

POLICY ISSUE
(Information)

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SECY-17-0089

FOR: The Commissioners

FROM: Victor M. McCree
Executive Director for Operations

SUBJECT: ANNUAL REPORT OF COMMITTEE TO REVIEW GENERIC
REQUIREMENTS REVIEW ACTIVITIES

PURPOSE:

This paper provides the Commission with the annual report of the activities of the Committee to Review Generic Requirements (CRGR, or the committee). The report covers the period from June 1, 2016, through May 31, 2017. This paper does not contain any new commitments or resource implications.

SUMMARY:

For this period, the CRGR issued its report documenting its comprehensive assessment of the agency's backfit review process to the OEDO. In this report, the CRGR concluded that opportunities exist to improve backfitting practices. The EDO agreed with the CRGR report recommendations and provided additional recommendations. The CRGR and the other relevant offices are presently engaged in accomplishing all of these recommendations. During this period, the CRGR conducted four informal reviews. There were no formal reviews conducted in this period. Furthermore, the CRGR is now re-engaged in reviewing rulemakings, which meet the new criteria, and guidance as described in SECY-16-0064, "CRGR Response to Staff Requirements – SECY-15-0129 Commission Involvement in Early Stages of Rulemaking," dated May 23, 2016 (ADAMS Accession Nos. ML16070A214 and ML16075A364). In summary, the result of this periodic review has identified that the CRGR continues to provide a benefit to the staff activities with regards to backfitting and has added value in its reviews of the staff documents.

CONTACT: Edwin M. Hackett, RES
301-415-1904

BACKGROUND:

The CRGR is comprised of senior U.S. Nuclear Regulatory Commission (NRC) managers from the Offices of Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), New Reactors (NRO), Nuclear Material Safety and Safeguards (NMSS), Nuclear Security and Incident Response (NSIR), the Office of the General Counsel (OGC), and one of the regional offices selected on a rotating basis (currently, Region III). The CRGR reports to the Executive Director for Operations (EDO) who appoints the chairperson and members. The committee conducts its activities in accordance with Revision 8 of the CRGR charter dated March 2011 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML110620618). The RES staff provides technical and administrative support to the committee.

By charter, the CRGR reviews selected regulatory requirements, generic correspondence, regulatory guidance, and NRC staff guidance related to licensing, inspection, and enforcement that could impose a generic backfit. The CRGR ensures that any generic backfits proposed for NRC-licensed power reactors, new reactors, and nuclear materials facilities that fall within the committee's charter are appropriately justified on the bases of the backfit provisions of the applicable NRC regulations, the Regulatory Analysis Guidelines (NUREG/BR-0058), and the Commission's backfit policy. The committee also helps the NRC regulatory offices implement the Commission's backfit policy and recommends to the EDO either approval or disapproval of certain staff proposals.

Since 1997, the committee has annually evaluated and reported its activities to the Commission. This paper provides the committee's annual report for the period of June 1, 2016, through May 31, 2017. The report summarizes the backfit reviews performed by the committee during the assessment period and provides the results of the committee's annual self-assessment. The report also summarizes the CRGR's response to the EDO's tasking on agency backfit processes.

DISCUSSION:

Backfit Tasking

During the last reporting period, due to both internal deliberations and external stakeholder feedback, the Office of the Executive Director for Operations (OEDO) convened a meeting with the senior managers and staff involved in backfitting. The focus of this meeting was to discuss how well management and staff were continuing to adhere to the "formal, systematic, and disciplined review of new or changed positions" that was intended for the backfitting process, consistent with our Principles of Good Regulation.

Moreover, following this discussion and with the intent of continuous improvement, OEDO tasked the CRGR to conduct a rigorous review of the NRC's guidance, training, and expertise for assessing issues for backfit implications and for responding to questions and concerns raised by our stakeholders. The June 9, 2016, memorandum entitled, "Tasking Related to Implementation of Agency Backfitting and Issue Finality Guidance" (ADAMS Accession No. ML16134A004) documents this tasking.

The tasking covered three general topics:

1. Assess backfit requirements, guidance, and criteria (NUREG-1409 and Management Directive (MD) 8.4).
2. Assess backfit training.
3. Assess knowledge management for backfitting.

