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General Comment

See attached file(s)

Attachments

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ON EQUIPMENT QUALIFICATION

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April 27, 2011

Ms. Cindy Bladey
Chief, Rules, Announcements, and
Directives Branch
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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Nuclear Utility Group on Equipment Qualification Comments on Draft Regulatory Guide, DG-1254, “Qualification of Connection Assemblies for Nuclear Power Plants” (76 Fed. Reg. 10917 (February 28, 2011))
Docket ID NRC–2011-0046

Dear Ms. Bladey:

The Nuclear Utility Group on Equipment Qualification (“NUGEQ”)¹ hereby submits comments on Draft Regulatory Guide 1254, “Qualification of Connection Assemblies for Nuclear Power Plants” (76 Fed. Reg. 10917 (February 28, 2011)). As described in the attached detailed comments, the NUGEQ supports the issuance of the draft guide, with clarification of two elements.

The attached comments address three topics presented by DG-1254. These matters concern, the endorsement of the IEEE Standard, the incorporation by reference discussion, and the

¹ The NUGEQ is comprised of member electric utilities in the United States and Canada, including NRC licensees authorized to operate over 95 nuclear power reactors in the United States. The NUGEQ was formed in 1981 to address and monitor regulatory and technical topics and issues related to equipment qualification, particularly with respect to the environmental qualification of electrical equipment pursuant to 10 C.F.R. § 50.49.

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“Implementation” guidance regarding the application of the backfit rule. In each case, the NUGEQ proposes specific modifications to the DG-1254 language to address our comments.

The NUGEQ’s detailed comments are presented in Attachment 1, hereto.

Please feel free to contact Bill Horin, Counsel to the NUGEQ (whorin@winston.com) or Phil Holzman, consultant to the NUGEQ (pmhstar@ieee.org) if you have any questions.

Respectfully submitted,

A handwritten signature in black ink that reads "William A. Horin". The signature is written in a cursive style with a large initial "W".

William A. Horin
Winston & Strawn, LLP
Counsel to the Nuclear Utility Group on Equipment Qualification

Attachment 1: NUGEQ Comments on DG-1254

**Nuclear Utility Group on Equipment Qualification
Comments on Draft Regulatory Guide DG-1254, “Qualification of
Connection Assemblies for Nuclear Power Plants”
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I. NUGEQ Position Regarding Standard Incorporation

The NUGEQ agrees with the NRC position that the standard is an acceptable method of demonstrating compliance with the NRC regulations pertaining to environmental qualification, including 10 CFR 50.49. As clearly stated in IEEE 572 2006, 1.2 Purpose - the purpose of the standard is to provide specific direction for the implementation of IEEE 323-2003 as it pertains to qualification of connectors, terminations, and environmental seals.

**II. NUGEQ Proposed Supplementation of “Discussion–Other Codes and Standards”
Section B.**

The discussion with respect to incorporation by reference, while appropriate, should be further clarified to enable licensees to determine the incorporated by reference materials. With the issuance of the 2009 bound version of the 2009 10 C.F.R. volumes, the Material Approved for Incorporation by Reference (Incorporation by Reference) was removed as a “Finding Aid.” That Finding Aid has been relocated to the Electronic Code of Federal Regulations site at:

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=93e79c367cccd42e4d22c4c059962497&c=ecfr&tpl=ibr.tpl>

Accordingly, Revision 1 to Regulatory Guide 1.156, in “Section B. DISCUSSION, Other Codes and Standards” should be clarified to assist licensees and other stakeholders in identifying those applicable referenced standards that may have been incorporated by reference.

III. NUGEQ Proposed Revision to Draft “Implementation” Section D.

A. “Forward Fitting” Guidance

The NUGEQ supports the Staff’s inclusion of guidance in its Regulatory Guides related to the implementation of the Backfit Rule. That guidance can serve to clarify, and to assure consistency with respect to, the posture of the guidance in the context Backfit Requirements.

However, there is one aspect of the “NRC Staff Use” description which warrants reconsideration and modification. The final paragraph, dealing with what has come to be known as the “forward fit” question (i.e., future application of the guidance to voluntary changes through license amendment or through other change processes), does not properly present the legal boundaries under which the guidance could be forward fit for existing licensees. Based

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both on the history of the backfit rule, as well as practical considerations, that section of the draft guide warrants modification.

