

**Response to Public Comments for Draft Regulatory Guide DG-1254**  
**“Environmental Qualification of Connection Assemblies for Nuclear Power Plants”**  
**Proposed Revision 1 of RG 1.156**

A notice that Draft Regulatory Guide DG-1254 (proposed revision 1 of Regulatory Guide RG 1.156) was available for public comment was published in the *Federal Register* (76 FR 10917) on February 28, 2011. Only one comment letter was received. The following table contains the comments and NRC staff responses.

Comments were received from: William A. Horin  
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<b>Comment No.</b>	<b>NUGEQ Comment</b> ADAMS Accession No. ML11124A011	<b>NRC Staff Response</b>
1	<p><b>NUGEQ Proposed Supplementation of "Discussion-Other Codes and Standards" Section B.</b></p> <p>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 was removed as a "Finding Aid." That Finding Aid has been relocated to the Electronic Code of Federal Regulations site.</p> <p>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.</p>	In electrical and Instrumentation & Control (I&C) areas, only one standard (IEEE Std 603) has been incorporated in the NRC regulations by reference. This is the common knowledge in the nuclear industry. The staff feels that no further clarification is needed.
2a	NUGEQ Proposed Revision to "Implementation" Section D.	<p><b>NRC Response:</b></p> <p>The NRC agrees that the Commission intended the Backfit Rule</p>

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	<p><b>A. "Forward Fitting" Guidance</b></p> <p>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.</p> <p>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 both on the history of the backfit rule, as well as practical considerations, that section of the draft guide warrants modification.</p> <p>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 (DG-1244). 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. 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.</p> <p>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</p>	<p>to apply to the license amendment process, not as a condition precedent to issuance of an amendment. However, the NRC disagrees with the comment's position that the statement of considerations (SOC) for the 1985 Backfit Rule reflects the Commission's determination that licensees have the unalloyed freedom to request a backfit analysis for any license amendment. The relevant SOC discussion states:</p> <p>The Commission agrees with those who suggest that the Staff should not be required to prepare a backfitting analysis as a condition precedent to issuance of a license amendment if the licensee requested the amendment pursuant to 10 CFR 50.109. If a licensee believes that the amendment process is being used by the staff to impose a backfit, the licensee may invoke the Backfit Rule.</p> <p>50 FR 38097, 38101 (second column); September 20, 1985.</p> <p>The NRC regards this SOC discussion as reflecting the Commission's agreement with the Atomic Industry Forum comment that the licensee/applicant must have a mechanism to request a backfit analysis where "licensees are under informal but intense regulatory pressure to submit an amendment request." 50 FR at 38100 (second column). In other words, the Commission intended to ensure that only truly-voluntary license amendments would not be subject to the Backfit Rule. If the licensee's amendment request was instigated at the NRC's behest, then the NRC would no longer consider the amendment to be "voluntary" and instead subject the license amendment request to the purview of the Backfit Rule.</p> <p>Considered in this light, the NRC believes that the NRC General Counsel's position on the application of the Backfit Rule in</p>

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	<p>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.</p>	<p>licensee-initiated license amendments, as reflected in the July 14, 2010 letter from the NRC General Counsel to NEI's General Counsel (ADAMS ML101960180) cited by the comment, is consistent with the Commission's position on backfitting protection accorded to licensees in the context of license amendments. In footnote 2 of the General Counsel's July 14, 2010 letter, the General Counsel stated:</p> <p style="padding-left: 40px;">If a licensee voluntarily seeks to change its licensing basis (i.e., the change is initiated by the licensee to take advantage of a voluntary alternative afforded in the NRC's regulations, such as the adoption of NFPA 805 under 10 CFR 50.48(c), and is not compelled by a new or amended regulation), then the NRC may condition its approval of the proposed change upon a licensee agreement to adopt new or revised guidance. Such action will not be deemed to be backfitting if: (i) the new or revised guidance relates directly to the licensee's voluntary request; and (ii) the specific subject matter of the new or revised guidance is an essential consideration in the NRC staff's determination of the acceptability of the licensee's voluntary request.</p> <p>Thus, the General Counsel's position not only effectively reiterates the Commission's position on backfitting treatment of a voluntary license amendment, it also applies in the situation where a license amendment application is comprised of voluntary and NRC-compelled elements – arguably an extension of the Commission's position in the 1985 SOC. In such situations, the NRC-compelled aspects of the license amendment application would be subject to the Backfit Rule. For these reasons, the NRC concludes that the General Counsel's position on the applicability of the Backfit Rule to license amendments is consistent with the 1985 Backfit Rule's SOC.</p>