In addition, in a memorandum entitled, "Supplemental Tasking Related to Implementation of Agency Backfitting and Issue Finality Guidance," dated December 15, 2016 (ADAMS Accession No. ML16344A004), the EDO directed the CRGR to consider additional agency actions and direction issued since the date of the original tasking associated with backfitting and issue finality. In the supplemental tasking, the EDO also directed the CRGR to review its charter against the results of its assessment and to determine if any scope or process changes are warranted. Two notable actions fell within the scope of the supplemental tasking:

1. The EDO's decision to reverse, under appeal from Exelon Corporation (Exelon), a compliance backfit of Byron Station, Units 1 and 2 (Byron) and Braidwood Station, Units 1 and 2 (Braidwood).
2. Commission direction in SRM-COMSECY-16-0020 that the staff be "familiar with and operate in a manner consistent with" an OGC analysis about consideration of costs when considering exceptions to the backfit rule (Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.109, "Backfitting") and the use of the compliance exception to mandate consistency with General Design Criteria (GDC). This direction is summarized in a publicly available December 20, 2016, memorandum to the CRGR from the NRC Solicitor (ADAMS Accession No. ML16355A258).

On June 27, 2017, the CRGR delivered its report to the EDO (ADAMS Accession No. ML17174B161).¹ In preparing the report, the CRGR considered public feedback and conducted an independent assessment, including review of COMSECY-16-0020 and the associated SRM. The CRGR concluded that opportunities exist to improve backfitting practices. The CRGR recommended actions that will improve oversight by NRC senior managers and first-line supervisors; enhance engagement and oversight by the CRGR; improve staff knowledge, skills, and abilities associated with backfitting and generic requirements; and result in more consistent identification and treatment of potential backfitting issues. The CRGR concluded that broad communication of the Commission direction in SRM-COMSECY-16-0020, increased management involvement, and improved training and developmental activities will yield the greatest improvements in performance and consistency.

In summary, the results of the CRGR review identified the following nine key findings:

- The CRGR did not find many instances where licensees or the Nuclear Energy Institute (NEI) expressed backfitting concerns about generic issues that the staff handled through a formal agency process, such as rulemaking, or that were reviewed by the CRGR.

¹ Although the resultant CRGR report and the ensuing EDO response documents were generated outside of the scope of the period covered by this report, they are briefly mentioned as an update to the June 9, 2016, EDO tasking that was initiated within the current reporting period.

- Reactor licensees and NEI are concerned about inappropriate use of the compliance exception to justify facility-specific backfits as well as the potential for NRC inspection and oversight activities to result in inappropriate backfits.
- Except for the compliance backfit for Byron and Braidwood, which was overturned on appeal, the CRGR did not identify any instance of inappropriate backfits. However, based on industry feedback and the totality of its experience and assessment, the committee concluded that opportunities exist to improve backfitting practices.
- In the near-term, the EDO should issue interim guidance on the new Commission direction on backfitting to be used by the staff pending publication of the in-process updates of Management Directive (MD) 8.4, "Management of Facility-Specific Backfitting and Information Collection," (ADAMS Accession No. ML12059A460) and NUREG-1409, "Backfitting Guidelines" (ADAMS Accession No. ML032230247). The staff should use this interim guidance for issues currently under review.
- In the near term, as an interim measure, pending completion of the recommended comprehensive training program, the EDO should require NRC managers and staff with backfitting and issue finality responsibilities to attend initial "reset" training on backfitting.
- Agency knowledge and performance can and should be improved through investments in updated and improved guidance, procedures, and training and new KM tools. Training should yield the greatest overall improvement.
- The CRGR charter should be revised to reflect organizational changes, to incorporate the new rulemaking review decisionmaking criteria, and to add enhancements that could strengthen and support CRGR activities and overall agency performance on future issues that involve both generic and facility-specific backfitting and issue finality issues.
- The corrective actions that are currently underway and recommended will improve oversight by NRC senior managers and first-line supervisors; will enhance engagement and oversight by CRGR; will improve staff knowledge, skills, and abilities associated with backfitting and generic requirements; and will result in more consistency in identifying and resolving potential backfitting issues.
- Of the in-process actions and recommendations, the committee expects that broad communication of the new Commission direction, increased management involvement, and improved training and developmental activities will yield the greatest improvements in performance and consistency.

