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 Future Role of the CRGR

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 COMMITTEE TO REVIEW GENERIC REQUIREMENTS

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6 MEETING TO DISCUSS THE FUTURE ROLE OF THE CRGR

7 + + + + +

8 MONDAY,

9 NOVEMBER 9, 2009

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11
12 The Committee met in the Commissioner's
13 Hearing Room of the Nuclear Regulatory Commission, One
14 White Flint North, Rockville, Maryland, at 2:30 p.m.,
15 Dr. James E. Lyons, Chairman, presiding.

16
17 MEMBERS PRESENT:

18 JAMES E. LYONS, Chair

19 JACK GROBE, NRR

20 WILLIAM M. DEAN, NSIR

21 GARY M. HOLAHAN, NRO

22 CATHERINE HANEY, NMSS

23 CYNTHIA A. CARPENTER, FSME

24 LEONARD WERT, REGION II (For Victor M. McCree)

25 EDWARD L. WILLIAMSON, OGC

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STAFF PRESENT:

LES CUPIDON, NRC

SUSAN SALTER, FACILITATOR

LANCE RAKOVAN, FACILITATOR

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3 P-R-O-C-E-E-D-I-N-G-S

4 (11:20 a.m.)

5 MS. SALTER: Good afternoon. Welcome to
6 the Nuclear Regulatory Commission. My name is Susan
7 Salter. I work in the Office of Human Resources,
8 coordinating recruitment efforts, but I, in addition,
9 facilitate agency meetings. So, I will be your
10 facilitator today, along with Lance Rakovan, from our
11 Executive Director of Operations Office.

12 The purpose of today's meeting is to
13 discuss the future role of the Committee to Review
14 Generic Requirements, or the CRGR. Our agenda is
15 pretty simple today. After some opening comments, Mr.
16 Lyons -- the panel will introduce themselves, and Mr.
17 Lyons will give a presentation on the evolution of the
18 CRGR, and some options for future direction of the
19 committee.

20 Following that, we will open it up to
21 comments, and you're all at the table. So, I think
22 that'll make it a little bit easier. We do ask that
23 you speak into the microphone and give your name and
24 organization before you make your comment. We have a
25 transcriber this afternoon, so we'll want to make sure

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1 that he can capture all of the comments.

2 We also ask that the audience members keep
3 their sidebar conversations down to a minimum because
4 it makes it difficult for the transcriber to
5 accurately transcribe the comments if there's too much
6 background noise.

7 This is a public meeting, and we will be
8 discussing publicly available information. If you did
9 not sign in, or get handouts when you came into the
10 hearing room, please raise your hand, and Lance and I
11 will bring some over to you. We have restrooms right
12 across the hall, and if you need anything during the
13 meeting, just raise your hand or get Lance or myself's
14 attention, and we will come and do what we can to help
15 you out.

16 So, with that, I'm going to turn it over
17 to the panel members.

18 CHAIR LYONS: Thanks, Susan. Well, Susan
19 did a good job of going over the purpose of the
20 meeting. So, I'll go ahead and kind of jump right in
21 here. I want to thank everybody for coming today.
22 One of the things that we've been looking at, and I
23 guess I'll get right into it, is that there was a
24 recent OIG survey that came out January of this year,
25 that looked at the CRGR activities.

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1 They said that the agency's processes have
2 evolved, which in fact resulted in other offices
3 assuming some of the CRGR's duties, and we certainly
4 are part of this audit. So, we were helping them
5 along with that. Then consequently, the CRGR no
6 longer performs a central role in this process that
7 was originally envisioned back in the 1980's when they
8 first started the CRGR, and that -- and the offices
9 have now taken over many of the responsibilities in --
10 in meeting those requirements.

11 I think from our standpoint, we feel
12 that's appropriate: that they should be the ones that
13 are responsible for that. So, the OIG made two
14 recommendations. First, to develop, document,
15 implement and communicate and agency-wide process for
16 reviewing backfit issues to ensure that generic
17 backfits are properly justified based on NRC
18 regulations and policy.

19 This is something that -- that we as a
20 CRGR needed to know -- needed to be done. We knew we
21 needed to update our charter to update the guidance
22 documents because the rule has been changed, and
23 evolving over the years. But once we knew that there
24 was going to be an OIG audit, we said, "Well, we might
25 as well wait and see what they said before we go off

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1 and change things, and then have them come up with
2 either different recommendations, or send us off on a
3 different direction."

4 And then the other recommendation they
5 said was to determine what if any role CRGR should
6 perform in NRC's backfit review process, to include
7 whether the CRGR function is still needed. And that's
8 really the basis for this meeting that I want to focus
9 on is that second bullet, is to talk about what should
10 the CRGR's role be in the future.

11 So, to give you some background and the
12 evolution of the CRGR, we had talked -- the committee
13 has talked about this quite a bit, and one of the
14 things is looking back at it, I remember actually it
15 was 1981 when they actually formed the CRGR, which was
16 the year I got here at the NRC. And so, some people
17 have been here a little longer than me.

18 One of the things was back then new
19 positions were being developed by sections and
20 branches without even management's knowledge. And in
21 fact, if you remember when Bill Russell became office
22 director, and maybe it was even before he was office
23 director, one of his first things was he wanted what
24 was called Task Actions Plans before somebody went off
25 and spent significant resources in developing a new

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1 position because he wanted some buy in from management
2 before they actually were able to spend those
3 resources.

4 Because what was happening quite literally
5 was there would be generic letters that would rise to
6 management, and nobody would know that they were
7 coming. The division management some time would be
8 surprised, but certainly at the office level.

9 Obviously, there were many new
10 requirements that came out of TMI that led to the
11 strengthening of the backfit rule in -- because it was
12 1985 I think is when it was signed out, and it
13 actually went into affect 1986 for the backfit rule.
14 New positions were issued, a lot of times by generic
15 letters of bulletins without the benefit of any public
16 involvement before they were issued.

17 And so, as a result, the CRGR had brought
18 responsibilities regarding not only the backfit issue,
19 but the technical positions that were being brought
20 up. Part of the thought of having the CRGR come
21 together at a high level of management, and I think
22 it's pretty much been at the deputy director office
23 level, is that they wanted to get buy in and have a
24 lot of different people look at this before any
25 position was put forward and promulgated out to the

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1 industry.

