone to the Commission and been sent back, or where  
11 there have been last-minute issues when the packages  
12 have gone forward, where, perhaps, in your review you  
13 might have noted those things, or your predecessors  
14 might have highlighted those things, and fixed the  
15 package before it went forward.

16 Engaging stakeholders in this self-  
17 assessment I think would be very good. You may even  
18 want to go into the Federal Register and ask for a  
19 broader audience of people for assessing the CRGR.  
20 And then, of course, you can't just do that, you need  
21 to bring recommendations together. Okay? Then move  
22 forward with that.

23 Next page. Setting expectations - I  
24 mentioned this before, as being a good attribute for  
25 an effective CRGR. Insisting on quality work coming

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1 in to you. Can the process itself be improved? It  
2 may be that the analysis process could be improved?  
3 It's very extensive, and maybe there's a way to make  
4 that easier to do. It's been a long time since I  
5 think the NUREG was written on how to do that, but we  
6 know more about risk analysis now, and we may be able  
7 to make that process not so onerous so that people  
8 wouldn't try to avoid it.

9 I think that a workshop and training on  
10 expectations for the staff would be very useful. And,  
11 of course, you need to have accountability and  
12 consequences for once those expectations have been  
13 set, and they're understood, and people know that they  
14 should meet them.

15 And I've added as a last thing, although  
16 Jim pointed out that plant-specific backfits are not  
17 under the CRGR's charter now, that it would be  
18 probably useful to look at what the expectations are  
19 for those plant-specific backfits, and look at them,  
20 not in a 100 percent way, but in a sampling way, or in  
21 a way that you can be assured, as you're assured when  
22 you go out and inspect a plant when you're sampling,  
23 to see what's going on.

24 Next page. A more open process. This is  
25 our suggestion that we have greater stakeholder

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1 involvement. Although it's obviously not completely  
2 analysis since the ACRS is a FACA group. Right,  
3 Kathryn?

4 MS. WINSBERG: No, we're an internal --

5 MR. HOUGHTON: No, no, no. I said it's an  
6 analogy to ACRS.

7 MR. RAKOVAN: Kathryn, could you please  
8 use the microphone?

9 MR. HOUGHTON: It's not completely  
10 analogous, because ACRS is a FACA group, and you're an  
11 internal group.

12 MS. WINSBERG: ACRS was established by the  
13 statute.

14 MR. HOUGHTON: Okay. Well, then it's  
15 definitely not analogous. Okay. That's the point I  
16 wanted to make. But I think by having open and closed  
17 sessions, where you have open sessions where the  
18 public can see what is being suggested, and some of  
19 the discussion, in the same way that the ACRS when  
20 it's reviewing regulatory positions and rules, and  
21 things like that, would be very helpful to the public,  
22 and I think a value to you, also. And, of course, you  
23 need to have closed sessions when you come to make  
24 your final decisions. I think that, of course, is  
25 entirely appropriate.

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1           In terms of openness, perhaps you might  
2           want to think about a web page. It's very hard to  
3           find information about CRGR, packages, and findings,  
4           and results, and everything else, in the same way that  
5           we've opened up in terms of license renewal, and  
6           amendment, other things. I would think a web site  
7           might be very helpful for people knowing where to go,  
8           instead of having to be a guru on ADAMS. Okay.  
9           That's tough. I hope it's easier on the internal  
10          website. No? Okay.

11                 Opportunity for industry - I should say  
12          industry, not licensees - to appeal to CRGR. We were  
13          talking about this morning, and maybe it's not an  
14          appeal, but maybe it's that the industry has a  
15          capability of bringing issues to the CRGR for you to  
16          look at, where we feel that maybe what's being  
17          implemented in the field isn't doing what it looked  
18          like was going to be done in the generic letter, or  
19          the RIS, or the temporary inspection, or whatever.  
20          Okay? And that would avoid the problem of having to  
21          worry about being in trouble with your regulator,  
22          which is a perception. Okay? And being able to have  
23          a way of bringing the issue forward, where we can  
24          address the generic aspects of it.

25                     Annual public meeting, I think that's

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1 worthwhile to communicate changes to the program,  
2 receive industry feedback. You may have Amelia Island  
3 as a possibility. You have a regulatory track there,  
4 and maybe CRGR is involved in that activity, that  
5 might be a venue for it. I'm sure there are others,  
6 but that's just one venue that might be a possibility.

7           Next page. Communication and alignment on  
8 when the Backfit rule applies. We've got a lot of new  
9 people. I think we have a lack of common  
10 understanding. We can read the words on the page, but  
11 actually, when it comes down to what's in the  
12 regulation, and what did the review initially say, and  
13 what's the current licensing basis, we have some  
14 problems there, and I think we need to think how we  
15 can do a better job of understanding each other. And  
16 this might -- it might be useful to conduct NRC  
17 stakeholder workshop, and try to get our hands around  
18 this. I know a good number of years ago that was  
19 done. It's probably time to do it again, now that  
20 we're all -- we've got to so many new people, and this  
21 is an issue. I mean, we may not agree, but I think we  
22 need to figure out how we can do better in agreeing  
23 not to agree, or agreeing. I think that's important  
24 in a workshop. Well thought out in advance would be  
25 very helpful in doing that.

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1 How am I doing on time?

2 MR. RAKOVAN: You're good.

3 MR. HOUGHTON: Nobody poked me yet. Okay.  
4 Well, you want lots of recommendations, so I'm doing  
5 my best.

6 CRGR role in plant-specific cases. We see  
7 an opportunity where CRGR could play a role in helping  
8 by monitoring some things, and perhaps with some  
9 suggestions by industry on what to look at. I think  
10 that could be very helpful.

11 Next page. Finally, in conclusion, a  
12 couple of points that I think I probably said, and  
13 said again, and said again, but that's what you're  
14 supposed to do in a public presentation. We're both  
15 focused on safety. We don't want to have anything  
16 that harms the public. We don't want to have anything  
17 that damages our investment.

18 The regulator expects us to rigorously  
19 follow the requirements, and we expect the same from  
20 NRC in terms of the Backfitting rule. We feel that  
21 CRGR should take a strong leadership role and be the  
22 champion for the integrity of the Backfitting rule.  
23 And we hope that you can engage stakeholders to work  
24 together to meet these common goals. Thanks.

25 MR. WIGGINS: Thanks, Tom, for the

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1 comments. I guess by the agenda we should have a few  
2 minutes here for some questions from the panel to Tom,  
3 hopefully that are more clarifying. Anything on the  
4 panel?

5 MR. LEEDS: Oh, back on -- I don't see  
6 numbers on the slides.

7 MR. HOUGHTON: What's the --

8 MR. LEEDS: The title is "Why change is  
9 needed".

10 MR. HOUGHTON: Okay.

11 MR. LEEDS: And you talked about informal  
12 backfitting occurs outside CRGR purview.

13 MR. HOUGHTON: Yes.

14 MR. LEEDS: And I noted your comment was  
15 with regard to license amendment, inspection reports.

16 MR. HOUGHTON: Yes.

17 MR. LEEDS: Those are the principal areas  
18 that you were talking about. Are there other areas?

19 MR. HOUGHTON: Those are the primary  
20 areas.

21 MR. McCANN: Maybe to clarify what --

22 MR. RAKOVAN: If you're going to make a  
23 comment, please speak into a microphone. You can use  
24 this one, if you'd like.

25 MR. McCANN: John McCann, Entergy. I



1 think some of the idea there was that - where these  
2 documents meet the road, the rubber meets the road is  
3 in the inspection process, and in the application of  
4 guidance to license amendment reviews. And what we  
5 think we see are some instances where the inspector  
6 makes an interpretation that may not have been what  
7 the committee originally considered, but that is the  
8 actual impact on the licensee. And the plants kind of  
9 deal with those one, or two, or three at a time.  
10 License amendments, the same thing. I think we would  
11 have some examples. We would probably offer that the  
12 issue associated with Method 3 in Set Point  
13 Calculation might fall into that category. Licensees  
14 hit it one, or two, or three times. I know that's an  
15 example we've been through a hundred times, but that  
16 is one, frankly, maybe at the end we agree to disagree  
17 on. So those are the instances that we're talking  
18 about. It's kind of where the implementation phase  
19 occurs, but we see some of this as potential backfits.

20 MR. LEEDS: Thank you. It's kind of  
21 interesting to me, the generic requirements versus the  
22 plant-specific, and your suggestion - I'm asking a  
23 clarifying question. You think that CRGR should  
24 stretch its bounds, and look at more plant-specific  
25 issues?

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1 MR. HOUGHTON: Well, yes. Sometimes there  
2 is what might, for one plant be a plant-specific, you  
3 might say well, that's plant-specific; however, when  
4 it happens at the second, or third licensee for the  
5 same generic topic, that that starts making it  
6 generic.

7 MR. WIGGINS: I kind of heard a slightly  
8 different twist on it. I don't want to put words in  
9 John's mouth, or your mouth, but I think what I heard  
10 was, you may have a thing, whether it's a generic  
11 letter, or a Reg Guide or whatever, or regulation that  
12 comes through CRGR, and we do our thing, and the  
13 staff, we find, makes its appropriate threshold  
14 showing that it's worthy of applying. But what I  
15 think I hear is when the rubber eventually meets the  
16 road, and it turns into a requirement that's in the  
17 inspection program, when the inspector approaches the  
18 issue, he or she may not be in the same place as the  
19 staff was when they presented to CRGR. So I think  
20 John is suggesting an end-to-end check, not to put  
21 words in his mouth, but that's what I heard him say.

22 MR. McCANN: I couldn't have said it  
23 better. Exactly.

24 MR. WIGGINS: Okay.

25 MR. LEEDS: Thank you. That's helpful.

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1 And, Jim, if I can take another?

2 MR. GEORGE: I'll give you another example  
3 here.

4 MR. LEEDS: Oh, I'm sorry.

5 MR. GEORGE: Ben George, Licensing Manager  
6 for Southern Nuclear. The regulatory information  
7 summary process has been useful in providing  
8 information, but also, I think in a couple of areas  
9 across the line relative to interpretation of the  
10 regulations. And, often you'll see, especially with  
11 the advances in technology we have, with the PRAs like  
12 the fire protection voluntary rule, the ultimate  
13 source term voluntary rule, and probably future down  
14 the road 5046 Alpha, the voluntary large break LOCA  
15 rule, you're seeing these RISs being issued, and  
16 they're taking the -- they're using that voluntary  
17 regulatory wording or pathway to avoid doing the  
18 backfit review.

19 Now the last time I read the regulations,  
20 only the Commission can interpret the regulations. I  
21 didn't care whether it was voluntary or involuntary  
22 regulation. And I think the CRGR should challenge the  
23 staff on where they're using RISs, for example, where  
24 we have a voluntary rule, because it's still a rule,  
25 but they are making interpretations of that

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1 regulation. And there's also RISs in some areas where  
2 they use the compliance, or conformance language to  
3 avoid doing a backfit. So I would also suggest that  
4 you gentlemen consider screening RISs in that regard.  
5 Thank you.