With respect to the backfit rule, and its “legislative history,” the NUGEQ adopts here by reference the discussion in Attachment 2 to the comments of the Nuclear Energy Institute on Draft Regulatory Guide-1244.¹ As described therein, the Staff’s position is premised on an interpretation of an NRC letter concerning backfitting that was issued by the NRC’s General Counsel in July of 2010.² As pointed out in those comments, the NRC’s position is not premised on a detailed review of the backfit rule, or its legislative history. A close look at that history indicates that the Commission did intend for the backfit rule to apply to the license amendment process, not as a *condition precedent* to issuance of an amendment but if requested by the licensee, a backfit analysis should be prepared even in the context of a license amendment.

That principle is particularly important when one considers the practical implications of the staff’s current position stated in the draft guide. First, the Staff suggests that it “may require” the application of the regulatory guide as a “prerequisite” to issuance of an amendment. A regulatory guide does not impose requirements, and thus to state that the staff may require application of the guide is legally incorrect.

In addition, the proposed language does not adequately address the significance of the change and the relationship to the “essential consideration” criterion. For instance, a relatively minor plant change may require a license amendment (including Technical Specification change). However, if relatively few components are involved, and numerous similar components elsewhere in the plant are not affected, this regulatory guide language could be used to justify the imposition of new guidance for a relatively few components. This would set up disparate licensing bases for the same components depending on where they were located in the plant. Further, the proposed language does not consider whether a significant safety benefit would be derived from imposing the new guidance. Without a demonstration of a safety basis for doing so, imposing the new guide in this context should not be justified.

Also, the language of the draft guide does not directly address the circumstance where the amendment itself is not voluntary. In other words, if the NRC Staff has pressured the licensee to make some change which requires a license amendment, the present language would give the Staff the freedom to “impose” the amendment without receiving scrutiny under the backfit rule.

¹ See Nuclear Energy Institute Letter (John C. Butler) to NRC (Cindy K. Bladey), “Comments on Draft Regulatory Guide 1244, “Availability of Electric Power sources” (Federal Register of September 24, 2010, 75 FR 5844), dated November 24, 2010, Attachment 2.

² See NRC Letter (Stephen G Burns) to NEI (Ellen C. Ginsberg), July 14, 2010.

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Based on the above, the NUGEQ makes the following suggestions (see italics and ~~strikethrough~~) with respect to the modification of the language in the penultimate paragraph in the "NRC Staff Use" portion of "Section D. Implementation."

D. IMPLEMENTATION

The purpose of this section is to provide information on how applicants and licensees may use this guide and information regarding the NRC's plans for using this regulatory guide. In addition, it describes how the NRC staff has complied with the Backfit Rule, 10 CFR 50.109, and any applicable finality provisions in 10 CFR Part 52.

NRC Staff Use

If an existing licensee seeks an amendment or change in an already approved area of NRC regulatory concern the staff may, in certain circumstances, request that the licensee adopt practices consistent with this revision of Regulatory Guide 1.156 as a prerequisite to NRC approval. The staff may make such a request only if: (1) the licensee's request is voluntary and is not compelled by a new or amended regulation; (2) this revision of Regulatory Guide 1.156 relates directly to the licensee's voluntary request; and (3) the specific subject matter of this revision to Regulatory Guide 1.156 is an essential (material and safety significant) consideration in the NRC staff's decision on the acceptability of the licensee's voluntary request. In any event, while the staff may make such requests in situations where these three criteria are met, this revision to Regulatory Guide 1.156 does not represent the sole method of complying with the relevant regulatory requirements and the licensee may propose alternative methods of compliance. Further, in such situations a licensee seeking a license amendment to a change to an existing regulatory approval may request that the staff perform a formal backfit analysis prior to conditioning approval upon conformance to this revision of Regulatory Guide 1.156. and: (1) the NRC staff's consideration of the request involves a regulatory issue directly relevant to this new or revised regulatory guide and (2) the specific subject matter of this regulatory guide is an essential consideration in the staff's determination of the acceptability of the licensee's request; then, as a prerequisite for NRC approval of the license amendment or change, the staff may require the licensee to either follow the guidance in this regulatory guide or to provide an equivalent alternative method that demonstrates compliance with the underlying NRC regulatory

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~~requirements. This is not considered backfitting as defined in 10 CFR 50.109(a)(1) or a violation of any of the issue finality provisions in 10 CFR Part 52.~~