2 So, that was -- that was kind of the
3 beginnings of what's happened. In the -- since then,
4 what has happened is -- is that new positions are now
5 vetted thoroughly through management before they ever
6 even -- before resources are expended, and certainly
7 before they ever get to the CRGR.

8 If you look at NRR back in the late '90s,
9 early 2000s, they developed a concept called a
10 Leadership Team, where the division directors in NRR
11 met routinely. They -- any positions, any generic
12 letters went through the Leadership Team before they
13 were moved on.

14 There was also a lot more coordination
15 between offices when a -- when a certain position had
16 meaning and had relevance to other offices. And so,
17 we tried to put together -- you know, we did a lot
18 more coordination both within offices, and across
19 offices.

20 Now, we have dedicated branches to handle
21 generic communications in NRR, and our regulator
22 guides and in the office of research. The rule-making
23 process has a -- has a branch in NRR that are
24 dedicated to those processes, and making sure that the
25 staff meets all the requirements before any of these

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1 positions go forward.

2 Plus, most of the positions are also
3 vetted through the ACRS and -- and the things that --
4 the generic communications we've revised. We've
5 revised our generic communication process in the late
6 '90s. We included regulatory information summaries.
7 We've tried to strengthen that process in for generic
8 letters and bulletins especially, and -- and for many
9 regulatory information summaries, we actually issue
10 those for public comment before they -- before they go
11 into effect.

12 And so, the CRGR doesn't have that central
13 row of looking over and making sure that these are the
14 right technical issues and the processes are being
15 followed. And then in the -- in the effort to
16 streamline the rulemaking process, CRGR has actually
17 been removed from the rulemaking process. And so,
18 we're not even looking at rules anymore because they
19 get vetted through. All the offices concur on them
20 before they go out.

21 OGC has made a determination on whether or
22 not there's a backfit in there. Any public comments
23 have to be addressed, and those are -- and resolved,
24 and provided to the commission. So, all that gets a
25 thorough look at, and so, we've been taken out of that

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1 process.

2 So, that leaves us, as CRGR, to be focused
3 mainly on generic communications and to some extent
4 regulatory guides, although in the recent past, what
5 we've been doing is allowing a regulatory guide, since
6 it really doesn't put any new requirements on anybody,
7 to go out for public comment. And then, if there are
8 any comments regarding backfit on the regulator guide,
9 then we'll get involved and look at it.

10 Although in some cases, some of the
11 offices do ask us to look at their regulatory guides
12 before they go out, and we'll do that.

13 So, just to kind of -- to summarize again,
14 so the current program office, they're responsible for
15 identifying changes to agency positions. They
16 coordinate the technical resolutions with the program
17 office, and with other effective program offices.
18 They perform a regulatory analysis that determines if
19 a proposed position is a backfit.

20 They get a buy off from OGC on whether
21 it's a backfit. Then, they're also responsible for
22 determining what's the appropriate vehicle for either
23 implementing a new position, or communicating a
24 position, whether it's a rule or reg guide, or generic
25 communication.

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1 And the CRGR, we're left to look -- we
2 review all generic communications that go out, and we
3 do them to make sure that they comply with the backfit
4 rule. And we do both formal and informal reviews, and
5 the OIG audit talked about this a little bit, but the
6 -- basically the difference is for an informal review,
7 most typically the regulatory information summary will
8 be sent to me, sent to Les Cupidon, who is the program
9 manager for the CRGR activities, and he gets that.

10 He reviews it to see if it looks like
11 there's any backfit implications. And if he doesn't
12 think there are, he provides it to me. I'll email it
13 out to the rest of the committee members, and say,
14 "Hey, we looked at this. It doesn't -- here's like a
15 quick synopsis of it. It doesn't look like there's
16 anything backfit in here. Take a look at it, and if
17 you have any comments, let me know."

18 And if we need to, we'll get together and
19 meet formally, and have a presentation by the staff.
20 So, the formal ones are more likely in a generic
21 letter. We actually have the staff come make a formal
22 presentation to the CRGR. We have back and forth
23 discussions with them.

24 In the informal, there are times in the
25 informal where one or more of the members will have a

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1 question about either what's in the generic
2 communication, or what -- or some position that's
3 being taken in there, and we'll raise that. A lot of
4 times, we can take care of that really electronically.

5 So, we kind of do a virtual meeting. We -
6 - we send it around the comments to everybody, and
7 then we -- we decide whether we need to have a
8 meeting. In a lot of cases, the office that's
9 proposing the generic communication will make
10 modifications that'll satisfy.

11 And so, that I think works pretty well and
12 is fairly efficient for us. And of course now that
13 some of us are in other buildings, we're back in the
14 '80s riding shuttle buses to and from Church Street
15 and EBB. It does help us to be able to do that.

16 As I said, we review the regulatory
17 guides, if there are public comments regarding
18 backfit, or if the program office requests. And then
19 we do periodic assessments. We do an annual
20 assessment to where we ask the offices that have
21 interacted with the CRGR with how effective the
22 reviews were, whether we added value to their
23 products, and we also do a five-year audit where we'll
24 look at kind of the backfit program overall.

25 If you remember, CRGR is really

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1 responsible for generic changes, generic backfits.
2 But we also have within our charter a responsible to
3 look at the -- the plant specific backfit from a
4 process standpoint to make sure that the various
5 offices have procedures in place, that they're
6 following procedures. That sort of thing.

7 So, we'll do that on a five-year basis.
8 Another thing to point out is I talked about Les being
9 our staff person that follows this. In the office of
10 research, which I'm in, we allocate half an FTE
11 towards the -- the CRGR, the staffing of it. Now, the
12 rest of us are all managers, so we're just overhead.
13 And so, we don't really count.

14 So, we don't -- nobody keeps track of our
15 time. But Les does keep track of his time, and so
16 he's half an FTE.

17 Back in the `80s when the CRGR had
18 originally begun, there was a whole staff. They had
19 six-seven people working full-time, looking at generic
20 requirements and doing this kind of coordination that
21 now is being done more properly by the program
22 offices.