6 MR. WIGGINS: I can clarify. You may have  
7 -- your comment is well taken in terms of the  
8 legitimacy of the process, but we do screen RISs.  
9 Actually, we do a screening review. Les Cupidon, the  
10 principal staff person on CRGR, and whoever the  
11 chairman happens to be, we've been looking at RISs  
12 since RISs existed. I think I'll take your commentary  
13 that we may be able to do a better job, or be more  
14 alert for whether the voluntary statement that's in  
15 the RIS is truly voluntary. Is that what you're  
16 saying?

17 MR. GEORGE: Well, that's one of my hot  
18 buttons, if you will.

19 MR. WIGGINS: Okay.

20 MR. GEORGE: It is still a rule. It is a  
21 regulation, whether it's voluntary or not, we ought to  
22 -- we have to follow the requirements of the rule.  
23 Now, oftentimes, the RISs are interpreting the rule,  
24 not a Reg Guide, possibly not some other, but they are  
25 creeping, crossing the line into actually re-

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1 interpreting language and that sort of thing.

2 MR. RAKOVAN: Tim, do you want to pick  
3 this back up later? I mean, this time was supposed to  
4 be for clarifying comments or questions from the  
5 speakers. I mean, if you're okay, but I just wanted  
6 to make sure.

7 MR. WIGGINS: Yes. I think we have the  
8 comment.

9 MR. GEORGE: Okay.

10 MR. WIGGINS: That's fine.

11 MR. GEORGE: Thank you.

12 MR. WIGGINS: But we do review RISs. I  
13 want to make sure that's clear.

14 MR. GEORGE: We weren't clear on that.

15 MR. WIGGINS: We're looking at them, and  
16 we'll take a comment as maybe we should be doing it  
17 differently, or better.

18 MR. HOUGHTON: Even better than you do it  
19 now.

20 MR. WIGGINS: Particular aspects of it.  
21 Okay.

22 MR. GEORGE: Thank you.

23 MR. WIGGINS: All right. Thank you.

24 MR. WIGGINS: Go ahead.

25 MR. ADER: If this is not clarifying,

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1 maybe we could come back to it, but you talk plant-  
2 specific backfitting, and probably two, three years  
3 ago in response to concerns from external stakeholders  
4 of the process, there was an effort to go back and  
5 look at the procedures, try to get them out on  
6 regional websites so people knew what the process was,  
7 and who to go to. And I guess I'm just curious, has  
8 that been effective? Has that improved the  
9 communications?

10 MR. HOUGHTON: I remember what you're  
11 talking about, Charlie, but I don't think it has been  
12 effective. We don't feel it has been effective. We  
13 think another shot at it is needed.

14 MR. ADER: I mean, that was addressing  
15 part of the problem of just understanding the process,  
16 understanding the procedures that the regions were  
17 using. And I had not heard any feedback, I've been  
18 away from it for a little while, but I was interested.  
19 Okay.

20 MR. WIGGINS: Anyone else?

21 MR. LEEDS: This is the last one that I  
22 have, Jim. On another slide there was a bullet, it's  
23 the next slide - "Why Change is Needed" is the title  
24 of the slide. It says, "Some proposals brought before  
25 CRGR do not pass the backfit test, but they're

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1 approved anyway." Have you got examples?

2 MR. HOUGHTON: Well, I think the example  
3 that comes to mind was the generic letter in 2006 on  
4 multiple shorts, which the Commission said was a  
5 backfit. I think that's probably the prime example,  
6 or first example.

7 MR. LEEDS: If you have others, or you can  
8 get those to us afterwards, I'd appreciate it. Jack?

9 MR. RAKOVAN: Go ahead and use that. If  
10 you can introduce yourself, please.

11 MR. RHODES: I'm Jack Rhodes, Director of  
12 Operation Support, NEI. I think there's a really  
13 relevant instant example. The Commission just  
14 received the Part 26 rule making package. We had an  
15 opportunity when the final package that went to the  
16 Commission to take a look at it, and we were basically  
17 in a situation to write to the Commission and tell  
18 them two things. First thing is, the staff did not  
19 follow your guidance. Staff is not allowed to  
20 aggregate backfit issues, alcohol and drug, work  
21 hours, and all, and then come to a conclusion it's all  
22 good. They have to segregate it. Like work hours has  
23 go to be addressed, drug and alcohol. They didn't do  
24 that.

25 When you separate, the work hours portion

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1 did not pass 51.09, didn't even come close, so that's  
2 a contemporary issue right here. Our expectation is,  
3 CRGR would have caught that right away.

4 MR. LEEDS: Thank you, Jack.

5 MR. WIGGINS: Jack, why don't you indicate  
6 - the rule making process is there to catch that, too.  
7 Are you saying that CRGR should have caught it, in  
8 terms of we would have stopped the rule making  
9 process? I mean, I'm not trying to pick at your - I'm  
10 just trying to understand where the position is coming  
11 from.

12 MR. RHODES: Where we were is that, when  
13 we saw the final rule, that's when we saw the backfit  
14 analysis was done by the staff. All the information  
15 were in there, all you had to do is say all right,  
16 what is the substantial benefit that is required? And  
17 there was no substantial benefit that was described in  
18 the rule making. It was in general.

19 The second thing is, there were huge  
20 costs. The CRGR should have said you cannot meet the  
21 threshold that's required by 51.09. There is no  
22 substantial increase, and you have huge costs;  
23 therefore, you do not pass 51.09. Therefore, they  
24 should have brought that to the Commission's  
25 attention. Industry brought that to Commission's

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1 attention.

2 MR. WIGGINS: Well, I have maybe a couple  
3 of quick ones. I'll use the Chairman's prerogative  
4 and extend the time.

5 MR. RAKOVAN: It's your meeting, Jim.

6 MR. WIGGINS: Just let me check a few  
7 things. And none of these are in order of importance  
8 in any shape or form, it's just kind of -- some are  
9 shorter answers, some aren't.

10 You talked about the need for periodic  
11 meetings. I guess a number of us have been discussing  
12 that for some time on the committee, also. Some of  
13 our predecessors would say - the prior chairman of  
14 CRGR, Sher Bahadur, would attend the NEI licensing  
15 forum and use that as a vehicle. I would presume  
16 you're thinking we need to do more than that.

17 MR. HOUGHTON: I think so. I think  
18 opening the CRGR meetings would go a long way, but I  
19 think, also, a periodic industry meeting would be  
20 useful. Yes.

21 MR. WIGGINS: Okay. And I'm glad - you're  
22 like a straight man for my next question - opening the  
23 meetings. Now this may be an internal tension, but  
24 you have a tension between -- the staff has a tension  
25 between wanting to be open, and getting people

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1 inserted in the wrong place in the deliberative  
2 process, so you have this tension that you normally  
3 look at anyhow about well, we want to do things to an  
4 extent out in the open, but there's a certain amount  
5 of reluctance, let's say, to put things out too early  
6 when we're still among the staff vetting, because we  
7 don't want to spin people up unnecessarily, or  
8 whatever. That's certainly a question out there. I  
9 guess you're suggesting we should look more to the  
10 openness side of it?

11 MR. HOUGHTON: I think so. I mean,  
12 perhaps Jack's issue on Part 26 might have been able  
13 to be observed, or commented on, or been revealed  
14 earlier in the process instead of going all the way to  
15 the Commission. I think that openness allows you to  
16 learn more about what's going on. It's your decision,  
17 but I think we can point out, perhaps, where there are  
18 problems or weaknesses. I think Jack, for instance,  
19 was looking at implementation guidance for Part 26,  
20 and it was eye-opening for some of the staff to say  
21 gee, that's not what we really thought we were asking  
22 you to do. And when you get that information, it's  
23 got to be helpful for you in doing it. And I think  
24 earlier you do it, the better.

25 MR. WIGGINS: Okay. I'll just ask one,

1 then we can move on the agenda, unless somebody else  
2 has a question. There were a couple of times in your  
3 discussion, and some people have gotten up and talked  
4 about this issue of changing staff interpretations.  
5 It's fairly -- it's kind of like black letter, it's  
6 the rules of the game on backfitting, say changing in  
7 staff interpretation constitute backfits, so assuming  
8 that in the vast majority of cases, people don't  
9 blatantly violate that, it gets into this question of  
10 what are we talking about, explicit interpretations,  
11 or implicit interpretations?

12 We're talking about what a staff position  
13 would be on an aspect of a regulation that maybe we've  
14 never had to think through explicitly, what would be  
15 enough to comply? Is that -- you understand where I'm  
16 going on this? That's sort of a convoluted question  
17 and comment.

18 MR. HOUGHTON: Turn this to my expert on  
19 this.

20 MR. WIGGINS: But you run into a scenario.  
21 What you see is, you run into a scenario, say, at an  
22 operational facility, or an operating environment,  
23 whether it's -- I guess recently there was a RIS out  
24 that's talking about what licensees should do if they  
25 were in the process of making a notification on an

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1 emergency declaration, something happens and the  
2 conditions change, and now do you reset the clock, and  
3 start another 15-minute clock, or do you carry through  
4 on the first one, and then carry through on the  
5 second, and make 15 minutes on each?

6           Although it's hard to believe that hadn't  
7 come up before, it's likely that maybe it hasn't come  
8 up, and the staff had to say well, what are you  
9 looking for? What would we actually say? So, Alex,  
10 do you have some comments?

11           MR. MARION: Alex Marion, Executive  
12 Director of Nuclear Operations and Engineering at NEI.  
13 The way we look at it is, the NRC has the prerogative  
14 to interpret the regulations. That's very clear. The  
15 industry gets concerned when these new interpretations  
16 appear that are not - and there's no documentation to  
17 establish the basis or the rationale for that change  
18 in position.

19           More importantly, when these new  
20 interpretations are communicated, they do have a  
21 direct impact on the licensing basis of the plant. So  
22 the licensees look at that and say well, if it was  
23 acceptable yesterday, why is it not acceptable today?  
24 Answering the question of why by an external  
25 stakeholder is the thing that's a challenge, because

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1 that information is typically not made available in  
2 the public domain, because the NRC typically uses a  
3 compliance exception clause of the Backfitting rule to  
4 justify not documenting the basis for their regulatory  
5 decision making.

6 MR. WIGGINS: Well, the ones I've been  
7 familiar with - I'm not trying to argue. What I've  
8 seen come forward, the staff comes to us and says this  
9 is not a new interpretation. We've always had this  
10 position. This thing, whatever the specific is in  
11 front of us, has just given us an opportunity to  
12 articulate it in a clearer way, so staff -- is that --  
13 you seem to be seeing it a different way.

14 MR. MARION: Yes. There's an impact  
15 aspect or element to those newly stated  
16 interpretations. The impact relates directly to the  
17 licensing basis of the plant. Fire protection is a  
18 good example. We support the concept of providing  
19 definitive stability, and definitive understanding of  
20 what needs to be done in terms of complying with the  
21 fire protection regulations. But if you're making  
22 these new positions to achieve resolution and closure  
23 that affect the licensing basis of the current plants,  
24 then document that rationale, and make it available.  
25 And if a condition like this occurs, given the

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1 committee's basic function, I think there would be a  
2 lot of benefit to get some input from the industry on  
3 the practical impact and implications of these new  
4 positions. Thank you.

