

Consolidated Listing of Public Comments  
Received by CRGR  
Regarding the June 9, 2016,  
OEDO Backfitting Tasking

<u>ID</u>	<u>Commenter</u>	<u>Source</u>	<u>Summarized Comments</u>
1	Mr. Lochbaum, Union of Concerned Scientists (UCS)	09/13/16 public meeting	Several groups in the NRC issue annual reports of their activities which are very helpful.
2			NRC should perform retrospective assessments like the one that was done in NUREG-1776 for the Station Blackout Rule to see whether the expected results from the rule were achieved, and if not, how why not.
			UCS does not object to some meetings being non-public if that will facilitate internal discussions. The caveat to this is that there should be documentation of what was discussed.
3	Mr. Pietrangelo, Nuclear Energy Institute (NEI)		NRC should consider a cost threshold in determining whether it is worth pursuing a given issue.
4			Request that the CRGR include in its report to the EDO a history of the backfitting rule and why it was put into place. This would also serve to capture the information for Knowledge Management purposes.
5			With respect to regulatory analyses, request that the CRGR consider review of the proper application of qualitative factors.
6			It appears that NRC staff may not know what process they need to turn to when they have a differing perspective or disagree with a historical licensing decision. Staff should not just walk away either; if there is new or different information it should be evaluated. Industry is seeking stability in the process and predictability such that everyone has a process to rely on to get these types of issues properly vetted.
7			New staff coming into the agency need to understand historical context, and how backfit is applied to varying licensing bases. Knowledge needs to go beyond the CRGR.
8			Training on the foundation of the rule and its implementation, for both industry and NRC, would be useful.

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9			Industry hopes that the CRGR will give recommendations to the EDO/Commission that provide clear direction on addressing these longstanding issues and changes to agency guidance that are necessary.
10			Consider a Center of Expertise that has staff who are familiar with the rule, familiar with the background, and could advise senior management and the Commission. CRGR could be one of those Centers of Expertise on backfits, perhaps expanded its role into rulemaking and increasing public interactions/transparency.
11	Mr. Halnon, FirstEnergy		NRC should evaluate its decision making processes and whether they are sufficiently broad to evaluate potential backfits.
12			Some of NRC's decision making processes could benefit by more transparency or stakeholder input prior to a final decision being made. We have made some in roads in this area; one is the TIA process where a number of backfits are actually adjudicated.
13			Request that the CRGR consider consistency in procedures across Regions
14			Consider clarifying "formal" versus "informal" CRGR reviews.
15			Contrary to Management Director 8.4, cost should be a consideration and a finding of substantial safety improvement need should be made when the compliance exception is being pursued by the staff.
16	Ms. Redick, Exelon		Request that OGC consider making available to external stakeholders the training it has developed on the Backfit Rule and application of the compliance exception.
17			What should the involvement of CRGR be in the backfill appeal process and should those discussions be held behind closed doors? Should there be a CRGR or Center of Expertise role in reviewing facility-specific issues, especially when they have generic implications?
18	Mr. Jury, Exelon		Is there a role for CRGR in evaluating/spot checking specific plant issues for generic implications? Industry sees decisions where the potential for generic applicability was either not considered or was missed.
19	Mr. Bonanno, NEI		CRGR should consider whether NRC actually needs two processes for backfitting – facility specific and generic.
20			For the specific technical issue discussed at the meeting, there did not appear to be CRGR involvement in the review of the documented evaluation.
21			Periodic meetings, non-issue specific, with CRGR would be beneficial.