23 So, given that as a background, just try
24 to paint the picture of where we are. Where do we go
25 from here? And so, I -- we've got about four proposed

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1 options here. They're kind of variations on a theme.

2 There -- there's nothing set in stone here. I kind
3 of put the -- we put these together to help stimulate
4 some conversation.

5 We want to get your feedback on these
6 proposals or any other proposals that you might think
7 are worthwhile. Obviously, in the long run, what
8 we're going to do is we're going to take this, put
9 together some proposed options to put up to management
10 up to the EDO, up to the commission to see where they
11 want us to go. But one of the things we wanted to do
12 was get some external input before we went off and did
13 that.

14 So, let me kind of run through these
15 options, and we can talk about them when I get
16 through. First off, option one. The first four
17 bullets are really pretty much what we're doing now.
18 The -- we don't review the rule makings.

19 We review regulatory guides if there's
20 public comments. We review all generic communications
21 before they are issued, either for public comment, or
22 issued out final, either formally or informally, and
23 the program offices are responsible for meeting the
24 backfit rule.

25 I think that's one thing that we want to

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1 maintain always is that they are the ones that are
2 really responsible for meeting this, and one of the
3 things we want to add, though, is we'd really like to
4 add a backfit point of contract, a guru if you would.

5 You know, have somebody really trained up in each
6 office.

7 What we're looking at adding is putting in
8 a formal, generic and plant specific backfit appeal
9 process. There's currently a backfit appeal process
10 for plant-specific backfits, and there's words that
11 says, "Well, you know, if you had a -- if you want to
12 appeal a generic backfit, you can kind of use the same
13 process." And it really runs through the program
14 office that makes the proposed -- takes the proposed
15 position. It runs up through their management.

16 And so, what we're looking at is -- is to
17 put in a formal process that would allow the industry,
18 or any stakeholder, to appeal a backfit decision. And
19 then one of the things we're looking at is that the
20 CRGR could be set up to hear appeals on generic
21 backfit determinations; that we'd actually have public
22 meetings with stakeholders, get input from the public,
23 and -- and input from the staff on the positions, and
24 then I guess my thought would be still as a -- as a
25 body that provides recommendations up to the EDO, is

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1 then make a recommendation to the EDO of what should
2 go on something.

3 And I put down here at the bottom that for
4 any of the options, an improved training program is
5 going to be needed. I talked about this a little bit
6 at the RIC last year that what we want to do is put
7 together a training program that provides a basic
8 training module on the backfit process, and then maybe
9 specific training modules for different types of
10 staff, like a reviewer or a project manager, or we
11 have a slightly different process in the -- in east-
12 west reactors for backfit than for the operating
13 reactors. And for NMSS, for other offices, for the
14 regions, try to put together modules.

15 The concept I have, and that Les was
16 already working on, was some sort of a web-based,
17 computer-based training program that staff would be
18 required to take, either at some periodicity, or
19 somehow.

20 And so, wherever we go with this, that is,
21 I think, one of the key things is that we do need to
22 provide more training to our staff. We've got a lot
23 of new staff, a lot of people that haven't been
24 involved in this before, and that we -- we need to be
25 able to -- to bring them up to speed.

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1 I think because of the processes that the
2 office has put into place, the backfit application --
3 rule application is inserted into these internet
4 communications, into rule-making, and into regulatory
5 guide preparation. But training the staff up, I
6 think, would help.

7 So, that's the first one, which is
8 basically that we review all the generic
9 communications. We pretty much operate the way we
10 have, but then we would be also a place for an appeal
11 to come -- the next one was kind of a way to --
12 although we don't have a lot of generic communications
13 coming through is maybe to back us off a little bit of
14 our time commitments, which should be that again no
15 rule-makings, reg guides if there are public comments.

16 But on generic communications, to kind of
17 have them the way they are now provided to us in -- to
18 lessen myself, and then either I would make a
19 determination, either the office would request that we
20 looked at it. If there was maybe a non-concurrence
21 within the staff about whether something is a backfit
22 or not a backfit, and that all -- but no bulletins and
23 generic letters would be looked at.

24 So, we'd probably do more of a sampling,
25 but then again, set up ourselves as a place to become

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1 more of an appeal process. The third one would pretty
2 much take us out of the front end of the process. To
3 have the CRGR have all generic communications --

4 MS. SALTER: Excuse me, Jim. Did you want
5 to flip the slide? I just --

6 CHAIR LYONS: I'm on option one, option
7 two. I'm on option three. I'm sorry for anybody who
8 is following along upstairs. Thanks, Susan. Is for
9 all generic communications to go out and receive
10 public comments before they go out that program
11 offices again are the ones that are primarily
12 responsible for meeting the backfit rule, having this
13 point of contact.

14 Then again, we've put in place a formal,
15 generic and plant-specific appeal process, and then
16 maybe the CRGR would no longer be called the CRGR, but
17 we'd become the backfit appeal panel, or are some
18 other name that we're -- all we'd really do is come
19 together in -- in the event that there is a question
20 raised about backfitting, and hold a public meeting,
21 and -- and provide a recommendation up to the EDO.

22 And the fourth one is -- if I can get my
23 fingers to work there, is -- is maybe not even have a
24 standing backfit appeal panel. Like right now, what
25 we have is you have representatives from every office,

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1 typically at the deputy office director level that --
2 that a Backfit Appeal Panel would be built on an ad
3 hoc basis that in the event there was an issue raised,
4 the EDO could name an ad hoc panel to come together
5 and review it, and hold these public meetings, and
6 maybe get people that are more familiar, or more in
7 tune with that specific issue.

8 I think the benefit you have right now of
9 -- we have a broad spectrum of people on the -- on the
10 panel that see a lot of different issues. And so,
11 sometimes it's -- even though you might not be
12 specifically interested or involved in it, you have
13 some knowledge of what's going on.