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2b	<p>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.</p>	<p><b>NRC Response:</b></p> <p>The NRC agrees with the comment's observation that, in a situation where a license amendment involves relatively few components that could be required to comply with updated guidance, but there are numerous other components throughout the plant which are not the subject of the license amendment, the result may be disparate licensing bases. This is one factor that the NRC must take into consideration when determining whether, in any particular situation, the revised guidance should be imposed on those components which are the subject of the license amendment. The proposed <i>Implementation</i> language does not state that the NRC will impose the updated guidance, nor does the NRC believe that as a legal or regulatory matter, it is compelled to impose the updated guidance when approving the license amendment. On the contrary, the proposed <i>Implementation</i> language (and the General Counsel's letter addressing this point) states that "the staff <i>may require</i> the licensee to either follow the guidance in this regulatory guide or to provide an equivalent method... (emphasis added)." The <i>Implementation</i> language recognizes the discretion of the NRC to both consider an increase in the complexity of the licensing basis, and to decline to impose the updated guidance upon consideration of all relevant factors. The NRC's discretion in this regard is consistent with the overall discretion afforded the NRC in determining whether to impose backfitting for any reason other than adequate protection, as reflected in 10 CFR 50.109(a)(5):</p> <p style="padding-left: 40px;">The Commission <i>shall always require</i> the backfitting of a facility if it determines that such regulatory action is necessary to ensure that the facility provides adequate protection to the health and safety of the public and is in accord with the common defense and security (emphasis added).</p>

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		<p>The regulatory language mandates (“shall always require”) backfitting if it is necessary for adequate protection of public health and safety; the language is silent with respect to other backfitting. This is consistent with Section 103 of the Atomic Energy Act of 1954, as amended (AEA), which is one of the statutory provisions in the AEA that set forth the adequate protection standard for facility licensing.</p> <p>Licensees are free to raise the issue of consistency in their interactions with the NRC staff on their license amendment application, should the NRC seek to require the use of updated guidance. This will ensure that the NRC has complete information when acting upon the license amendment application. However, the NRC wishes to note that increased licensing basis complexity and disparate treatment in a class of components, <i>by itself</i>, may not be sufficient to overcome other factors in favor of imposing the updated guidance for components within the scope of the license amendment application. If the license amendment application itself proposes to establish a new design basis for a portion of the plant which is the subject of the application (e.g., the licensee requests that, for a particular piping system segment, the requirements of a newer ASME Code Edition or Addenda be approved), then the licensee’s own request is establishing a disparate licensing basis for that piping system segment. Under that circumstance, the licensee’s claim - that an NRC proposal to impose updated guidance applicable to and directly concerning the design of that piping system segment introduces unnecessarily complexity in the licensing basis - would not, <i>by itself</i>, appear to be accorded much weight in the NRC’s consideration. If there are complicating factors unique to that situation (i.e., factors not present in analogous form in other voluntary licensing basis changes), then these factors should be considered by the NRC in</p>

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		determining whether to impose the updated guidance as a condition of approval of the license amendment application.
2c	<p>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.</p> <p>Based on the above, the NUGEQ makes the following suggestions (see <i>italics</i> and <del>strike through</del>) with respect to the modification of the language in the penultimate paragraph in the "NRC Staff Use" portion of "Section D. Implementation."</p> <p style="text-align: center;"><b>D. IMPLEMENTATION</b></p> <p>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.</p> <p><b>NRC Staff Use</b></p> <p>If an existing licensee seeks an amendment or change in an already approved area of NRC regulatory concern <i>the staff may, in certain circumstances, request that the licensee adopt practices consistent with this revision of Regulator 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 Regulator 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</i></p>	<p><b>NRC Response:</b></p> <p>The NRC agrees with the comment, as well as the underlying position that the Backfit Rule should be applied in circumstances where the license amendment is the result of "intense regulatory pressure" or other NRC compulsion from the NRC. Accordingly, the NRC will revise the <i>Implementation</i> language, in both the final RG and in future RGs as applicable, to read as follows:</p> <p>If an existing licensee <i>voluntarily</i> seeks a license amendment or change 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 the staff may request that the licensee either follow the guidance in this regulatory guide or provide an equivalent alternative process that demonstrates compliance with the underlying NRC regulatory 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.</p> <p>Additionally, an existing applicant may be required to adhere to new rules, orders, or guidance if 10 CFR 50.109(a)(3) applies.</p> <p><b>Conclusion</b></p> <p>This regulatory guide is not being imposed upon current licensees and may be voluntarily used by existing licensees. In addition, this regulatory guide is issued in</p>

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	<p><u>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.</u> and: (1) the INRC 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 requirements. This is not considered backfitting as defined in 10 CFR 50.109(a)(1) or a violation of any of the issues finality provisions in 10 CFR Part 52.</p>	<p>conformance with all applicable internal NRC policies and procedures governing backfitting. Accordingly, the NRC's staff issuance of this regulatory guide is not considered backfitting, as defined in 10 CFR 50.109(a)(1), nor is it deemed to be in conflict with any of the issue finality provisions in 10 CFR Part 52.</p> <p>If a licensee believes that the NRC is either using this regulatory guide or requesting or requiring the licensee to implement the methods or processes in this regulatory guide in a manner inconsistent with the discussion in this Implementation section, then the licensee may file a backfit appeal with the NRC in accordance with the guidance in NUREG-1409 and NRC Management Directive 8.4.</p> <p>It was not the NRC's intention to suggest that the guidance must be complied with in all cases, or that licensees are precluded from proposing acceptable alternative approaches to compliance with the underlying regulatory requirement. Having earlier stated in the Implementation language the general principle (articulated in the comment) that licensees are free to propose acceptable alternatives, the NRC did not believe it was necessary to restate the general principle in the context of discussing the exception.</p>