5 MR. WIGGINS: Are you ready to go next?  
6 Go ahead, Bill.

7 MR. DEAN: I just have one. One thing  
8 caught my attention. This is on the slide, CRGR role  
9 in plant-specific cases, and that's the bullet that  
10 says, "Licensees are reluctant to challenge individual  
11 reviewers and inspectors." That always gives me some  
12 pause when I see language like that, because that has  
13 implications that there's either some chilling effect,  
14 or some concerns about retribution. And that was an  
15 issue a decade and a half, or two decades ago, where  
16 we had industry raise that issue at a significant  
17 level to the EDO and the Commission. I guess my  
18 concern, do we have indications of that occurring out  
19 there? And I know we put in place processes to allow  
20 industry the opportunity to contact senior management  
21 of this agency when they thought that those types of  
22 incidences were occurring, so I guess I'd look for a  
23 little background here, a little bit more edification.

24 MR. HOUGHTON: Well, there are time  
25 constraints, quite often, when you have a schedule

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1 problem, or there are instances where you are  
2 reluctant to push a position too hard. I'm not sure  
3 it rises to the level that it did before a number of  
4 years ago. Now, is that too hot for you guys?

5 (Laughter.)

6 MR. McCANN: John McCann, Entergy, again.  
7 But we have a lot of discussion about this, and I  
8 think -- I would like to make it very clear that we're  
9 not afraid of you guys. I mean, at the end of the  
10 day, we have a job to do, you have a job to do, and we  
11 have to be able to interact professionally to do that  
12 job.

13 This isn't a matter of feeling a chilled  
14 effect, but there are certain realities about how much  
15 time and energy and effort an individual plant can put  
16 into to dealing with what we may perceive as being,  
17 for lack of a better word, an injustice. That there  
18 are some things that you eat and move on, that if they  
19 were addressed at a generic level in advance of the  
20 issue you might not be dealing with. Is that clear?  
21 Is that -- that's kind of what we're trying to say I  
22 think.

23 MR. DEAN: So, I mean, just to put it in  
24 different words, are you trying to say there's not an  
25 issue out there where you feel potentially there might

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1 be retribution for your challenges, that the path of  
2 least resistance to sort of achieve your means and the  
3 grander scheme of things is just move on.

4 MR. McCANN: That's exactly right. There  
5 are fights you have the time to take.

6 MR. DEAN: Okay.

7 MR. McCANN: And there are things that you  
8 say, "Okay. We're going to pass on this one." That's  
9 really what it comes down to.

10 MR. DEAN: Thanks, John.

11 MR. HOUGHTON: Okay. Well, thank you very  
12 much for the opportunity to talk.

13 MR. WIGGINS: All right, Tom. Thank you.

14 All right. Next up is Dave Culberson  
15 representing the fuel cycle community.

16 MR. CULBERSON: Thank you. Very clearly,  
17 you're going to get three different perspectives  
18 today. No doubt about that. And you're going to hear  
19 some similar issues I think in what I have to say.  
20 Mine are not going to be expressed nearly as  
21 eloquently as what has already been said, and some of  
22 the issues you'll see on my slides have already been  
23 covered, so I'll try to go over those rather quickly.

24 But there are similar issues, and I think  
25 one particular one is on the site-specific side of

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1 backfit issues, and you'll -- I'll get into that a  
2 little bit later, but I do appreciate the opportunity  
3 to be here representing the fuel cycle industry. This  
4 is a part of the industry that, in terms of numbers of  
5 facilities, is small by comparison.

6 But in terms of costs and implications and  
7 effects of rulemakings and backfits, it can be very,  
8 very costly. These plants are quite expensive to  
9 operate, and, although there are not many of the,  
10 there's a huge investment. And several of them are  
11 private owned, so that has a different connotation in  
12 terms of the costs of implementation.

13 Backfit is clearly an issue to us, and I  
14 hope that some of the comments I have to make today  
15 will be worthwhile to you. First, I want to introduce  
16 the Fuel Cycle Facility Forum to those of you that --  
17 there may be one other person in here that knows  
18 anything about this group. So hopefully you'll leave  
19 with some new knowledge today.

20 This is a group that has been around a  
21 while, and I will get a little bit more definitive.  
22 But let me say that this group focuses solely on  
23 decommissioning. We've been in effect since 1987, and  
24 our sole focus has been on decommissioning. That  
25 alone has given us the ability to address a lot of

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1 issues in a very specific arena and dig down until we  
2 really get into the nitty-gritty detail.

3 And the NRC has been very, very supportive  
4 of that -- this group. And if it weren't for that, I  
5 think I wouldn't be here today. But most of the  
6 comments I'm going to have today are going to be from  
7 a decommissioning perspective, which is, like I say,  
8 totally different from what you'll hear from the other  
9 panelists probably.

10 The second thing I want to do is review  
11 some of the backfit provisions, many of which have  
12 already been touched on, so I won't spend a huge  
13 amount of time on those. But at least highlight some  
14 of those that are particularly important to fuel cycle  
15 licensees, and that will also set the stage for some  
16 of my later comments.

17 Next, I want to provide a perspective of  
18 the backfit issues that are going to be different than  
19 what you've already heard -- again, focused primarily  
20 from a decommissioning perspective, and I'll try to  
21 broaden that as best I can within the whole fuel cycle  
22 industry, but that's kind of my expertise here today.

23 After that I want to touch on just a  
24 little bit on awareness, both within the industry and  
25 NRC in terms of what our goal is and the role of the

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1 CRGR. I think from a fuel cycle perspective there may  
2 not be as much awareness of what your role is and what  
3 you have done from a fuel cycle perspective as perhaps  
4 on the reactor side.

5 And, finally, I want to offer a few more  
6 suggestions, some of the same ones that Tom mentioned  
7 regarding how the CRGR may consider changing its  
8 charter, its role, or membership to delve into some of  
9 these implementation issues. And those get more into  
10 the site-specific aspect, I think, of how the role is  
11 carried out.

12 Next slide, please.

13 Okay. The first thing is the Fuel Cycle  
14 Facility Forum itself. This is a voluntary  
15 organization. We started in 1987. A couple licensees  
16 on the fuel cycle side of the house got together and  
17 started talking about decommissioning. That was at  
18 the time when the decommissioning rule was being  
19 developed and rolled out, and there was a lot of  
20 uncertainty on both sides -- regulatory and industry  
21 -- on what's this all about, where it was headed, and  
22 what the expectations were.

23 So we started meeting very informally. We  
24 still meet very informally. The group has been as  
25 large as about 30 companies. It's down now to perhaps

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1 about 15 representatives, but still very pertinent to  
2 what's going on on the fuel cycle side of the house.  
3 We represent special nuclear material licensees, some  
4 source material licensees, and some specialty metal  
5 refiners.

6 And as I said, these are the sites out  
7 there that are typically the most complex to deal  
8 with, because we deal with naturally-occurring  
9 radioisotopes, which presents a unique set of problems  
10 in terms of decommissioning. And these are the ones  
11 that are typically labeled the special cases with the  
12 agency in terms of decommissioning.

13 So very problematic, very huge cost swings  
14 when there are changes and when regulations come out  
15 or interpretations come out or guidance comes out. So  
16 this is an important issue to us.

17 This organization serves as a platform for  
18 the industry to voice its comments and concerns  
19 directly to the NRC. Within the last five to ten  
20 years, the NRC has become a regular participant in our  
21 groups. We meet three times a year for two days and  
22 typically visit sites. We share decommissioning  
23 experience and lessons learned very openly, very  
24 candidly.

25 And it's pretty much closed to the

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1 licensees and the regulator, just because it helps  
2 with the dialogue. We do have speakers come in  
3 occasionally, but it's a very good, open, candid  
4 discussion platform.

5 Next slide, please.

6 First, I want to highlight a few of the  
7 key backfit provisions that can impact the fuel cycle  
8 side of the industry. First, the definition itself,  
9 which we've already covered earlier, let me just  
10 highlight that one of the things in the definition is  
11 that it -- the modification of or additional to  
12 system, structures, and components, or to procedures  
13 and organizations required to operate a facility,  
14 those are a different set of words that sometimes  
15 don't get looked at as often, because typically the  
16 systems, structures, and components were -- you would  
17 logically think would bear the brunt of the cost and  
18 bear the brunt of the burden from a backfit  
19 perspective. But from our perspective, procedures and  
20 organizational changes are quite often significant.

21 When the backfit rule was first  
22 promulgated for fuel cycle facilities it seemed most  
23 likely to me that the emphasis was placed on systems,  
24 structures, and components, and that procedures and  
25 organizations didn't get quite the same amount of

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1 consideration then, and perhaps now as well. But from  
2 a licensee's perspective, the changes in this arena  
3 can be very, very costly, and in a lot of cases more  
4 than the cost of making changes to hardware.

5 The exceptions to the backfit analysis  
6 that are highlighted in the regulation -- our  
7 regulation is 70.76, which was mentioned earlier --  
8 indicates that a backfit analysis is not required,  
9 provided the regulatory action involves defining or  
10 redefining a level of protection that should be  
11 considered as adequate.

12 From the decommissioning perspective, I  
13 can say that our licensees represented in our group  
14 often feel like this level of protection is a moving  
15 target, because of some of the flowdown requirements,  
16 interpretations, regulations, guidance.

17 As an example, the remediation and  
18 decommissioning goals that -- and final site release  
19 criteria that might have been previously established  
20 in an approved decommissioning plan can change  
21 throughout the course of a decommissioning action. A  
22 decommissioning plan is a document that gets a lot of  
23 review, and it's a formal -- it's like a license, if  
24 you will, a license modification that allows the  
25 licensee to proceed in a certain direction, and

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1 there's a safety basis to that.

2 And a lot of times the changes that come  
3 about don't appear to carry a significant increase in  
4 safety, yet often result in a huge increase in cost of  
5 decommissioning. In decommissioning, there's a  
6 tremendous amount of money spent every year.

7 So this gets into the issue of  
8 implementation, and over the years of our discussion  
9 implementation seems to be where the rubber meets the  
10 road many times. And if you look at what's going on  
11 from an implementation perspective, i.e. from the  
12 licensee's perspective, quite often things appear  
13 different and are handled differently.

14 So the result can often be millions and  
15 millions of dollars spent without an apparent  
16 comparable increase in safety. And it can result in  
17 schedule delays, and it actually can impact other  
18 operations at the site.

19 So our feeling is that in the area of  
20 rulemaking and guidance and staff recommendations,  
21 staff interpretations, this seems to be an area, even  
22 though it may be site-specific, that CRGR could have  
23 a role, because many of these things are rolled out,  
24 will flow out to one licensee. They begin to appear,  
25 as has been stated earlier, in other licensee

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1 performance objectives or decommissioning plans or  
2 expectations during the inspection process. So it  
3 appears to be creeping towards the generic  
4 application.

5 The next issue is installation and  
6 continuing costs. In the past, I have been a  
7 licensing manager at one of the largest fuel cycle  
8 facilities, and personally do not recall having been  
9 invited to participate in this type of an assessment  
10 at a facility to provide the estimates costs of  
11 installation or continuation of a change.

12 It may be that during the time I was there  
13 there were no backfits rolled out, but clearly that  
14 type of evaluation should be coming up in other  
15 changes that are rolled out, or interpretations and  
16 guidance that is provided by the NRC. So it's just  
17 something I think on the fuel cycle side that is --  
18 there is less known about. And I may be the only one  
19 here that's not aware of that, and I certainly  
20 wouldn't shy away from that, but it's something that  
21 probably, again, warrants consideration by the CRGR.