14 The other thing is we've all moved around
15 enough in our career that we've typically been in
16 different offices at different times, and know what
17 some of the issues are. So, those were kind of four
18 places that -- things I thought, and just to kind of
19 give you where I see us going from here is to take
20 whatever input you all have for us, provide, like I
21 said, recommendations up to the executive director for
22 operations for -- to the Commission to see where they
23 want us to go, and then once we have some direction,
24 then we're going to go off and revise our charter,
25 modify our Management Directive 8.4, which is what we

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1 use to guide us in a backfit process. You know,
2 ensure that the relevant offices reflect the role of
3 whatever new roles CRGR has in their procedures, and
4 develop this over-arching training program to ensure
5 that all the staff is -- has the information they need
6 to ensure that we comply with the backfit rule.

7 So, that's kind of a quick summary of
8 where we are, and I'd like to open it up. We've got -
9 - there's staff here, too. They can certainly ask
10 questions, but if -- if you all could provide us any
11 input, I'd certainly appreciate that.

12 MS. SALTER: Jim, could I ask the panel
13 members to just introduce themselves?

14 CHAIR LYONS: Yes, those that are up here?

15 MS. SALTER: Yes.

16 CHAIR LYONS: Yes. We can go all the way
17 around.

18 MR. WILLIAMSON: Ed Williamson, OGC.

19 MR. DEAN: Bill Dean, NSIR.

20 MR. HOLAHAN: Gary Holahan, Office of New
21 Reactors.

22 MR. GROBE: I'm Jack Grobe, NRR.

23 MS. HANEY: Cathy Haney with NMSS.

24 MR. WERT: I'm Leonard Wert. I'm a
25 division director in Region II. I'm here for Victor

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1 McCree.

2 MR. CORBIN: Carl Corbin. I'm with the
3 Stars Alliance. I'm with the Stars Regulatory Affairs
4 Group.

5 MR. POINDEXTER: Tom Poindexter, Morgan
6 Lewis.

7 MR. HORIN: I'm Bill Horin, Winston and
8 Strawn.

9 MR. BONANNO: Jerry Bonanno, NEI.

10 MS. SALTER: And I know we also have some
11 participants in the audience. If you would like to
12 introduce yourself, you can step up to the microphone.

13 I think we have three or four. For comments, we do
14 ask that if you are in the audience that you come up
15 to the microphone to make your comment; that you state
16 your name and the organization.

17 If you're at the table, the same thing:
18 press the button. It should turn orange when it's on.

19 State your name and the organization, your comment.
20 And when you're not making a comment, just press the
21 button to turn your microphone off.

22 With that, who would like to make the
23 first comment?

24 MR. BONANNO: Jerry Bonanno, NEI. First,
25 I'd like to thank you all for providing the forum

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1 here. I think it's an important topic, and don't
2 take the lack of numbers as lack of interest. We
3 discussed this, the CRGR and backfitting, at recent
4 lawyers' committee meeting, NEI lawyers' committee
5 meeting.

6 So, it's a topic that we're interested in.

7 I think some of the things that we heard, at least I
8 heard, and I hope other will chime in on the options
9 are pretty encouraging. I think in general, we feel
10 like -- well, we recognize the situation has changed
11 from the early '80s. There's more communication
12 between offices, and you have a more robust
13 concurrence process now than you did back then.

14 I think we still see the need for
15 centralized high-level review, specifically in the
16 context of generic backfits and specifically rule-
17 making, maybe for slightly different reasons than you
18 had in the early '80s. I think some of the things
19 that we think about or that we see are influx of new
20 staff, as you mentioned. That is kind of coupled with
21 knowledge management challenges with retirements
22 within the agency.

23 As those new -- that new staff comes in,
24 new ideas come in. The agency gets smarter, as it
25 should, but we think that there is a need to kind of

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1 have an independent high level management review as
2 those new ideas kind of flow into new generic
3 requirements in the form of rule-making, or new
4 guidance in the form of regulatory guidance.

5 So, I guess our general point is that we
6 still feel there is a need for some type of -- of high
7 level review of staff positions. I guess the first
8 couple options, I think, were -- at least what I heard
9 that was encouraging is I think there is a need for a
10 well-defined backfit appeal process for generic
11 backfits, in addition to facility specific backfits.

12 You may -- you may be able to provide some
13 of that review without increasing the resources
14 incredibly by structuring it as kind of an appeals
15 process, where the -- the stakeholder has an
16 opportunity to bring the issue to the CRGR when they
17 have an issue, as opposed to reviewing every package
18 that comes up.

19 That could be an option to help conserve
20 some resources, but that's kind of the basic comment.

21 Bill, do you have anything?

22 MR. HORIN: Hi. Bill Horn with Winston
23 and Strawn. I also want to thank the panel for the
24 CRGR for providing this opportunity. I think this is
25 an important area for the future of regulation. We

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1 have, for the past 25 years or so, been looking at and
2 providing protections for all interested parties.

3 This is not an area that is simply geared
4 toward protecting licensees. It's an area that
5 encourages openness and transparency in the process.
6 It gives an opportunity for everyone involved to see
7 what the basis is, or all bases are, for all rule-
8 makings, for generic communications.

9 And so, we find that it is very beneficial
10 for all parties involved, whether they be industry or
11 other organizations, or individuals. And I think that
12 the CRGR, over time, has served a tremendous role in
13 doing that, and making their processes open to
14 evaluating in great detail some of the backfitting
15 analysis that were done. I think that that is a role
16 that needs to be maintained.

17 It's also important, and I think Jerry
18 touched on it, but I can't emphasize enough the
19 concept of independence. One of the things that we
20 find most significant in many areas, to assure that
21 there is a valid and careful and questioning review of
22 positions taken, is that that be done by someone
23 independent, whether it is a QA organization, or
24 whether it is any other organization.

25 And I think the fact that CRGR for many

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1 years was totally independent, and was able to look at
2 rule-makings, look at generic communications and say,
3 "You know, this doesn't quite work this way." There
4 are really questions here that, although your heart
5 may be in the right place staff, that doesn't satisfy
6 the backfit rule. And I think we have, if you go back
7 and look at the time during the late `80s and early to
8 mid-`90s, I mean there were some substantial reviews
9 performed by the CRGR that helped assure that we had
10 an adequate and proper resolution of issues related to
11 generic actions.