Subsequently, in a July 19, 2017 memorandum entitled, "Tasking in Response to Committee to Review Generic Requirements Report on the U.S. Nuclear Regulatory Commission's Implementation of Backfitting and Issue Finality Requirements" (ADAMS Accession No. ML17198C141), the EDO issued a response to the CRGR that supported the CRGR's recommendations and provided subsequent direction to the CRGR as well as affected offices. The planned actions fall within four broad categories: (1) requirements, guidance, and criteria; (2) training; (3) knowledge management; and (4) revisions to the CRGR charter. The tasking also includes direction to conduct an effectiveness review of the actions taken, to report on the availability of key docketed information and the resources needed to make information more

readily retrievable, and to report on the resources needed to complete the directed actions. Many of these actions are already underway and will take effect over approximately the next year.

Backfit Reviews Conducted by the CRGR

During this assessment period, the CRGR performed informal reviews of the following documents:

- Review of proposed Regulatory Issue Summary (RIS) 2016-XX, "License Amendment Requests for Changes to Emergency Response Organization Staffing and Augmentation" (ADAMS Accession No. ML16124A002).
- Review of proposed RIS 2016-XX, "Requests to Dispose of Very LLRW Pursuant to 10 CFR 20.2002" (ADAMS Accession No. ML16007A488).
- Review of proposed Office Instruction, ADM-104, "Development, Issuance, and Closure of Interim Staff Guidance for the Office of Nuclear Reactor Regulation" (ADAMS Accession No. ML16271A488).
- Review of proposed guidance documents for Subsequent License Renewal (SLR): NUREG-2192, "Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants" (ADAMS Accession No. ML17188A158); NUREG-2191, Volume 1, "Generic Aging Lessons Learned for Subsequent License Renewal (GALL-SLR) Report" (ADAMS Accession No. ML17187A031); and NUREG-2191, Volume 2, "Generic Aging Lessons Learned for Subsequent License Renewal (GALL-SLR) Report" (ADAMS Accession No. ML17187A204).

For this period, the CRGR did not perform any formal reviews of generic documents. However, the CRGR performed informal reviews of the above listed generic documents to ensure that the staff continues to adhere to the backfit rule and the Commission backfit policy and to ensure that no issue finality concern exists. The staff did not propose any generic backfits in this assessment period. Moreover, based on its reviews, the CRGR did not identify any inadvertent backfits in the documents that it reviewed.

Results of CRGR Self-Assessment

The committee solicited feedback from the regulatory offices and used its own insights to assess its effectiveness in fulfilling the primary areas of responsibility specified in the CRGR charter and its impact on staff activities. The results of the self-assessment are provided below.

1. Documents Reviewed

For each of the four proposed documents (two RISs, one office instruction, and a set of three guidance documents for subsequent license renewal), the committee verified that the staff proposal was consistent with the backfit provisions of the applicable regulations. The committee also confirmed that the staff had followed the requirements specified in the CRGR charter and had supplied all documentation needed to support each CRGR review. Based on staff feedback

and its assessment of these CRGR reviews, the committee concluded that it had effectively fulfilled this key charter responsibility.

The CRGR also concluded that the concurrence process ensured that all pertinent offices are appropriately engaged; the appropriate technical staff, branch chiefs, and SES-level managers are involved in the reviews; and OGC is involved both in the reviews of legal issues and backfit considerations. OGC performs a legal review of each generic communication and ensures that the appropriate backfit language is included in each document.

The CRGR report to the EDO tasking has provided insights regarding how effectively we are adhering to our guidance and executing backfit reviews and the areas that have opportunity for improvement. As mentioned above in the summary list of items identified, the CRGR charter was identified as one document that requires updating for the various reasons mentioned. Moreover, the various corrective actions underway and those recommended in the CRGR report will enhance engagement and oversight by CRGR with regards to its activities and review of proposed agency communications and selected plant-specific communications that could imposed a backfit.