22 The next area is 70.76 also states that if  
23 there are two or more ways to achieve compliance, or  
24 if there are two or more ways to reach an adequate  
25 level of protection, the licensee is free to choose

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1 the way that best suits its purpose. This is good in  
2 concept. Many of us on the fuel cycle side have found  
3 that this is -- we've had a lot of discussion about  
4 this, and it's an area where sometimes we do not feel  
5 that those alternatives are really available, simply  
6 because the path of least resistance that was  
7 mentioned earlier may be to roll over to a position  
8 that is not necessarily a different alternative.

9 But there seems to be consensus whether in  
10 the decommissioning space or otherwise that those  
11 alternatives may not in all ways -- in all cases be  
12 real to the licensee. And there are a lot of reasons  
13 for that. There are political reasons, there are  
14 societal reasons, there are safety reasons, but many  
15 times licensees are steered towards a solution that  
16 has been "tested or used at another facility," and is  
17 a comfortable place to go, and so it's where we  
18 typically end up.

19 So this is an area that probably warrants  
20 some consideration by the CRGR, because it's a very  
21 subtle way of creeping, if you will.

22 And the last of the backfit provisions is  
23 70.76(b)(2), which states that the NRC will consider  
24 a general description of the activity that would be  
25 required by the licensee in order to complete the

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1 backfit. This goes back to the same point I made  
2 earlier that I'm just not aware of many cases where  
3 the licensee was consulted on the actions that would  
4 be required to complete the backfit from the  
5 standpoint of an evaluation of costs and effect on the  
6 licensee.

7 Next slide, please.

8 I've just covered a few of the backfit  
9 issues that can impact fuel licensees, and I'd like to  
10 give you just a few examples here to kind of  
11 illustrate the points. The first example relates to  
12 approved decommissioning plans, and I'm going to use  
13 some site-specific examples here, so I think you will  
14 begin to see some of the points that have already been  
15 made and some points I'd like to make.

16 With respect to the decommissioning plans,  
17 the elapsed time between the approval of the plan and  
18 the implementation of the final status survey, which  
19 is the last step in the process -- and it can be many,  
20 many years -- quite often results in regulatory  
21 changes through a number of means that can really  
22 impact the cost of that decommissioning.

23 And if you compare the final actions to  
24 what was proposed in decommissioning plan, quite often  
25 you'll see significant differences in the outcome of

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1 where the licensee ends up.

2 One of the major concerns that has already  
3 been voiced and that we have raised in the past is  
4 staff turnover. This often leads to what I would call  
5 de facto changes, because you lose historical  
6 perspective, you get differences in individual staff  
7 approaches and positions and interpretations, you get  
8 different opinions about what constitutes an adequate  
9 level of safety, because some much of that is  
10 individualized. And you get deviations from what has  
11 been previously approved in documents like a  
12 decommissioning plan.

13 It's not apparent to us that these types  
14 of changes always get the same type of analysis that  
15 would be -- that it would if it was a backfit-type  
16 review. And maybe the backfit review per se is not  
17 the right way, but that type of an assessment before  
18 they are made would be beneficial I think.

19 The second example relates to partial site  
20 cleanups. And I know many of you probably don't know  
21 much about this, but this is one area that has gotten  
22 a lot of attention on the fuel cycle side. The fuel  
23 cycle side of the house has had situations come up  
24 where partial site decommissionings could have really  
25 benefitted from a backfit-type analysis.

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1           In this case, several portions of a site  
2 were released for an unrestricted -- this is a  
3 specific example, and I'm not going to name the site,  
4 because they were kind enough to share the information  
5 with us. But several portions of the site were  
6 released for unrestricted use prior to recognizing  
7 that groundwater contamination had migrated into those  
8 areas.

9           These areas were released, actually  
10 released, in accordance with an approved  
11 decommissioning plan, which had been approved by  
12 earlier criteria. These happen to be concentration-  
13 based criteria instead of what is now current new  
14 dose-based criteria.

15           In this particular case, the NRC  
16 maintained that the areas had to be brought back under  
17 the license, and also maintained that by doing so it  
18 would require that those areas fall under the license  
19 termination rule now, and that other portions of the  
20 site and other media would also have to be  
21 reconsidered and revisited.

22           In this case, for the sake of that one  
23 media, the regulatory process more or less  
24 circumvented the grandfathering provisions of 10 CFR  
25 20, because the licensee had to go back and revisit

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1 everything again. And there have been multiple  
2 examples of that being the case.

3 This is a site-specific issue that could  
4 have benefitted from a CRGR type of a backfit review.  
5 It's just not apparent that that has been done before  
6 decisions like this are made. and, again, this is one  
7 that was made with no apparent increase in the safety,  
8 but could have benefitted from a review like that.

9 The third example is a similar partial  
10 site cleanup example. Currently, the fuel cycle  
11 licensees don't have a good regulatory basis or an  
12 option for remediating portions of a site. Again, a  
13 lot of this is based on the fact that these are long-  
14 lived isotopes, they're naturally-occurring, and  
15 present a different set of problems than short-lived  
16 isotopes that would decay away quickly.

17 In this particular example, the NRC had  
18 approved a final status survey plan for a portion of  
19 the site, and at the time the DP was approved both the  
20 licensee and NRC were aware of groundwater  
21 contamination issues again. After completing the  
22 decommissioning effort, and the approved status --  
23 final status survey sampling program, the licensee had  
24 to go back and conduct additional surveys because  
25 those were -- and this is the licensee's word -- the

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1 NRC was accustomed to seeing it done that way at other  
2 sites.

3           So this is an example of where it -- the  
4 alternative approach wasn't really an option to this  
5 particular licensee for whatever reason -- and I don't  
6 know the specifics. It's just that it ended up being  
7 -- having to do another sampling approach because this  
8 was what was expected today. And, again, there are a  
9 lot of reasons for that, but that's -- to me it falls  
10 in the category of backfit.

11           This is essentially a backfit, because it  
12 involves the imposition of a requirement that really  
13 is generic in nature but it doesn't -- it hasn't been  
14 promulgated to the industry in a way that makes it a  
15 generic requirement.

16           And it also sort of flies in the face of  
17 that statement earlier that where there are two or  
18 more ways to achieve compliance, and if there are more  
19 -- two or more ways to reach an adequate level of  
20 protection, the licensee is free to choose the way  
21 that suits its purpose. And we don't want to abuse  
22 that at all, but in this case it seemed that there was  
23 another way to achieve the same level of protection.  
24 But that didn't, in fact, carry -- happen.

25           So, in summary, these three examples

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1 illustrate the point that a backfit type of evaluation  
2 could be very beneficial on a site-specific basis or,  
3 in many cases, what appear to be generic situations,  
4 because these clearly have cost implications, schedule  
5 implications, and operational implications at these  
6 facilities, because many of them are still operating  
7 and these are decommissioning type activities that are  
8 going on during operations.

9 Next slide, please.

10 I'm going to quickly comment on awareness  
11 from both NRC and the industry standpoint, and these  
12 are my opinions. Most of the fuel cycle licensees  
13 seem to be well aware of the backfit provisions that  
14 are contained in 70.76, and I'm not aware of any  
15 particular problems per se. Implementation seems to  
16 be going smoothly, and, in fact, one licensee made the  
17 comment that as far as he knows, and as far as I know,  
18 implementation of the backfit rule seems to be working  
19 fine, and there are no major issues that we're aware  
20 of.

21 Personally, I was not aware of the CRGR  
22 before I was invited to participate today. I am very  
23 pleased to see that this organization exists, because  
24 I think it has some real usefulness. I suspect there  
25 are others on the fuel cycle side of the industry that

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1 may not also be aware. It seems that most of the  
2 energy and effort may be focused on power reactors,  
3 which is fine, but there is this whole other side of  
4 the industry that could benefit by a lot of the types  
5 of reviews that I've heard mentioned here that the  
6 CRGR does.

7           And I hope you will continue to seek  
8 industry input, because I -- over my 20 years in the  
9 Fuel Cycle Forum, I have found that to be a very, very  
10 useful thing, and it can be very constructive for all  
11 parties.

12           In regard to NRC's awareness -- this is  
13 just an opinion again -- there seems to be some  
14 evidence that the NRC may not be fully aware of all of  
15 the impacts that changes can have on the industry.  
16 And, again, many of these may be site-specific, but  
17 they creep towards generic application.

18           These are in areas of policies and  
19 guidance and technical interpretations and staffing  
20 positions, even in some of the site-specific  
21 approvals. So I would commend CRGR to continue its  
22 efforts to look at the licensee-specific cases more.

23           Next slide, please.

24           This is my final slide. And, in summary,  
25 I'd like to make three or four suggestions for your

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1 consideration. This was mentioned earlier, that I  
2 suggest that the CRGR give some consideration to  
3 including industry representation in his charter.

4 This could either be a full-time dedicated  
5 person of your own choosing, or it could be groups of  
6 individuals that represent different aspects of the  
7 industry that would be called upon on an occasional  
8 basis to make -- to use as sounding boards or to  
9 provide input on specific issues or specific aspects  
10 of the industry.

11 But I think the industry -- direct  
12 industry input would be beneficial. I really believe  
13 that, because it's very difficult to see how many of  
14 these things are implemented on the licensee's side  
15 without being there and walking in their shoes for a  
16 while.

17 Secondly, I will suggest that the CRGR  
18 consider expanding the charter to include backfit-type  
19 reviews. Now, whether they are specifically backfit  
20 reviews per se or just that similar reviews of select  
21 other documents and regulatory actions like  
22 decommissioning plans, security plans, things that are  
23 -- can become generic in nature because they set  
24 precedents, they set examples that other licensees  
25 will use. So they can be generic in nature, although

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1 they were approved on a site-specific basis.

2 These added reviews I think would give the  
3 CRGR an added perspective from what they have now, and  
4 it would ensure that regulatory approvals and  
5 promulgation of staff positions and interpretations  
6 are not inadvertently leading towards de facto  
7 requirements.

8 Third, and finally, I suggest that the  
9 CRGR consider seeking industry feedback. This has  
10 already been mentioned, but feedback on both a generic  
11 and a site-specific basis. I think this type of a  
12 workshop or meeting is very, very useful. There are  
13 other ways to do that where you get good interaction.  
14 Good, candid feedback I think is crucial, but I do  
15 believe the CRGR has a role in that, and we encourage  
16 you to continue to seek that input.

17 Next slide.

18 I've tried to present a very unique  
19 perspective, one you probably weren't anticipating,  
20 you may not have heard otherwise, and it's one you may  
21 not have considered. But some of you have -- some of  
22 these perspectives that I have presented have already  
23 resulted in significant costs on the fuel cycle side.

24 The funding is a big, big issue, because  
25 it can grow so quickly when you're talking

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1 decommissioning. And I think many of the types of  
2 issues we faced would have really benefitted from a  
3 backfit type of review before the requirements or  
4 interpretations were put out there.

5 I hope I've stimulated your thoughts, and  
6 I'll be glad to answer any questions you have, if I  
7 can.

8 MR. WIGGINS: Thank you. Let me go first  
9 to the people that work in your community here.

10 MR. PANGBURN: Just a couple questions.  
11 Again, I'm George Pangburn. In the last 10 years, I  
12 worked in the northeast in one of our regional offices  
13 and was involved in a number of decommissionings  
14 involving some source material sites and some SNM  
15 sites.