12 And I can't -- so, I can't emphasize
13 enough the need for independence. And while much of
14 this -- of the discussion I think is good, I think the
15 appeal process, strengthening that is a good effort,
16 fundamentally, while I think the different project
17 offices should definitely be able to provide a
18 comprehensive review of the backfitting issues, there
19 needs to be an independent review.

20 We've had numbers of examples in recent
21 years, where the backfit reviews simply were not well-
22 analyzed, and we have some that are currently before
23 the Commission now. The Commission rule-making is
24 one, but that was one that CRGR was not involved in.

25 I think that as we go forward, whether we

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1 call it CRGR, or whether we call it something else,
2 the role of an independent body to evaluate the
3 backfitting implications, and to ensure the proper
4 implementation of that rule, can't be over-emphasized.

5 Okay, thank you.

6 CHAIR LYONS: Thanks. Tom?

7 MR. POINDEXTER: Again, thanks for
8 inviting us to this meeting. It's well overdue, and a
9 welcomed opportunity. I guess I speak from a
10 perspective slightly different. Having been one of
11 the people sitting on your side of the table causing
12 the need for the backfit rule back in the late '70s
13 and early '80s, and then seeing how it evolved, and
14 believing at that point in time that it was very
15 transparent, but realizing the other perspective maybe
16 not so much, it's been interesting to watch it. I
17 won't use the term degrade, but sort of morph into
18 what it is with the sharing of the responsibilities as
19 -- as the industry evolved.

20 A lot of it is very appropriate as
21 responsibilities change, but I know what Bill and
22 Jerry said. That's that it's key to maintain the
23 system of checks and balances. I work out there in a
24 lot of what I call firefighting, and I can't tell you
25 the number of times we've heard NRC reviewers say,

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1 "Well, we don't do it that way anymore. We understand
2 others used to do it that way," to echo Bill's
3 comment, "but we're sort of the new kids, and we do it
4 this way."

5 They don't consider that a backfit. So,
6 the training is supported, continuing the CRGR is
7 highly supported in a manner that's in the first
8 couple of options. But we need that check and balance
9 to sort of help those who haven't done through that
10 evolution to understand from where the requirement
11 came, and how it has evolved to something different.

12 It doesn't mean that their position is
13 wrong, it just means that it's different, and the rule
14 doesn't place blame. It just says yes to justify
15 change, and that's all.

16 The other thing that we've seen going out
17 there, and maybe I'm promoting an expansion of your
18 role in some areas, is what I'll call a generic
19 backfit that develops as a result of many plant-
20 specific backfits. And that's been an area that
21 haven't really been focused on, but I'll use an
22 example: fire protection.

23 As we know, that has been sort of out
24 there for a long time. And what we saw from the
25 industry's perspective is sort of backfit individual

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1 plants. So, eventually you get into a generic
2 position because you'll backfit one plant. They'll
3 make a change and give in, and then you do it to the
4 next plant.

5 Then by the time you get to the 15th plant,
6 they say, "Well, all 14 others before you have done
7 this. So, therefore, it is now our position." So,
8 that's an area that I would suggest that in
9 maintaining CRGR that you actually expand your role.
10 I think in one of your options, you talked about
11 plant-specific activities for CRGR, which would be
12 well needed.

13 The other areas that perhaps CRGR hasn't
14 been as involved in would be your TIA's for example.
15 And these days, use of the exceptions to the backfit
16 rule, whether that's consistent, whether it's sort of
17 a default position. We get a lot of that, just the
18 automatic response, "Well, it's an exception to the
19 rule."

20 And we would urge a continuance of CRGR,
21 and an added focus on that aspect of things, which
22 leads me to conclude that your appeal role is
23 essential. That, coupled with your independence role,
24 I think would give the industry a lot of what they're
25 looking for: to have that avenue to go to.

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1 Right now, you more or less go to the same
2 entities that rule on you in the first place. So,
3 having that independence, that entity that does it
4 very transparently I think would be very important.

5 I guess the last point I'd like to make is
6 even though I will agree that CRGR today, it's roles
7 have been absorbed by the other offices, that was a
8 developed diminishing of the roles. It wasn't
9 necessarily because all of a sudden you weren't
10 needed. It's because slowly but surely, you chipped
11 away at it, and the low and behold, CRGR doesn't do
12 much in the backfit arena.

13 We would suggest that we go back in our
14 heyday where, from the industry perspective, CRGR had
15 a very valuable role. CRGR does very good analyses of
16 backfit situations from generic perspective. You
17 could sort of rely on those, and say that, "Both
18 perspectives were reviewed. You may disagree with the
19 result, but you certainly agreed with the tenacity of
20 the process."

21 So, we would urge not to use it as a
22 reason for doing away with CRGR because your roles
23 have diminished, but look at what the roles could've
24 been. Not what they are today, and to renew that
25 effort. Thank you.

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1 MR. GROBE: I have to say I'm a little
2 confused because we've heard comments about problems
3 in the `80s, and all the weird problems in the `80s.
4 We're not aware of any substantive issues that have
5 not been identified and addressed by the offices
6 before it came to the CRGR, and I'm certainly not
7 aware of any plant or generic backfits that have been
8 issued, and then come back and revisited and revised
9 where the position was concluded that it was
10 incorrect.

11 The -- the proposals are geared toward
12 making sure there's adequate -- you mentioned a QA
13 program. It's more focused on a QA program where you
14 make sure you have good training, that you're doing
15 periodic audits, and that you have a process that is
16 independent to -- as a double check, an appeal
17 process.

18 That seems to be -- if there is any issue
19 that is getting unresolved, that seems to be the kind
20 of practices, management practices, that would pick it
21 up if it develops. So, I'm a little confused. I
22 don't think anybody wants to go back to the `80s, and
23 I don't think we're having the kinds of problems we
24 had in the `80s.

25 MR. HORIN: Well, I think, if I might -

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1 Bill Horin again - provide a couple of comments on
2 that. First, and we certainly don't want to go back
3 to the '80s because we had regulatory issues then that
4 are different than what we have now. But I think it's
5 a completely valid point to say that with the change
6 in personnel, with the totally new people that are
7 coming in, and the retirement of people who have been
8 here for a while, that we do find many individuals who
9 are taking positions that are different than what have
10 been taken before, and that the analysis of whether or
11 not that's a backfit has been inadequate or non-
12 existent.