2. NRC Processes

The CRGR charter specifies that the regulatory offices incorporate the CRGR process into their administrative procedures for developing new or revised generic actions. Implementing documents include:

- MD 8.4, "Management of Facility-Specific Backfitting and Information Collection," dated October 9, 2013 (ADAMS Accession No. ML050110156).
- MD 8.18, "NRC Generic Communications Program," dated December 9, 2015 (Accession No. ML15327A372).
- NRR Office Instruction LIC-202, "Procedures for Managing Plant-Specific Backfits and [10 CFR] 50.54(f) Information Requests," Revision 2, dated May 17, 2010.
- NRR Office Instruction LIC-300, "Rulemaking Procedures," Revision 4, dated September 24, 2012.
- NRR Office Instruction LIC-400, "Procedures for Controlling the Development of New and Revised Generic Requirements for Power Reactor Licensees," Revision 1, dated December 20, 2006.

As previously noted, the CRGR performed four reviews during the assessment period. For each CRGR review, the committee interacted with the staff, as needed, to understand the intent of the proposed documents as well as any potential or actual backfitting implications. On the bases of the quality of the documents submitted for its review and the quality of its interactions with the responsible regulatory office staff and managers, the CRGR concluded that the established CRGR review process, in concert with the associated agency and regulatory office implementing procedures, resulted in the proper treatment of any backfit considerations. For these reasons, the committee concluded that it and the staff had effectively fulfilled this charter responsibility. Notwithstanding, the CRGR response to the EDO tasking identified opportunities

for improvement in the process documents, such as the need for updates to MD 8.4, NUREG-1409, the CRGR charter, and other relevant staff guidance with respect to backfitting and the CRGR engagement.

With regard to process, in response to Commission direction in SRM-SECY-15-0129, "Commission Involvement in Early Stages of Rulemaking," (ADAMS Accession No. ML16034A441) the CRGR developed the criteria and guidance, and the staff provided it to the Commission for information. This was provided in SECY-16-0064, "CRGR Response to Staff Requirements-SECY-15-0129 Commission Involvement in Early Stages of Rulemaking" (ADAMS Accession No. ML16075A365). The criteria require the staff to engage the CRGR when one or more of the following are met:

1. The rulemaking may have issue finality concerns or possible backfitting.
2. Qualitative factors were used to justify a rulemaking with significant costs.
3. Substantial statistical uncertainty exists in the quantitative benefit determination in the backfit analysis.
4. The staff relied on the compliance exception or the adequate protection exceptions to justify backfitting.
5. The EDO directed the review, or stakeholder or NRC staff concerns regarding the backfit or regulatory analysis have been raised.

In addition, as indicated in SECY-16-0064, the CRGR stated that it would assess the lessons learned and feedback from the staff on its use of the new criteria and guidance and inform the Commission in this CRGR annual assessment whether further process enhancements would be beneficial. Any changes to the scope of CRGR review and the associated staff responsibilities would be incorporated into a subsequent revision of the CRGR charter and the appropriate agency and office implementing procedures. The following discussion highlights the assessments of the trial period of the CRGR-developed criteria and whether further process enhancements would be beneficial.

Result of Assessment of the CRGR Criteria and Guidance

The staff anticipates that starting in October 2017, NMSS' Rulemaking Center of Expertise (RCE) will formally provide agencywide rulemaking project management to NMSS, NRR, NRO, and the Office of Administration. Future members of the RCE provided comments on the criteria and guidance provided in SECY-16-0064.

In general, the RCE suggested that further refinement of the criteria is warranted. The RCE stated that criterion 2, related to qualitative factors, will require CRGR engagement/consultation for all security-related rulemakings because of their reliance upon qualitative (non-quantitative) factors. Based on this criterion, the RCE anticipates that it would recommend to office management that CRGR consultation and/or review is appropriate for three additional proposed rules and four additional final rules over the next 5 years. The RCE also suggested that it would be beneficial to establish criteria for "formal" versus "informal" CRGR reviews.

The RCE also suggested enhancements to the process for coordinating with the CRGR to ensure the staff fully understand the consultation process and concurrence process. These changes along with the associated CRGR charter changes will ensure consistency across all rulemaking efforts. Overall, the RCE anticipates that early CRGR consultation and/or review will add value to rulemaking packages. In addition, the RCE will track lessons-learned from CRGR rulemaking reviews across the agency and provide feedback to the CRGR as appropriate, and the CRGR will further engage the staff for more input into criteria and process improvements.