16 I was particularly curious when you --  
17 when you talked about the linkage -- let me back up a  
18 second -- in that time, but certainly we've had some  
19 spirited discussions with licensees about the criteria  
20 involved for those cleanups, but a linkage to the  
21 backfit rule is not something that I had heard.

22 And in looking at examples -- going back  
23 to Jim's slide -- about how backfitting applies under  
24 70.76, I was hard-pressed to make that linkage,  
25 because it appears to be -- and, again, I'm more of a

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1 materials decommissioning kind of guy here, that, you  
2 know, it applies, as you mentioned, systems,  
3 structures, or components, or design of a facility, or  
4 procedures or organizations required to design,  
5 construct, or operate a facility.

6 And, of course, in decommissioning we're  
7 in the -- on the flip side of that, we're  
8 deconstructing facilities. I guess, can you explain  
9 for me a little bit better the linkage that you see  
10 there?

11 MR. CULBERSON: On the fuel cycle side,  
12 there aren't that many sites that are truly  
13 decommissioning the way it's defined in Part 70,  
14 decommissioning being to clean up to a level that is  
15 suitable for unrestricted release, and then  
16 termination of a license.

17 Most of the sites that are involved in  
18 Fuel Cycle Forum are operating sites, and they are  
19 remediating or removing source term, with  
20 decommissioning type of approach. The requirements  
21 that are coming out for that are very, very similar to  
22 what you would do for decommissioning. But since  
23 they're operating facilities, it has a huge impact on  
24 operations and the ability to continue operations with  
25 the costs they're facing in decommissioning space.

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1           Now, I agree with you that the -- it's not  
2 a backfit issue per se the way it's defined in the  
3 regulations. But the types of reviews that are done  
4 for the backfit are the types of reviews we feel like  
5 should be done for approvals, changes in  
6 decommissioning space, because of their implications.

7           And they tend to -- what tends to get  
8 approved for one licensee tends to show up in another  
9 decommissioning plan, whether it was submitted that  
10 way or not, or decommissioning approvals from site to  
11 site because it's -- I don't know how to say this.  
12 It's not -- it's an alternative for one licensee.  
13 Then, after that, it becomes a requirement, a de facto  
14 requirement. And that's the only correlation I guess  
15 to the backfit. It's not promulgated by the NRC  
16 per se, other than through secondary documentation.

17           MR. PANGBURN: Just seeking to understand,  
18 because a lot of -- many of these sites are -- the  
19 situations are terribly site-specific. The geologies  
20 are different, the groundwater conditions are  
21 different, the source term itself is different. And  
22 it's an interesting perspective that you bring, and  
23 I'm glad to have you here today for that very reason.  
24 I'm probably the only non-reactor person sitting at  
25 the table here, so --

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1 MR. CULBERSON: Thank you.

2 MR. PANGBURN: -- I think it's -- I think  
3 it's good to have this perspective here today. But it  
4 is -- it's a different approach, and I'm glad you  
5 brought it up. So that's --

6 MR. CULBERSON: I think the point was it  
7 highlights the need to look from a site -- to spend  
8 more time on site-specific reviews I think. And I  
9 know the charter of CRGR is to look at generic  
10 applications, and that's fine. I mean, I think it has  
11 a very -- pretty much a need, but there's also a need  
12 on the site-specific side for similar types of  
13 reviews, whether it's by CRGR or some other mechanism.

14 I think it's something worth looking into,  
15 because of the charter and the role the CRGR plays in  
16 the agency. I think there is some merit there.

17 MR. GWYNN: Dave, I had a question. Many  
18 of the facilities that are decommissioning fuel cycle  
19 facilities are located in my region, and I'm  
20 interested in the feedback. And, in fact, I think  
21 that it would be useful, if there hasn't already been,  
22 to bring some dialogue to bear on a couple of these  
23 situations that you've mentioned. Do you know if the  
24 specific licensees felt free to contact regional  
25 management about feeling that they were being forced

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1 into one versus the other where they thought the other  
2 was the better approach?

3 MR. CULBERSON: Typically, they are not  
4 afraid to express their opinions. We don't have that  
5 problem.

6 We have had very, very good discussions at  
7 our meetings, and perhaps we could do that at one of  
8 the fuel cycle meetings. I would be happy to put that  
9 on the agenda. It's a great opportunity to get some  
10 direct feedback and to voice some of the opinions the  
11 members might have. I think you would get the type of  
12 feedback you're talking about.

13 MR. GWYNN: Okay. Thank you.

14 MR. CULBERSON: Sure.

15 MR. LEEDS: Thank you for your -- let me  
16 get the microphone before Lance yells at me. Eric  
17 Leeds again.

18 I heard what George had to say. I have  
19 spent a few years working in Part 70, so I'll take  
20 exception that it's just a bunch of reactor guys up  
21 here.

22 MR. DEAN: I read Part 70.

23 (Laughter.)

24 MR. LEEDS: Outstanding. Outstanding.  
25 The Fuel Cycle Forum, is that the Forum that -- I

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1 think I'm familiar with that -- your next meeting is  
2 in June?

3 MR. CULBERSON: No.

4 MR. LEEDS: No?

5 MR. CULBERSON: We don't actually have a  
6 meeting scheduled. I'm working on that right now.

7 MR. LEEDS: Oh.

8 MR. CULBERSON: It's a very small group,  
9 about 15 representatives right now. We meet about  
10 three times a year. There are some other groups by  
11 similar names, but this -- NEI is aware of the  
12 organization. It actually participates in our group,  
13 but it's just the licensees and --

14 MR. LEEDS: Oh. I know that there is a  
15 fuel cycle one that Bob Pierson's group at the NRC is  
16 doing on fuel cycle. And they say fuel cycle  
17 licensees, and I was thinking more of GE Wilmington,  
18 Westinghouse, you know, Columbia, and --

19 MR. CULBERSON: Those are all members.

20 MR. LEEDS: They are all members --

21 MR. CULBERSON: Yes.

22 MR. LEEDS: -- in your group.

23 MR. CULBERSON: John Greives from our  
24 organization, Mike Webber has been involved, several  
25 of the -- it's on the decommissioning side and NMSS

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1 has participated.

2 MR. LEEDS: Okay.

3 MR. CULBERSON: And they typically come --  
4 you know, two or three will come to our meetings when  
5 we have them.

6 MR. LEEDS: Okay. A question for you for  
7 clarification, and maybe I missed this. You talked  
8 about 70.76 seems to be working. What I wrote down  
9 here is "seems to be working for fuel cycle." And the  
10 group -- I'm still having trouble separating the two  
11 groups. Most of your comments were -- I think were  
12 aimed at decommissioning facilities, and I'm wondering  
13 about the other fuel cycle facilities -- the  
14 Honeywells, the Paducahs, the AREVA, and BWXT, NFS.  
15 Do you have any involvement with those?

16 MR. CULBERSON: The representation on the  
17 Fuel Cycle Forum is NFS, BWXT, GE, Westinghouse,  
18 CABOT, Malincrot, Framatone, Siemens --

19 MR. LEEDS: Right.

20 MR. CULBERSON: -- all the major fuel  
21 fabricators, fuel processors. And many of the same  
22 people get together on an operational standpoint to  
23 discuss operational issues as well.

24 There are very, very few fuel cycle  
25 facilities that are truly in the final decommissioning

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1 stage. There are some. They are working their way  
2 out of business, but most of them have operating  
3 facilities and decommissioning is a problem. While  
4 they're trying to operate, they're having to deal with  
5 decommissioning issues as well.

6 So, yes, we interact with many of those  
7 same facilities, and there are a few that we don't, on  
8 a routine basis.

9 MR. LEEDS: Okay. I guess the root of my  
10 question is, the comments more -- while they  
11 gravitated, they were focused on decommissioning.

12 MR. CULBERSON: Yes.

13 MR. LEEDS: I'm wondering if we're having  
14 those back -- the same backfit issues on the operating  
15 side, or if you've heard of them on the operating  
16 side.

17 MR. CULBERSON: The only real feedback  
18 I've gotten from the licensees on the operating side  
19 was that it seemed to be working fairly well. And  
20 when I was at -- I was with Nuclear Fuel Services, and  
21 the time I was there it didn't seem to be a problem in  
22 terms of implementation.

23 MR. LEEDS: Thank you.

24 MR. WIGGINS: I've got one here. I'm just  
25 trying to get this clear in my mind about what I think

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1 I got out of your presentation. I don't want to put  
2 words in your mouth, and I'm certainly not trying to  
3 say I agree with anything I'm about ready to say. But  
4 this is what I think the point is.

5 You mentioned the scenario where you have  
6 a specific facility, and a decision is made with -- by  
7 the licensee, there is a debate with the NRC, some  
8 other thing happens. But I got the impression that  
9 you thought that now that that decision got made it  
10 gets fed forward into additional facilities in other  
11 scenarios. You know, like once we make a position, we  
12 feed it forward and use it again.

13 MR. CULBERSON: It's probably more  
14 deliberate.

15 MR. WIGGINS: So we're kind of building  
16 the structure as we go.

17 MR. CULBERSON: Right.

18 MR. WIGGINS: Building the regulatory  
19 structure as we go. Is that what your sense of things  
20 is?

21 MR. CULBERSON: Yes. My hunch is, yes,  
22 that's what I'm saying is that it shows up in the  
23 approvals, interpretations, applications, inspections,  
24 whatever at other facilities.

25 MR. WIGGINS: Subsequent to the first one.

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1 MR. CULBERSON: Yes. A lot of the same  
2 reviewers get involved I think, because the number of  
3 facilities is small, and decommissioning is a very  
4 narrow segment of the industry. So a lot of the same  
5 reviewers get involved.

6 The regions are different, with different  
7 personalities, different objectives, different goals,  
8 so you see differences there. But it's interesting  
9 how things seem to crop up at one and, lo and behold,  
10 other licensees are feeling the same type of  
11 persuasion.

12 MR. WIGGINS: Okay. I think I understand  
13 what your point is. All right. Anything else from  
14 the panel?

15 (No response.)

16 All right. Next up was Dave Lochbaum,  
17 but --

18 FACILITATOR RAKOVAN: Yes. Our third  
19 speaker seems to have disappeared, so I was thinking  
20 maybe we'd take about a 10-minute break, kind of  
21 stretch our legs and see if we can locate him.

22 MR. WIGGINS: Okay. Did he leave any of  
23 his stuff here or --

24 FACILITATOR RAKOVAN: So I've got about  
25 2:30-ish. So why don't we plan on starting up again

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1 around 20 of. We'll see if we can locate Dave.

2 And if you haven't signed in on the sign-  
3 in sheet on the chair in the back, if you could please  
4 do so.

5 (Whereupon, the proceedings in the  
6 foregoing matter went off the record at  
7 2:35 p.m. and went back on the record at  
8 2:49 p.m.)

9 MR. WIGGINS: All right. We have to make  
10 an adjustment in the sequence. As you can see, our  
11 third speaker isn't available. I don't -- it's  
12 unfortunate not -- you know, it was voluntary. The  
13 person just -- we asked -- you know, we invited Dave  
14 to come to make a presentation, and it was for the  
15 reasons that I said in the beginning.