13 I mean the example that Tom used with
14 respect to the chipping away at the position one
15 licensee at a time is one that the NEI License and
16 Action Task Force has been talking with the NRC about,
17 and trying to work into a regulatory process review
18 process mechanism to be able to identify and assess.

19 Another specific example, and without
20 saying what it is, let's just take this: We have a
21 new staff position, and the staff says this is not a
22 backfit because it's clarification. And we go back
23 and look, and we find that it's interesting that it's
24 a clarification, or viewed as a clarification. We
25 find no other licensee who has ever been required to

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1 take that approach.

2 In my 30 years in the industry, if there
3 has been a rule that has been unclear, you can do a
4 survey, and you'll find ten licensees that ended up
5 doing it this way, 45 ended up doing it this way,
6 another 35 ended up doing it this way. And in that
7 situation, if we wanted to end up saying we wanted to
8 do it one particular way, I think that's a
9 classification.

10 But if we have a situation where the staff
11 says, "Oh, that's not a backfit because it's a
12 clarification," and we say, "Well, how can it be
13 clarified? No one has done it that way for 20 years."

14 The staff has reviewed these for 20 years, and no one
15 has done that. How can you say that's a
16 clarification, and apply an exception to the backfit
17 rule?

18 That happened to be in a rule-making,
19 which CRGR was not allowed to review, and it is one
20 that's still pending before the commission. So, that
21 is an example of why there needs to be an independent
22 analysis of what is done, and an independent analysis
23 by people who are -- have the time and the resources
24 to look closely at it.

25 The people on the CRGR don't have the time

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1 to do that. We have a half FTE, who is supporting the
2 CRGR. That simply is not enough to pick up that type
3 of thing, that type of detail in terms of failure in a
4 backfit analysis. So, I think there are continued
5 problems. There are continued issues. It is
6 different from what it was in the early `80s, but they
7 still remain, and the need for an independent
8 oversight remains.

9 MR. CORBIN: Carl Corbin with Stars. I
10 think I agree with most of the remarks, all the
11 remarks that were made previous. And I also want to
12 say we appreciate the opportunity to provide feedback
13 today.

14 I think some of the main points that we
15 wanted to make have already been made, but just to
16 reemphasize, we see the CRGR as an oversight role.
17 Just as the licensees have oversight groups and
18 committees, it's not that the groups providing the
19 input have the wrong intent, it's just an overall
20 technical evaluation to make sure that they're all
21 consistent. We think that -- strongly encourage that
22 the role being instituted the way it was originally,
23 and provide more formal reviews, and we have more of a
24 dedicated staff.

25 I think it was kind of mentioned earlier,

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1 but one of the issues that we've seen in the past is
2 as an individual licensee, you have a working
3 relationship with the staff. And if you claim the
4 backfit rule, then sometimes it seems like you're
5 going over their head, and it creates sometimes a bad
6 working relationship.

7 We see the value of the CRGR, as the NRC
8 internally is doing that job without the licensees
9 having to raise their hand, and say, "This is a
10 backfit." And it could be -- I think several of the
11 Stars plants have mentioned the security area. That's
12 an area where it is constantly evolving. We feel like
13 there's new requirements. As an example, maybe some
14 of the interim staff guidelines, they'll come out with
15 e-requirements that end up being, you know, parts of
16 the rule that are required that maybe we didn't think
17 they were intended.

18 But we do -- there has been a lot of
19 progress. We see the internal where the staff uses
20 the new technology to route things around, and it's a
21 lot better today. We think those are improvements,
22 but as far as the options that were proposed today, we
23 would encourage more towards the first option, which
24 would be more -- more review as opposed to less. And
25 we think in the long run, that would reduce regulatory

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1 burden not just for the licensees, but for you also.

2 Thank you.

3 CHAIR LYONS: Thank you.

4 MS. ROMA: Hi, Amy Roma, Hogan and
5 Hartson. I just have a couple comments. I agree with
6 what everybody else has said today. And just to
7 expand on what Bill was saying, where we do need an
8 independent reviewer providing the backfit analysis, I
9 wanted to add that that independent reviewer should
10 have institutional knowledge, and the -- institutional
11 knowledge.

12 The NRC has had a significant turnover in
13 staff, and a bunch of new staff members. I mean I was
14 here for a couple years, a few years ago. Jerry was
15 here for a couple years, and then we moved on. So,
16 there's a lot of new staff that you're interacting
17 with on a slew of new issues, who haven't had a lot of
18 backfit experience, and they haven't had a lot of
19 experience in the areas that they're reviewing
20 necessarily.

21 So, having the institutional knowledge of
22 people who have experienced that before they know how
23 the backfit analysis should be performed, and they
24 can, A, provide guidance to -- and I think you
25 probably touched upon that when you talked about the

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1 training, developing the training program, and
2 training individuals, and establishing a backfit point
3 of contact for each office. I think those are both
4 great, but that backfit point of contract is probably
5 going to be somebody who is a little bit more junior,
6 who doesn't have a lot of experience. And having the
7 CRGR provide a higher level of institutional knowledge
8 is great.

9 The second point that I wanted to make is
10 that having an independent body who reviews all
11 backfit enables you to benefit from the knowledge of
12 the backfit applied in one area, and the impacts that
13 it may have, or may not have in other areas.

14 For an example, right now, we're
15 constructing new fuel cycle facilities, and the staff
16 may come to a decision on how construction can proceed
17 that will affect COL applicants down the road when
18 they're constructing their facilities. And without an
19 over-arching reviewer who is aware of the situations,
20 and how one decision in one place can affect another
21 decision further on, then I think the NRC is really
22 doing a disservice to the industry and its ability to
23 accurately apply the backfit analysis.

24 CHAIR LYONS: Thank you.

25 MS. SALTERS: I'd like to just invite any

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1 of the other public participants to either come down
2 to the table, or to one of the mics at the end of the
3 aisle if you would like to make a comment. Raise your
4 hand if you -- I'm not sure who all is from the
5 public, and who is NRC, but if you'd like to make a
6 comment, raise your hand. Questions?