One office indicated that the guidance and criteria were appropriate and useful in determining that their guidance documents did not require a full review of the CRGR and that an informal review could add value to the documents without requiring significant resources and impacting their schedule.

In addition, the CRGR concluded that based on addressing the various relevant recommendations as a result of the above-mentioned CRGR report to the EDO tasking and the RCE suggestions, some changes will be made to the CRGR rulemaking review process to improve future CRGR and staff engagement in the rulemaking process.

Finally, although the criteria has now been in place for over 12 months, there has only been one rulemaking—the proposed rule for cybersecurity at fuel cycle facilities—during this trial period where the criteria could be applied. The CRGR engaged in review of this draft proposed rule on June 27, 2017 (CRGR #442), and July 12, 2017 (CRGR #444). Because this review was outside of this reporting period, the results of this review will be discussed in the next CRGR annual report. However, the joint CRGR meeting minutes for this rulemaking can be found as ADAMS Accession No. ML17200A101.

Therefore, because this marks the only CRGR review of a rulemaking using the new criteria and guidance, an additional assessment period is needed to ensure that it adequately meets the needs of other offices that may engage in the process of rulemaking. Although the RCE will provide future assessments on the criteria and guidance, the CRGR will continue its assessment for an additional 12-month period (from June 1, 2017 to May 31, 2018) to gather additional information for needed improvements to the criteria and guidance. Any subsequent changes to the criteria and guidance or CRGR processes related to its review of rulemaking will be discussed in the next CRGR annual report.

3. Impact and Value of the CRGR Process

Throughout the assessment period, the CRGR provided guidance to the staff regarding generic backfitting considerations as the staff drafted proposed generic communications. The committee's objective was to address any implications of potential backfits in proposed generic documents before the staff issued them as final generic communications. To minimize delays, to the extent practicable, the CRGR scheduled its meetings expeditiously to meet the NRC staff's requests for special meetings. In addition, the CRGR provided timely assistance to the staff before and during its reviews. To expedite the endorsement process, the CRGR members also helped the sponsoring office staff resolve committee comments as appropriate.

For this assessment period, the committee concluded that its reviews were timely, focused on high-priority issues, and beneficial to the NRC staff. Interactions with the NRC staff were

positive and professional, resulting in constructive feedback and useful insights to ensure product compliance with the applicable backfit provisions. The committee typically completed its reviews within the timeframes requested by the staff.

The CRGR often asked the NRC staff questions and made comments on its proposed generic communications, which may have required revisions. The committee's comments were not always related directly to backfit issues, but rather concerned other technical or regulatory issues associated with the proposed generic document under review. For this assessment period, feedback from the regulatory offices (ADAMS Accession No. ML17144A225) confirmed that the CRGR reviews added value by ensuring that proposed generic documents were consistent with the applicable Commission backfitting policies, rules, and regulations and did not inadvertently backfit new requirements on licensees. In addition, the offices stated that the staff generally expended reasonable efforts addressing CRGR comments and recommendations. Moreover, the costs and impacts associated with CRGR review activities did not significantly affect the overall schedules and staff resources beyond those associated with preparing the packages for CRGR review.

Other CRGR Activities

During this assessment period, the CRGR provided input to the NRC's responses to congressional questions, including the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2017, with regard to the CRGR role and responsibilities in the rulemaking and backfitting processes, CRGR review process and its procedures, interactions with the industry, review of specific documents, and current and planned CRGR activities.

CONCLUSION:

The CRGR continues to contribute to staff and industry awareness of the applicable NRC regulations and Commission policy on backfitting. The self-assessment and program office feedback suggests that the committee has performed its reviews and evaluations in an efficient and effective manner, added value to the regulatory process, and contributed to the accomplishment of the NRC's mission. The CRGR looks forward to working with the program offices and the various supporting offices to implement all the CRGR report recommendations and subsequent EDO direction for enhancing agency rigor in future backfitting evaluations.

/RA by Frederick D. Brown for/

Victor M. McCree
Executive Director
for Operations

Enclosure:
Items Reviewed by the Committee
to Review Generic Requirements
June 1, 2016, through May 31, 2017

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