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22	Mr. Nolan, Duke Energy		Compliance is important, but the focus should be on safety, and compliance shouldn't be a distraction from that.
23	Mr. Leshinskie, State of Vermont		External stakeholders should have an opportunity to participate in regulatory meetings, including those discussing backfit.
24			States and local communities need similar involvement as groups like NEI in NRC processes. Please pursue avenues to encourage these additional communications.
25			With respect to the backfit process, consider the approach used for psychological evaluations for unfettered plant access – ask very simple question and ask the same question in different ways to assure a way of triggering the desired thought process in people who think differently.
26			When considering changing the backfit evaluation process, CRGR should consider different concepts/frameworks to see what might be applicable.
27	Mr. Halnon, FirstEnergy	01/28/17 public meeting	There should be opportunities for licensee to formally provide their perspective on issues being considered for backfit.
28	Mr. Shea, Tennessee Valley Authority		Is NRC considering going back and looking at the compliance exception analysis, basis, and discussions for some of the recent big ticket items, such as tornado missiles, which are currently in the implementation phase? Going back and re-evaluating these issues would ensure the same rigor and logic as the Exelon final appeal decision. Some would see the tornado missile issue as similar to the Exelon issue in that there varying licensing bases and gaps in licensing bases.
29	Mr. Bonanno, NEI		The 2010/2011 update of MD 8.4 discussed stakeholders being able to raise concerns that aren't resolved at the public comment phase; however, this aspect of the MD was not really fully developed. Developing this for generic issues would be beneficial.
30			Splitting the revision of NUREG 1409 and NUREG 0058 is appropriate.
31	Mr. Lochbaum, UCS		NUREG-1022 on reportability could be a useful approach for determining what goes into the backfit process and what does not. Such examples would guide staff to the right outcomes.
32	Mr. Pietrangelo, NEI	01/20/16 letter, NEI to Bill Dean (ML16027A352)	In order to ensure proper application of the compliance exception, every documented evaluation prepared to justify invocation of the compliance exception must – at a minimum – provide a clear and thorough description of: (1) The “known and established standards” at issue; (2) The prior NRC staff approval(s) of the licensee’s method of compliance with such “known and established standards;” (3) The specific omission or mistake of fact that

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			undermines the prior NRC staff approval(s); (4) An evaluation explaining that, but-for the identified omission or mistake of fact, the NRC staff would not have issued the prior approval; and (5) A description of how the NRC has interpreted the “known and established standards” at issue (with respect to the specific licensee in the case of a facility-specific backfit, or generically in the case of a generic backfit).
33	Mr. Pietrangelo, NEI	07/19/16 letter, NEI to Victor McCree (ML16208A105)	Although we support the efforts directed in the Tasking Memorandum, it’s important that the agency provide a forum for consideration of stakeholder views when considering the need for potential improvements to the agency’s backfitting program. There would be value in providing industry (and other stakeholders) the opportunity to share views on the Open Phase Condition documented evaluation prior to endorsement by the CFGR. Unfortunately, no such opportunity was provided in this case. While the process used by the staff may comport with the agency’s current procedures for CRGR review, it lacks transparency and does not promote informed decision-making.
34			The section “Misapplication of GDC as Known and Established Standard” discusses the failure of the staff in this activity.
35			The section “Misapplication of Omission or Mistake Standard” discusses the failure of the staff in this activity.
36	Mr. Pietrangelo, NEI	10/31/16 letter, NEI to Ed Hackett (ML16308A045)	It is vitally important that the analytical framework employed by the Panel to evaluate use of the compliance exception be institutionalized in a durable fashion, and used by the NRC staff to guide application of the compliance exception in the future.
37			With the resolution of the Exelon Appeal in mind, the industry would like to stress the following points for consideration as the CRGR develops its response to the EDO’s tasking: (1) Clear and consistent direction from the NRC senior management to the staff on application of the compliance exception and identification of backfits is needed to improve the quality, consistency, and clarity of the agency’s backfitting decision; (2) CRGR oversight of the on-going efforts to revise the NRC’s cost-benefit guidance is essential to ensure holistic consideration of how changes to those documents will affect the agency’s backfitting program; (3) The facility-specific process should be improved to ensure that the generic implication of potential facility-specific backfits are consistently evaluated; and (4) Increased transparency in the backfitting process is needed to ensure a common understanding of the agency’s policies, guidance, and decision-making process.

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38	Ms. Korsnick, NEI	08/04/2016 letter, NEI to Chairman Burns (ML16217A453)	The Commission should provide the staff with clear direction on the use of the compliance exception to the backfit rule to ensure that use of the exception is consistent with the policy direction provided in the preamble to the 1985 backfitting rule.
39	Mr. Miranda	03/06/2016 email (ML17073A181)	There is a conflict of interest in one of CRGR member's involvement in the CRGR tasking as he was also involved in the Exelon backfit appeal which concluded that the staff incorrectly applied the compliance exception.
40			Qualifying pressurizer safety valves for water relief is meaningless; this is not evident in the final Exelon appeal decision.
41			Please enter my 10 CFR 2.206 enforcement petition (ML17010A051) for CRGR review, as a public comment.
42	Mr. Miranda	03/18/2017 email (ML170079A327)	Please enter a referenced paper published by ASME in its Proceeding of the 24 <sup>th</sup> International Conference on nuclear Engineering (ICONE24, June 28-29, 2016) into the record with my comments. The paper's annex outlines a history of many of the issues of interest to the CRGR.