7 MR. DOLLEY: I am Steven Dolley with
8 Platis, and this is just a sort of a pretty mundane
9 question. When do you expect to send the
10 recommendations to the EDO?

11 CHAIR LYONS: I would like to in the first
12 part of 2010 have recommendations up to the EDO, and
13 get it by in there to get it up to the Commission.
14 Sooner rather than later. It's not a five-year
15 program.

16 MS. SALTER: Any comments or questions?

17 MR. HORIN: Just one quick --

18 MS. SALTER: State your name again, sir.

19 MR. HORIN: Pardon?

20 MS. SALTER: State your name again, sir.

21 MR. HORIN: Bill Horin. I think given the
22 comments, if we look at the options that you have
23 here, they're all going to the lesser, lesser, lesser.
24 I think we need to look at -- perhaps we need to
25 reinvigorate to reestablish some positions in

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1 authority to be able to achieve what I think, based
2 upon the comments here, is a very important function
3 for the NRC regulatory process.

4 MR. HOLAHAN: This is Gary Holahan. I'd
5 like to go to a specific issue that was mentioned by
6 almost everyone, and covered in Jim's introductory
7 remarks, but in very different ways, and that is rule-
8 making.

9 So, Jim started off saying, "We don't do
10 rule-making," and almost everyone said that rule-
11 making was an issue that needed this same sort of
12 oversight. So, when I see you leaning towards lower
13 numbered options, am I hearing an option zero, which
14 is even more than the ones here?

15 CHAIR LYONS: Correct.

16 MR. HOLAHAN: And rule-making seems to be
17 the one item, or maybe an expansion of the plant
18 specific backfits, and I -- and I guess if that's the
19 direction that we're leaning, I wonder if somebody
20 could comment on is there a problem with the -- I mean
21 rule-making has public comments on it, and so there's
22 a comment resolution process.

23 Is there something that doesn't quite work
24 in the comment resolution process? Because naturally,
25 you would think that if someone thinks that there's a

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1 backfit in the rule, or something inappropriate or
2 inconsistent with the backfit analysis, you would hear
3 that in the comments, and the staff would be dealing
4 with it in the comment resolution process. Is there
5 something about that process that is not satisfying
6 people?

7 MR. HORIN: Bill Horin. I think it goes
8 back to the independence. In the example that I used
9 earlier about an exemption, or a backfit exception
10 because it's a clarification was presented in
11 comments, and yet it did not change. And I think that
12 was a pretty clear example where had there been an
13 independent review, I would hope that there would've
14 been some additional consideration of that specific
15 issue.

16 So, if you have someone taking a position,
17 and then there are comments, and they're the same ones
18 who resolve the comments, we don't have the same
19 independence reviewing that in issue that I think CRGR
20 has in the past fulfilled a very valuable function in
21 doing.

22 MR. POINDEXTER: Also, an answer --

23 MS. SALTER: Tom Poindexter, Morgan Lewis.

24 In assisting folks to respond to rule-makings, it's
25 interesting what has evolved. I think the clients

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1 that we deal with, the -- the backfit issues that they
2 could raise in response to the rule-making, they put
3 that at the bottom of the list because they want to be
4 more efficient in their comments.

5 The general view is, "Well, if you comment
6 about backfitting, nothing is going to happen there.
7 So, let's put all of our marbles in these either more
8 technical issues, or issues where we can really gain
9 some -- the attention of the staff."

10 So, backfitting issues, because of
11 whatever reason, a lot of different reasons and we
12 could all agree and disagree, have been sort of even
13 put on the back burner of some of the folks in the
14 industry because they don't feel - and I think it goes
15 back to what Bill mentioned and others - that there's
16 a really hard, independent look at the backfit issue.

17 Therefore, let's not dilute our comments with those
18 sorts of things because they won't get traction.

19 MR. BONANNO: Jerry Bonanno, NEI. I think
20 also another value-added -- we keep talking about
21 independence, but I think another benefit of that
22 independence is spotting trends. I think when you
23 have -- you have office concurrence, you have
24 individuals who may be reviewing a rule-making package
25 or guidance package, and it is brand new. The issues

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1 are brand new.

2 Whereas, if you have an independent review
3 that's removed somewhat from that that's reviewing a
4 lot of these packages, you all may be able to spot
5 trends in problematic trends, or trends just to watch
6 in -- in the backfitting analyses.

7 For example, Bill mentioned the issue of -
8 - of -- that we've seen recently in using the argument
9 that things were clarifications versus changes in
10 position. That has come up actually in a few
11 different rule-makings recently that we've seen.

12 So, I think that is another value added to
13 doing -- having an independent body that is removed
14 from the concurrent chain, but sees a lot of those
15 packages that come through.

16 MR. HOLAHAN: I can think of three ways to
17 do this, and I don't want to imagine which one you
18 would support. So, let me say if you look at option
19 one, and you could simply say, "Rather than not review
20 rule-making, you could put it in the same category as
21 regulatory guides." So, you wouldn't review them all,
22 or you wouldn't review every one of 300 or 400 or 500
23 comments, but you would only review those if there are
24 public comments regarding backfit, all right?

25 That's kind of a middle ground. One is

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1 you could say, "CRGR reviews resolution of all
2 comments on rule-making." But I think Jim would hit
3 me with something if I said that because you wouldn't
4 be talking about hundreds and potentially thousands of
5 comments on every rule. So, one way to do that would
6 be to put it in the same status as regulatory
7 guidance, which is -- which is almost like an -- not
8 quite like an appeal process, but getting pretty close
9 to it.

10 And the third is it seems to me that you
11 could -- you could hold off and only use CRGR in an
12 appeal process. So, you could review all comments.
13 You could review backfit comments, or you could review
14 backfit comments, which were not resolved to the
15 satisfaction of the commenter. So, people could have
16 views as to what would be a reasonable way forward.