16 This was a committee decision on who we  
17 should invite. You were all agreed to as a committee,  
18 and the committee was interested in getting diverse  
19 viewpoints. That's why we have reactors, we have fuel  
20 cycle from the licensee community, we were interested  
21 in getting viewpoint from non-licensees. You know,  
22 frankly, we wanted to see if we'd get -- make sure  
23 there was an opportunity to get a sense of balance,  
24 okay, in this. And that's what we asked Dave to do.

25 Dave provided some slides. We need to

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1 talk to him to identify -- to determine what he'd like  
2 us to do with the slides, since he is not here to  
3 discuss them. So sometimes it's difficult reading  
4 slides without a person to give the context.

5           So I would hesitate right now to make any  
6 commitments one way or the other about entry of this  
7 into the record of the meeting, until we have some  
8 opportunity to discuss with him whether that was his  
9 intent or whether he has a different intent at this  
10 point. But, you know, consistent with common sense,  
11 we have the slides. Obviously, we're going to read  
12 them.

13           And if there are points in there that we  
14 think we should react to in our deliberations -- and  
15 certainly it's not likely we would ignore the  
16 information or ignore the point. It's just  
17 unfortunate that he's not here, and I hope there was  
18 nothing, you know, bad that caused him -- or, you  
19 know, nothing wrong that he had to leave because of  
20 some condition that he hadn't anticipated.

21           So we will -- our staff will contact Dave  
22 after this and see what the next steps are for him.

23           All right. With that, that opens up a  
24 little bit more space on the agenda. We're now into  
25 generally open Q&A. Principally, the focus of the

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1 questions or commentary should be on CRGR. The panel  
2 representatives that are here, if they would like to  
3 add information to the answer, that's at their  
4 discretion. This is sort of mandatory for us and  
5 voluntary for them. Just like most NRC meetings that  
6 we run, you're focused on us.

7 So with that, you have the floor. Any  
8 questions? Any comments?

9 MR. WOODLAN: Hello. I'm Don Woodlan from  
10 TXU Power NuBuild. I have three things I wanted to  
11 mention. Mostly, I think they come in the category of  
12 clarification or my opinions on some of the things  
13 that have already been discussed. And I'd like to say  
14 right up front that this isn't the result of a  
15 tremendous amount of research or necessarily personal  
16 experience. It's a result of my observations and my  
17 perceptions from what I've seen belonging to industry  
18 groups and alliances and things like that.

19 One of the questions talked earlier about  
20 was the reluctance of licensees to use the backfit.  
21 And I think John's answer was excellent, and that was  
22 a very valid reason why we don't. But I'd like to add  
23 two more thoughts to that.

24 One is that -- well, first of all,  
25 retribution -- I have never heard a licensee say they

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1 didn't do it out of fear of retribution. So I don't  
2 think that's an issue. But I have heard them talk  
3 about regulatory margin, and I don't know the exact  
4 definition of that term, but it's kind of what the  
5 licensees feel that the NRC's perception of them is.

6 And they want to maintain a good  
7 perception with the NRC. They don't want to appear to  
8 be controversial or someone who is argumentative about  
9 everything. They want to appear like someone who is  
10 a good licensee who is focused on safety, and they  
11 feel that claimed backfits may not be to their best  
12 interest with respect to a regulatory margin.

13 And third one is I've heard a lot of  
14 licensees saying it isn't even worth trying, that  
15 they've had experience, they've claimed backfit  
16 before, and they felt they lost the battle. And  
17 without now going into the appeal processes, they  
18 didn't have a chance. So why even try now?

19 And, in particular, they felt the  
20 compliance backfit argument was used against them  
21 inappropriately but didn't feel it was worth the  
22 energy, like John said, to pursue that through the  
23 appeal process.

24 The second thing I wanted to mention is  
25 the -- and this, again, is just a perception by what

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1 I read on the documents. It appears that documents  
2 like regulatory guides and RISs seem to get accepted  
3 as not having backfits based on the statement that's  
4 in there that says this is just one way to do it, and  
5 you can always propose alternate methods. And,  
6 therefore, it's not a requirement and, therefore,  
7 there can't be a backfit.

8 I think in reality there are several  
9 things going on. One is it's generally perceived --  
10 and I think the way the staff reviewers apply these  
11 documents -- is that they represent a minimum, and so  
12 they've kind of set the standard whether the specifics  
13 are actually -- you want to call those requirements or  
14 not, they've set the standard, and an alternative has  
15 got to meet that standard.

16 So if a new reg guide comes out that has  
17 a higher standard, even though it's still just another  
18 way of doing it -- an acceptable method -- they've  
19 raised the bar. In my mind, that's a backfit. You've  
20 changed the level of requirements that's necessary to  
21 meet that regulation, or whatever, in the staff's  
22 mind.

23 And the other side of that is in de facto  
24 -- when you go to do something. In many cases, if  
25 you're not meeting what the RIS says, or what the reg

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1 guide says, you're not going to get approved. That's  
2 just a simple fact. That's the way the staff  
3 reviewers treat them. So it concerns me that it -- it  
4 was accepted as not having a backfit, because of that  
5 statement.

6 Now, the third point I'd like to make --  
7 and this is really much the same thing Tom said, it's  
8 saying it in my own words. In my feeling, part of the  
9 problem is the mind-set. I probably shouldn't call it  
10 a problem. I should say that the approach we have  
11 with respect to backfit is partly the mind-set that  
12 the staff has.

13 I've been very impressed recently in the  
14 new plant area, and I should point out that I am now  
15 working in new plants. I've just recently moved over  
16 to that area. But the EDO, and even the  
17 Commissioners, have come out with this concept that  
18 we're going to have one problem, one review, and one  
19 position. And that was to create this atmosphere of  
20 stability, which is very important.

21 And I think it has been very impressive.  
22 I see that filtering down through the staff and  
23 through the new reactor's organization, and I think  
24 that's great. And we're only in the early innings of  
25 new plant, but I see the staff supporting that. I

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1 don't see that on the operating plant side.

2 In my mind, the mind-set should be that we  
3 have these plants operating, we've established a level  
4 of safety, we shouldn't be making changes unless there  
5 is a good reason to make a change. But the mind-set  
6 seems to be, let's go ahead and make a change, unless  
7 somebody can come up with a reason why we shouldn't.  
8 So it's just -- in my mind, it's just the wrong  
9 approach.

10 I would be -- like to see CRGR working  
11 with the highest levels in the NRC to change that  
12 mind-set within the staff and get them thinking --  
13 showing a high level of respect for the current  
14 licensing basis. And, like I say, getting to a mind-  
15 set where change shouldn't be made unless there's a  
16 very good reason to make the change.

17 And those were my three points.

18 MR. WIGGINS: Okay. Any comments from the  
19 panel? It's hard to refute some what he says. It's  
20 hard to disagree. I think, as Tom said, we do share  
21 a lot of common goals. It's just how we see what we  
22 need to do to meet the goals.

23 You know, we're in -- I think at least  
24 from my perspective and the people we've talked --  
25 I've talked to and the people I interact with in the

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1 staff, you know, the stability of the regulatory  
2 environment is important. It's just, how do you --  
3 what does that mean when you translate that into day-  
4 to-day discussions? That's where things -- that's  
5 where we start to part ways, you know.

6 There is no one -- at least at our level  
7 -- you talk about senior levels of the agency. You've  
8 got basically a deputy office director level sitting  
9 here. When we take our CRGR hat off and put our other  
10 hat on, I mean, we're the second tier in the office.  
11 So -- well, really, the first tier in the office is  
12 the office director level. So, you know, we're not --  
13 there is no one sitting here to tell you that he was  
14 trying to change the game plan for people, you know.

15 At the same time, I will be honest with  
16 you. Stuff happens out there, you know, and it needs  
17 to be decided. Something needs to be done. So, you  
18 know, basically, we need to make sure that it's done  
19 appropriately, and, if it was a backfit, that you  
20 follow the process requirements.

21 Okay. That sounds like motherhood and  
22 apple pie, but it's kind of the truth.

23 Now, the RISs are something that I think  
24 we could take a look at, and certainly I'm hearing  
25 that you're wanting to -- you're asking the question.

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1 The RISSs that we've looked at -- we're real careful at  
2 this, so there may be -- like a suggestion that was  
3 made by John from Entergy, there may be a difference  
4 between what happens when we see it and what happens  
5 when someone is asking a question in the field.

6 So the end-to-end piece is an interesting  
7 perspective. That's an interesting question. And,  
8 you know, it is true we have not been -- CRGR has not  
9 been out in the field for a long time. Okay? So  
10 maybe we -- if we hear that that's one of the  
11 recommendations, we'll see if that's in the cards.

12 MR. GWYNN: I have a question, if you  
13 don't mind, Don. You made two good interesting points  
14 about problems perceived with our plant-specific  
15 backfitting procedure. People have a negative  
16 connotation that comes to them from trying to  
17 implement a procedure that people believe that  
18 procedure is used against them in an off-handed sort  
19 of way.

20 I read the minutes from a previous meeting  
21 like this -- I think it was 2001 -- where a licensee  
22 said that they have spent \$20,000 to avoid a \$10,000  
23 inspection. And they -- I'm not sure they were  
24 successful in that attempt. And so I certainly have  
25 some sympathy for the view, but my question is, is

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1 there a suggestion that you might have or that another  
2 member of the audience might have for a different  
3 approach to a plant-specific backfit process that  
4 would be less subject to negative perception, that  
5 might be less subject to the fear of retribution by  
6 the staff. Although I know somebody said that that's  
7 not what it is, I think there are others that have  
8 said that there is a fear that if people bring forward  
9 a backfit claim.

10 So I'm asking: is there an alternative  
11 approach that you might suggest we consider?

12 MR. WOODLAN: Well, I wish I had a good  
13 answer for that. Some suggestions that I've heard  
14 that I think have some potential merits is to provide  
15 some method to provide the information to the CRGR, or  
16 someone within the staff, without the licensee  
17 themselves having to do that.

18 MR. GWYNN: Like an ombudsman?

19 MR. WOODLAN: An ombudsman or maybe allow  
20 NEI to gather these things sometimes and present them.  
21 I know we've talked about maybe having a parallel  
22 organization with NEI -- within NEI to work with CRGR,  
23 much like they do in the ROP area. And if that was  
24 ever created, that might be a path to do it, or  
25 certainly something short of having to make an

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1 allegation which gives you anonymity, too, but some  
2 other way to make it run. That's not a real good  
3 answer, but that's all I know.

4 MR. GWYNN: Thank you.

5 MR. WIGGINS: Thank you. Alex?

6 MR. MARION: Alex Marion. I was going to  
7 speak to that a little bit, by indicating that all of  
8 us at NEI receive calls daily from utilities  
9 expressing concerns about something that's going on in  
10 an inspection or an interaction, if you will, between  
11 the licensee and the NRC.

12 And we can't deal with everything, but  
13 some of the issues become very clear that they're  
14 potentially generic, have greater applicability,  
15 etcetera, and we generally follow up with the  
16 responsible technical staff in NRR to make it -- to  
17 make sure we understand this is generic and we're  
18 willing to work with them on a solution, etcetera.

