

June 9, 2016

MEMORANDUM TO: Those on the Attached List

FROM: Victor M. McCree */RA Michael R. Johnson Acting for/*
Executive Director for Operations

SUBJECT: TASKING RELATED TO IMPLEMENTATION OF AGENCY
BACKFITTING AND ISSUE FINALITY GUIDANCE

Recent interactions with external stakeholders, coupled with internal agency discussions, have focused on the adequacy and consistency of the staff's implementation of agency backfitting guidance. When the Backfit Rule (Title 10 of the Code of Federal Regulations Section 50.109) was promulgated in 1985, it was noted that, "backfits are expected to occur as part of the regulatory process to ensure the safety of power reactors. It is important for sound and effective regulation, however, that backfitting be conducted by a controlled and defined process." Guidance for plant-specific backfitting also noted that licensees could appeal an agency backfit decision based on an assertion "that a recognized backfit, which the staff considered to be an adequate protection or compliance exception, does not meet the criteria for the exception." With the 1989 adoption of 10 CFR Part 52 and the significant revision in 2007, the Commission has expanded backfitting protection to include "issue finality." In addition, since the mid-1980's, comparable backfit requirements have been established by the Commission for other categories of licensees including enrichment, fuel processing, and spent fuel storage facilities.

As an example, enclosed is the Nuclear Energy Institute letter of January 20, 2016, questioning the use of the compliance exception to the backfit rule and stating that proper application of the compliance exception must provide a clear and thorough description of:

- Known or established standards at issue.
- Prior U.S. Nuclear Regulatory Commission (NRC) approval of a licensee's method of compliance with such known and established standards.
- The specific omission or mistake of fact that undermines the prior NRC staff approvals(s).
- An evaluation explaining that, but for the identified omission or mistake of fact. The NRC staff would not have issued the prior approval.
- A description of how the NRC has interpreted the known and established standards at issue (facility-specific or generic).

Although such questions are focused predominantly on facility-specific backfitting and the implementation of the compliance exception, there is also a connection with the role of the Committee to Review Generic Requirements (CRGR) in monitoring the regulatory effectiveness of the backfitting process on a generic basis. In a meeting held on February 9, 2016, agency managers and technical and legal staff discussed these issues. As a result of that meeting, I concluded that we need to determine the adequacy of our guidance, training, and expertise for

assessing issues for backfit implications and for responding to questions and concerns raised by our stakeholders.

To help address such questions, I am directing the CRGR to carry out the following tasks:

1. Assess Backfit Requirements, Guidance, and Criteria (NUREG-1409 and Management Directive (MD) 8.4)

Assess the adequacy and currency of existing NRC requirements, guidance, criteria, and procedures (the last revision of the NUREG is dated 1990 and the MD was last revised in 2013). Consider the following questions:

- Are the guidance, procedures, and responsibilities still effective, clear, and current?
- Should there be separate sets of guidance for generic versus plant specific backfits?
- How consistently are they being implemented across the agency?
- Based on the review of NUREG-1409 and MD 8.4, are the office implementing procedures adequate, needed, and consistent with agencywide guidance?
- Are our backfit assessments providing the appropriate level of rigor and the appropriate clarity and consistency as defined in the Principles of Good Regulation?

2. Assessing Backfit Training

Assess the training and development that NRC staff receive on backfitting, including coordination with knowledge management (KM) tools. Consider the following questions:

- Does training currently exist related to the backfit rule, guidance, and procedures, and is it required as part of any formal qualification programs?
- If training is available, is it sufficient for staff members to acquire the skills and competencies required to implement NRC's backfitting requirements?
- Are all the appropriate staff taking the available training?

3. Assess Knowledge Management on Backfitting

Assess the effectiveness of the NRC's KM program in capturing, storing, and transferring necessary knowledge about backfitting.

The CRGR will coordinate with the offices involved in backfitting reviews and rulemaking for support in addressing the tasks identified above (the Office of Nuclear Reactor Regulation, the Office of Nuclear Regulatory Research, the Office of the General Counsel, the Office of Administration, the Office of New Reactors, the Office of Nuclear Materials Safety and Safeguards, the Office of Nuclear Security and Incident Response, and the regions). This will ensure that backfit reviews for all categories of licensees (e.g., reactors, enrichment, fuel processing, and spent fuel storage facilities) are considered. The CRGR will provide the results of its efforts to address tasks 1-3 via a memorandum to me and will include its findings, actions going forward, and milestones for implementation. This memorandum is due to me on September 30, 2016. Following completion of this tasking, the CRGR will coordinate with the

Those on the Attached List

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Office of the Executive Director for Operations and the Commission, as appropriate, to develop a communications plan for both internal and external stakeholders.

Enclosure:

As stated

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Enclosure:
As stated

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OFFICE	QTE	OGC	NRO	NMSS	NSIR
NAME	CHsu*	GMizuno*	VOrdaz*	SMoore*	SWest*
DATE	06/6/16	06/6/16	06/2/16	05/24/16	05/25/16
OFFICE	RII	NRR	RES	OEDO	
NAME	LWert*	BMcDermott*	EHackett*	VMcCree (MJohnson for)	
DATE	05/31/16	05/25/16	05/24/16	06/ 09 /16	

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Memo to The Attached List from Victor M. McCree dated June 9, 2016

SUBJECT: TASKING RELATED TO IMPLEMENTATION OF AGENCY BACKFITTING GUIDANCE

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