17 MR. POINDEXTER: Tom Poindexter. Can we
18 get some of each of those? In all seriousness, the
19 appeal, certainly that option, but also for the
20 industry to know that this independent entity is
21 looking at it up front is a great benefit. I think
22 the industry has a lot of faith in the staff's review
23 capabilities, and if they know that someone not
24 biased, someone who doesn't have a stake in that
25 outcome is reviewing and reaching a reasonable

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1 conclusion, you'll start getting more comments on that
2 front because they'll have more faith that they're
3 going to be reviewed, and maybe you'll even echo some
4 of the same comments that the industry makes, and --
5 but I think it's a little bit of several of those
6 options.

7 MR. HOLAHAN: Gary Holahan again. So, you
8 finish the thought, and then you -- this comment is
9 related to some earlier comments by a couple of you
10 about the reluctance of various parts of the industry
11 to take on issues with various parts of the NRC, and
12 one of those comments I recall was like putting the
13 backfit comments on the bottom of the list.

14 So, this sort of option 1B, in which CRGR
15 would look at comments on the backfitting isn't going
16 to work unless stakeholders are encouraged to make
17 those comments. So, I think it would -- that would
18 call for a change of behavior on both the industry and
19 the NRC's part if -- if -- you know, to make such an
20 alternative viable. Ed, I cut you off.

21 MR. WILLIAMSON: Ed Williamson, OGC. I
22 was thinking this concept, which Gary has brought
23 forward, is a very open and transparent process. It's
24 already built into the rule-making process, which
25 involves obviously OGC reviews and the public.

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1 Once you start indicating that you need
2 independent review of your particular area of the
3 rule-making backfit, what's to say that other areas of
4 rule-making also don't warrant some independent review
5 if it's not to the agreement of those who are making
6 the comments.

7 I mean we go down this track not just for
8 backfit purposes, but for other purposes of rule-
9 making.

10 MR. POINDEXTER: Tom Poindexter, Morgan
11 Lewis. I think the backfit rule is a little
12 different. It's one of those regulations that also
13 applies to the NRC, and requires an NRC action, and
14 other areas don't enjoy that benefit/curse, whatever
15 you want to call it. It stands off by itself, I
16 believe, because of that perspective.

17 MR. HORIN: This is Bill Horin. I agree.

18 MS. SALTER: Any other comments or
19 questions? Audience, the panel?

20 MS. ROMA: I have a question. This has to
21 do with the current CRGR. If a licensee is aware of a
22 potential generic backfitting issue, or a plant-
23 specific issue that has generic implications, are they
24 able to avail themselves of the committee, or do they
25 have to go through the NRC staff, and just kind of

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1 stop there if it doesn't work the way they want it to?

2 CHAIR LYONS: They really are -- they work
3 through the program offices responsible. The
4 committee right now is set up to be an internal body
5 that provides recommendations up to the executive
6 director.

7 So, in fact, the case in point of one of
8 the rules: we actually got a letter that said, "Hey,
9 we'd like to come in and talk to you about this," and
10 I go right back and said, "Yes, well, we don't do
11 rules, and plus we don't -- up until this point, we
12 haven't been a body that works in the public forum."
13 But that's one of the things we're looking to change.

14 MS. ROMA: Okay. And so, the appeal
15 process that is noted here, we haven't really talked
16 about that much. How do you really envision that
17 working?

18 CHAIR LYONS: Well, right now, there is
19 currently an appeal process for plant-specific
20 backfit, and it goes to the office that brought the
21 issue, and it goes up to their office director, who I
22 think is the final step. But it can go up to the EDO,
23 and go up to the EDL. And so, it works really through
24 the line management that way. So, we don't get
25 involved in a plant specific -- even a backfit appeal

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1 -- off on the side. We just look at the generic ones.

2 MS. ROMA: And so, it would be up to the
3 NRC staff to make the decision about whether a plant-
4 specific communication has a generic implication?

5 CHAIR LYONS: Yes.

6 MS. ROMA: Okay. I would say that having
7 the industry input on that in some manner would
8 probably be beneficial because as Bill noted earlier,
9 no matter what the best of intentions are, sometimes
10 you don't see -- as the decision maker, you don't see
11 the implications your decision can have, especially on
12 other plants.

13 CHAIR LYONS: Right. And right now, that
14 responsibility lies within the management of the line
15 organization. That's -- we expect the division
16 director's office to be attuned to that sort of
17 practice. And so, that's where that -- at this point.

18 MR. HORIN: All right, just to follow up
19 on that, that specific issue is one again that the NEI
20 licensing action task force is trying to work with the
21 staff to include in the regulatory action guidelines
22 that we're working on to identify that type of
23 condition with the ultimate intent of if it does
24 become one that's identified as having generic
25 implications, or being a generic issue, even though it

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1 might be applied one by one by one, that that would
2 ultimately end up coming to CRGR, but that's not the
3 process now.

4 MS. SALTER: I just want to remind
5 everyone even during the question phase, if you could
6 state your name again, that would help the
7 transcriber.

8 MR. HORIN: That was Bill Horin.

9 MS. ROMA: That was Amy Roma.

10 CHAIR LYONS: Are there other questions?
11 Do you want to --

12 MS. SALTER: No, that's it. All right,
13 well, I want to thank you all for joining us this
14 afternoon. I also want to draw your attention to the
15 public meeting feedback form that you should've picked
16 up when you came in. Please try to fill that out, and
17 drop it off at the table when you leave, or you can
18 drop it in the mail to us. It does help us to improve
19 our public meeting process.

20 And so, if there are no other questions, I
21 turn it back over to --

22 CHAIR LYONS: I know. No, I really
23 appreciate you all coming and taking the time to meet
24 with us today. We've gotten you out of here early,
25 faster than -- I think originally we set this up for

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1 much longer. We didn't know how many people would
2 show up. Obviously, that's why we have a big room.
3 But we do appreciate it, and I'm glad we were able to
4 kind of have a it as a conversation here around the
5 table. I think that was -- so, thank you very much.

6 MR. POINDEXTER: And I think it obviously
7 was a sincere effort on the part of the staff, and I
8 think as that word gets out to the industry, you'll
9 see more folks showing up and sharing views.

10 CHAIR LYONS: Thank you.

11 (Whereupon, the above-entitled matter went
12 off the record at 3:39 p.m.)
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