19 But there are activities that occur on a  
20 day-to-day basis that push the envelope. And I guess  
21 one of the things we talked about this morning -- and  
22 I'd like to put it on the table for your  
23 consideration. Would you be willing to accept letters  
24 from NEI identifying some specific examples? Either  
25 activities occurring during the inspection process,

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1 the review of a license amendment, or NRC published  
2 documents that we think are a backfit, you know, and  
3 we would send such a letter I guess to the Chairman of  
4 the committee and maybe the secretary.

5 But we're not going to do that if that's  
6 violating some kind of protocol or your standing  
7 within the organization. But I would just ask you to  
8 consider that.

9 MR. WIGGINS: I don't speak for everyone,  
10 but generally we are -- you know, we try to maintain  
11 an open agency, free to communicate whatever -- it  
12 doesn't seem inappropriate to me that if you have a  
13 point of view you want to make, you pitch it to the  
14 CRGR Chairman, everyone will open the mail. You can  
15 -- you know, you would say it to Luis, so you can send  
16 it to us, whoever the CRGR Chair is. I mean, I don't  
17 think that's out of bounds.

18 But, you know, whether that becomes  
19 institutionalized would be a question that we'd have  
20 to take back. And as I get through my end of the  
21 meeting, I'll tell you what is going to become of all  
22 of this stuff that we've done here today. But, Alex,  
23 I don't think that's -- that's certainly not out of  
24 line.

25 Although it's found in the agency, I --

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1 you know, I've been around both regulatory impact  
2 surveys, towers, perm reports, all the stuff that  
3 industry has sent to us critiquing our performance,  
4 you know. It has always seemed to me that the higher  
5 you go up in the staff -- you don't have to go to the  
6 Commission. The higher you go up in the staff, the  
7 more -- the less invested we are in the specific and  
8 the more interested we are in understanding what the  
9 problem is.

10 So, you know, whereas I understand in the  
11 earlier days with some of the things that we did and  
12 some of the devices that were there -- I won't mention  
13 SALP -- there were these types of issues --

14 (Laughter.)

15 -- that have come up. But now I think  
16 it's a different -- you know, I think we're beyond  
17 that, and you certainly have every right to  
18 communicate with who you want to communicate with in  
19 the organization.

20 Now, what we could do is consider whether  
21 CRGR should institutionalize a role as being some  
22 recipient of that type of correspondence. It's a good  
23 suggestion. We'll take a look at it and see what Luis  
24 says about it.

25 MR. HOUGHTON: Jim, thanks for those

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1 comments. And I think you can see the thrust of part  
2 of what we're talking about in terms of openness and  
3 interaction and whether it's the form of FAQ or  
4 ombudsman or letters or some combination of the whole.  
5 That's one of our main thrusts is opening up for all  
6 stakeholders a more open dialogue with the CRGR.

7 MR. WIGGINS: Okay.

8 MR. BOGER: This is Rich Boger. I'm  
9 curious. You know, some of those items seem like they  
10 would be normal paths of communication through the  
11 licensing action task force or the ROP, you know,  
12 monthly meetings. Are these items that aren't  
13 reaching success in your mind through those channels,  
14 and you're seeking an alternate approach?

15 MR. HOUGHTON: Well, it -- I'd say no.  
16 I'd say we have --

17 (Laughter.)

18 No. We want to follow the channels that  
19 have been working, but I think there are probably  
20 issues that aren't appropriate for those other forum  
21 that would be more appropriate for the CRGR. It has  
22 a different role than the LATF.

23 MR. BOGER: Okay. I just wanted to make  
24 sure that there is --

25 MR. HOUGHTON: Yes.

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1 MR. BOGER: -- there are these other  
2 channels --

3 MR. HOUGHTON: Yes.

4 MR. BOGER: -- and we do meet a lot, and  
5 we --

6 MR. HOUGHTON: Yes.

7 MR. BOGER: -- have chances to talk.

8 MR. HOUGHTON: We actually do try to  
9 coordinate our different task forces.

10 MR. BOGER: Okay. Thank you.

11 MR. HOUGHTON: Thanks.

12 MR. WIGGINS: Charlie, you had something  
13 on this point before --

14 MR. HOLAHAN: No, I was going to mention  
15 that at least informally through I think licensing  
16 forum, there was an issue raised a number of years ago  
17 on -- I think it's fire protection inspector training  
18 that came to the CRGR's attention between discussions  
19 with the CRGR and staff and industry. There was  
20 enhanced communications between staff and industry.  
21 I think CRGR played a little bit of a catalyst in  
22 having that happen.

23 And as I remember, it came to a successful  
24 resolution that both parties were happy, and I think  
25 the plant-specific backfit audit a few years ago came

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1 out of a similar type of concern that was raised at  
2 one of the licensing forums or one of these types of  
3 meetings. So in the past, CRGR -- and I'm sure still  
4 does -- takes information they get from various  
5 sources and digest it and act on it when they feel  
6 that it's appropriate.

7 MR. WEIL: Jack Weil from NEI. Jim, we  
8 see that there are several places with respect to  
9 rulemaking that there are focus points in the  
10 Commission. One of the focus points we see is the  
11 CRGR. We have noticed recently that rulemakings are  
12 becoming more and more complex. The volume of them  
13 are getting very significant. We're probably at the  
14 point where we may see our first 2,000-page SECY.

15 Has the CRGR taken an opportunity to  
16 consider providing maybe some recommendations, some  
17 review about how to make this process a little less  
18 onerous? If we plot the size of the pages over the  
19 past few years, we're on an asymptotic -- sort of an  
20 asymptotic range where we're going to get too big, and  
21 it has an impact on the industry.

22 We also are looking for the impact it must  
23 have on the NRC staff. Are there ways that the  
24 requirements to produce these packages can be pared  
25 back? Are there ways that the packages can be put

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1 together differently -- you know, bifurcated, put in  
2 different pieces -- so that they are easier for not  
3 only the staff but the industry to manage?

4 And that's the comment is, do you see a  
5 role of the CRGR in sort of an oversight of the  
6 process where you're a focal point to give comments to  
7 the Commission, to the EDO about how maybe to overall  
8 reduce the burden and make the rulemaking process  
9 maybe a little bit orderly and less burdensome for  
10 everybody.

11 MR. WIGGINS: Yes. You know, it's -- here  
12 I go again. I have to check my tendency to try to  
13 answer everything. I'm not sure it's a CRGR point to  
14 do that. If there is -- and, believe me, I understand  
15 what you're talking about. What I do know from CRGR  
16 is you -- and you know from the time that you've spent  
17 on our side of the table that the documentation  
18 package we get is bigger than the one you see, because  
19 the CRGR infrastructure requires several other things  
20 to come to us.

21 And it's not really practical to presume  
22 that people that are at senior levels of the  
23 organization are getting a chance to read document  
24 package that are that thick and do the type of review  
25 that might catch every little issue in it and

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1 challenge it.

2 So, you know, I -- just at my level,  
3 talking to -- with Les, the staff member in this, I  
4 can understand your point. I think we -- there seems,  
5 at least to me from a CRGR point of view, some need to  
6 find ways to focus the process, so that our committee  
7 can be focused on the questions that we're asked to  
8 police in the staff as opposed to getting it diverted,  
9 looking at all of the administrativia that's  
10 associated with the activity. Okay?

11 You know, we're -- well, let me just leave  
12 it at that, so -- but I take -- your point is well  
13 taken. I don't know what I can do about it all  
14 together. I think -- is there rulemaking forums in my  
15 new side of the house here?

16 (Laughter.)

17 When I get there, is that --

18 MR. BOGER: You know, the Commission has  
19 also expressed its concern about our rulemakings, the  
20 complexity and the size and the length of time it  
21 takes, and things like that. And we have underway a  
22 rulemaking streamlining effort, and so that's -- the  
23 Commission sent us an SRM about June of last year, and  
24 so we're due to have something this summer. So that's  
25 a --

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1 MR. HOUGHTON: Bruce, can I ask -- I think  
2 I saw that SRM, and I tried to follow the trail of the  
3 ADAMS numbers and was abysmally unsuccessful. And I  
4 think we got -- what our people got from the people in  
5 ADAMS was it was not publicly available.

6 And would there be any reason your efforts  
7 to improve the rulemaking process couldn't be made  
8 available so we could see what ideas you have and  
9 perhaps make some suggestions also? I'm not looking  
10 for a commitment right now, but would you look into --  
11 would you mind looking into it?

12 MR. BOGER: Yes, we'll consider that.  
13 Thank you.

14 MR. HOUGHTON: Thanks very much.

15 MR. BOGER: Sure.

16 MR. PANGBURN: This is George Pangburn  
17 again. Just sort of the flip side to the comment you  
18 were making, Jack, is the interest of the  
19 decisionmakers, and I guess our stakeholders as well,  
20 in dealing with matters holistically, which argues for  
21 the bigger packages.

22 And I was looking at one this past  
23 weekend. And while it certainly didn't get to the  
24 2,000-page threshold, it was a substantial rulemaking.  
25 And I don't know quite how to deal with that, because

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1 as we do at the same time want to be able to give the  
2 public in one piece so that they don't -- they don't  
3 see these tiny pieces of rules whose cumulative impact  
4 isn't clear, but providing, if you will, an overall  
5 rule that -- to a specific issue.

6 So I think there is a tension there, and  
7 separating the documents, you know, it may not be --  
8 be the way to go.

9 MR. WIGGINS: Okay. Well, let me just  
10 stoke this. I don't want to make a presumption of  
11 what the answer is themselves. Look at the last slide  
12 of the presentation I went through. There is sort of  
13 a reason why we ask this, and I was interested in  
14 getting some specific feedback on this.

15 It's more or less kind of a macro  
16 discussion in how CRGR should operate. Actually,  
17 where this comes from is you do see -- we annually  
18 have a report written that characterizes what CRGR  
19 did. And if you look at the last several years, you  
20 can come to the conclusion that CRGR -- either we're  
21 inept because we haven't found a backfit -- and I'm  
22 not going to believe that, but, rather, the staff has  
23 learned enough about the backfit rule that they can  
24 write things without tripping the thresholds.

25 So it makes you wonder whether you need to

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1 put CRGR -- whether it needs to remain in this process  
2 the way it has been traditionally, or can you not  
3 relax the staff's activities but put CRGR in a -- you  
4 know, call if needed basis, if there is a problem and  
5 if there is a request by the office director or the  
6 EDO or if industry senses that this is a bad thing  
7 coming down, it's a backfit issue, then you get it on  
8 demand.

9 Or should we just continue in large part  
10 as we've been doing, or do we need an expanded role?  
11 If you have any opinions, we'd like to hear it. Or if  
12 you have -- you know, even if it's maybe you should do  
13 this or you should definitely not do this option. Is  
14 there anything out there? Otherwise, we'll make our  
15 own conclusion.

16 MR. WEINKAM: Edward Weinkam, Nuclear  
17 Management Company. To go off of that, with Mr.  
18 Boger's question before about the other forums we have  
19 with ROP task force and licensing action task force,  
20 those forums very often resolve issues that, from my  
21 perspective, should have been viewed prior to getting  
22 to that forum.

23 There are some issues in the inspection  
24 manual that the ROP task force has worked out and  
25 resolved some issues in the inspection manual that,

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1 from my perspective, were backfits. And they were  
2 resolved, but I am of the view that they should have  
3 been caught before the inspection manual was issued.

4 So from the perspective of your questions,  
5 Jim, it goes -- I think that it needs to continue as  
6 a line activity as opposed to relaxing it.

7 MR. WIGGINS: Okay. All right. There has  
8 been some suggestion you could define getting involved  
9 in plant-specifics as an enhanced role, but we'll  
10 handle that as a comment. Okay.

11 Another thing that -- now that I've got  
12 the floor here, let me ask another one of these  
13 questions. I was surprised -- I kind of expected we  
14 might hear commentary that we've heard before that  
15 looks -- that gets to how our generic letters are  
16 coming out these days and what we are actually doing  
17 in generic letters.

18 A number of, if not most, if not all, of  
19 the generic letters we have put out that have asked  
20 for licensee responses have been framed in terms of  
21 questions that were asking for responses under  
22 50.54(f).

23 You can get into a construct that that's  
24 not a backfit, since all we're out doing is asking a  
25 question, not asking you to do anything other than

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1 what we are allowed to ask per the regulation, because  
2 we are allowed to ask you questions needed for us to  
3 make a determination of whether to suspend, modify, or  
4 revoke your license, allegedly.

5 Now, that's what the reg says. Do you  
6 have any commentary about whether it -- you know, I'm  
7 surprised you didn't complain about that, frankly.

8 (Laughter.)

9 If you have a complaint, take the gloves  
10 off and state it. Here's your chance.

11 MR. MARION: Alex Marion, NEI. Let me  
12 make it clear this is not a complaint.

13 (Laughter.)

14 It's a commentary. When we review a  
15 generic letter, we focus on two things, two aspects  
16 with it. One is: what is the problem? Is it clearly  
17 stated what the information is needed for? And the --  
18 you're absolutely correct, the NRC has the right to  
19 ask for information.

20 But when you impose that right under the  
21 auspices of 50.54(f), and if that information is  
22 beyond that which was used to grant the license, the  
23 NRC must justify the basis for that information  
24 request. Okay? That's clearly stated in the  
25 regulation, and that's one aspect, that's one area you

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1 can guarantee we're going to comment on, because we  
2 always have an opportunity to comment, because the  
3 staff doesn't do it in the proposed generic  
4 communication.

5 More importantly, when we submit comments  
6 on something, let's say, where their new  
7 interpretation of meeting the regulation that  
8 justifies the information request is a new position in  
9 our mind, and we say this is a backfit or this is a  
10 new interpretation, etcetera, the typical response we  
11 received is, "This proposed generic letter was  
12 reviewed by the Office of General Counsel and CRGR,  
13 and they had no comments on it."

14 So my point is: we're not communicating,  
15 and we need to communicate so that we understand the  
16 positions. Like in Tom's presentation about the  
17 regulatory analysis, as the package of stuff that  
18 represents to external stakeholders what NRC's  
19 regulatory decisionmaking is, we're not getting to  
20 that point in generic letter communications and  
21 commenting.

22 And the same commenting issue exists with  
23 other opportunities the industry has, including  
24 rulemaking. But we're basically talking past each  
25 other in that arena, so those are two perspectives I

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1 can offer.

2 Now, whether or not -- you know, one of  
3 the other things we do is we look at the information  
4 request and say, "Okay. What is it that they are  
5 going to do with this information when they receive  
6 it? Is it the right information that's representative  
7 of trying to find a solution to the problem that we  
8 understand?" And we collaborate with the NRC very  
9 well in that regard, so that works out very  
10 positively. But these other two areas are something  
11 that needs to be watched carefully.

12 MR. WIGGINS: Thank you. Thanks, Alex.  
13 I knew you guys had that feeling. I wanted somebody  
14 to put it on the record, so we can actually --

15 (Laughter.)

16 -- think about it, but I'm glad the way --  
17 it was interesting to hear how you stated it. So, you  
18 know, that gives it more than -- it takes it beyond  
19 just the top-level fight between us where, you know,  
20 the staff -- you're right, the staff has got to  
21 justify asking something under 50.54(f). It doesn't  
22 have to climb a mountain like it has to to impose an  
23 enhancement backfit. You basically have to explain  
24 your reason why you think you need the information.

25 And the regulation seems to -- what it's

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1 really trying to do is it's allowing the staff to have  
2 information to make its next -- and it's really -- if  
3 there's a backfit, it's really the next decision the  
4 staff makes. That's how it's supposed to work. But,  
5 you know, what you've told us is helpful. Thank you.

6 MR. GEORGE: Ben George again from  
7 Southern Nuclear. The only comment I'd like to make  
8 about the 50.54(f) terminology and the generic letters  
9 is, you know, that -- like you said, the language of  
10 what that means is very significant to us, and  
11 generally, you know, involves our legal staffs and  
12 this sort of thing.

13 But I guess I want to remind you that  
14 we're also obligated under 50.9 to provide you correct  
15 information, and, to me, I don't know why you need to  
16 invoke that unless there is really a reason to believe  
17 there is a safety issue that somehow we're not going  
18 to represent properly to you.

19 So it never has really -- I never have  
20 understood why the NRC insists on invoking that  
21 terminology when we're obligated any time we provide  
22 you information under 50.9 to be complete and accurate  
23 in all material respects. So, you know, that's a  
24 perspective.

25 MR. WIGGINS: Yes. Thank you.

1 MR. WOODLAN: I think this is very similar  
2 to what Alex says, but it's a little more specific.  
3 Some of the problem isn't in the way the generic  
4 letter is written, because they are usually very  
5 carefully written to say, "We're just asking for  
6 information." A lot of it has to do with the way the  
7 generic letter gets closed out and the RAIs that get  
8 asked, because sometimes we'll answer that, you know,  
9 what relationship do you have with the grid controller  
10 or with respect to voltage?

11 And if our answer is, hey, we've got a  
12 study done, and they maintain a level, but we don't  
13 have a continuous flow of information, the feedback we  
14 get from the staff -- and sometimes it's even in RAIs  
15 -- is that's not good enough. Well, that's what we've  
16 always had. The generic letter isn't supposed to  
17 impose a new requirement, and yet when it comes to the  
18 implementation it looks like it is imposing a new  
19 requirement.

20 MR. WIGGINS: Okay. Anything else?

21 FACILITATOR RAKOVAN: Sir, could you  
22 identify yourself real quick?

23 MR. WOODLAN: Don Woodlan.

24 FACILITATOR RAKOVAN: Thanks. Just wanted  
25 to get that for the record.

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1 MR. WIGGINS: Anybody else on our panel?  
2 You've got a captive audience here. Any questions  
3 you've been dying to ask?

4 (Laughter.)

5 Anybody? Yes.

6 MR. WOODLAN: Yes. I'd like to make one  
7 more comment. I always --

8 MR. WIGGINS: Identify yourself.

9 MR. WOODLAN: Oh. I'm Don Woodlan.

10 (Laughter.)

11 MR. WIGGINS: Still.

12 MR. WOODLAN: Still Don Woodlan.

13 MR. WIGGINS: I think we got that, thanks.

14 (Laughter.)

15 MR. WOODLAN: I'm always concerned about  
16 these meetings. I always try to put myself in the  
17 position of the regulator when I do something like  
18 this. And I'm always concerned that we, as an  
19 industry, sound like all we see are negatives. And I  
20 don't see that. I mean, we took a look this morning  
21 when we were trying to find examples of what we're  
22 doing, and we even went over the RISs for the last  
23 couple of years to pick out which ones we thought were  
24 problems. And we identified some, but it was only a  
25 handful.

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1           There's a tremendous amount of actions  
2           that go on in the inspection arena and the license  
3           amendment request arena and generic communications  
4           that are -- that go just fine. And I'll credit CRGR.  
5           I don't know if you're responsible or if it's just the  
6           whole process, but they work.

7           But there are problems, and, you know,  
8           that's what we're bringing forward here, and I think  
9           the importance of these problems is reflected by the  
10          number of people from the industry that took the time  
11          -- and many of them spent travel money, as I said, to  
12          come here -- it's important to us. The impact of  
13          those exceptions, of those problem areas, are not  
14          trivial. They are important to us, and they deserve  
15          attention.

16          But, you know, that doesn't mean the sky  
17          is falling. In fact, many things are being done very  
18          well.

19          MR. WIGGINS: Yes, I appreciate your  
20          comment. Whether or not it's CRGR, like I said, we're  
21          all the deputy office director level, so somebody is  
22          doing something right. And, you know, this is an  
23          opinion. It's worth what you paid for it. It always  
24          seems to me that when you're dealing with what I've  
25          dealt with, which is mostly the nuclear operating

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1 plants, the plants always do most of the things right.  
2 It's -- you're always talking on the margins of a very  
3 few things.

4 So the difference between a plant that is  
5 in column 1 and column 4, while significant, that  
6 column 4 plant still does a lot of things day to day  
7 correctly. And I think the same thing holds for the  
8 staff. I think the staff does a lot of things day to  
9 day correctly.

10 There are some things that we're going to  
11 argue about. So you're left with the three bins,  
12 things that we do well that you think we do well,  
13 things that we do well that you don't think we do  
14 well, and things that neither of us think we do well.  
15 So, you know, we've just got to --

16 (Laughter.)

17 -- got to work on the ones that we both  
18 agree, and we've got to make -- move the ones that we  
19 differ on into one of the other two bins. Right?  
20 It's just like you resolve any issues.

21 All right. Rather than belabor this, I do  
22 appreciate all the time you spent, appreciate the  
23 folks coming down here. This I think is valuable  
24 input for us.

25 What are we going to do going forward?

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1 The going-forward plan is obviously we're going to get  
2 a transcript out of this. That will be part -- and  
3 we're going to have to go through the transcript, so  
4 Les is going to have a little bit of work ahead of him  
5 to go through the transcript and capture what are the  
6 actionable comments out of it. And we will react to  
7 the comments.

8 I'm not going to say that we're going to  
9 respond to every item. My general judgment is to try  
10 to bin them into notions of where the problems are or  
11 where the suggestion is that we ought to do  
12 differently. We're roll up those suggestions, we'll  
13 study them as a panel, we'll make a recommendation to  
14 the EDO about what, if anything, we think needs to be  
15 done about them.

16 And then, you'll get a meeting report out  
17 of here. I don't know where that will be in the  
18 process. It might come before we finish. Likely, it  
19 will come before we finish, but -- so we'll have a  
20 transcript, we'll have a meeting report. We'll take  
21 the process further. We'll make recommendations to  
22 the EDO, and then we owe you an answer on what we  
23 decided to do differently. So we'll figure out a way  
24 to do that.

25 I don't think we'll drag you all back down

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1 here again. We'll figure out a way to put it on a  
2 site that you can find, so it's not just hiding in  
3 plain sight like a number of things we have on our  
4 website.

5 So, and it's -- with that, I would like to  
6 just thank the transcriber and, Lance, for keeping us  
7 reasonably on track here. And thank Les for the work  
8 in setting the logistics up. It was very helpful.

9 MR. HOUGHTON: And thank you for being  
10 open to --

11 MR. WIGGINS: Hope Mike Johnson got a good  
12 introduction. He has been sitting here taking copious  
13 notes. He is the prospective research deputy office  
14 director as of, what, 23rd of this month. And he will  
15 eventually inherit the chair of CRGR.

16 So that's it. Thank you. The meeting is  
17 closed.

18 (Whereupon, at 3:27 p.m., the proceedings  
19 in the foregoing matter were concluded.)

20

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