

OFFICIAL TRANSCRIPT OF PROCEEDINGS

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(Regions IV & V)

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BEFORE THE
U. S. NUCLEAR REGULATORY COMMISSION

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NRC Backfitting Workshop :
(Regions IV & V) :
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Champions I Ballroom
Sheraton Park Centre Hotel
1500 Stadium Drive
Arlington, Texas

Wednesday,
November 7, 1990

The above-entitled matter was convened,
pursuant to notice, at 1:30 p.m.

NRC Speakers and Panel Members:

- John Montgomery, Deputy Regional Administrator, Region IV
 - Bobby Faulkenberry, Deputy Regional Administrator, Region V
 - Johns Jaudon, Deputy Director, DRS, Region IV
 - Pat Gwynn, Deputy Director, DRP, Region IV
 - Stu Richards, Chief, Reactor Projects Branch, Region V
 - Edward Jordan, Director, AEOD/HQ and Chairman, CRGR
 - Geary Mizuno, OGC/HQ
 - Jim Conran, AEOD/HQ (CRGR Staff)
 - Carl Berlinger, Chief, Generic Communication Branch,
- NRR/HQ
- Daniel F. Stenger, Attorney, Winston & Strawn
 - Bob Bishop, Attorney, NUMARC
 - Frank A. Costanzi, Deputy Director, Division of Regulatory Applications, Office of Research

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AGENDA ITEM

PAGE

Opening Remarks

3

NRC Process for Backfit Review

6

Legal Aspects of Backfitting

46

Bulletins and Generic Letters

132

P R O C E E D I N G S

1
2 MR. CONRAN: If we could take our seats and get
3 started. We have got a pretty full agenda.

4 This is the backfitting workshop sponsored by the
5 Nuclear Regulatory Commission. I'm Jim Conran from the NRC
6 Headquarters.

7 I'd like to make just a few preliminary remarks
8 before we introduce the Regional Administrator to kick off
9 the workshop. If you haven't already found them, there are
10 hard copies of the slide presentations that will be made
11 today. Microphones are located throughout the audience,
12 four of them. That's to encourage you to participate in the
13 discussions.

14 We're going to have a break in mid morning and mid
15 afternoon in all of the workshops. If you want coffee, it's
16 available in the coffee shop downstairs.

17 The court reporter is making a transcript of the
18 proceedings, so if you have questions or comments,
19 participate in the discussion, please identify yourself for
20 the reporter.

21 Okay. With that I'll call on Mr. Montgomery to
22 kick off the workshop and make the introductions of the
23 players.

24 MR. MONTGOMERY: Well, first of all, let me just
25 say welcome, ladies and gentlemen. We're pleased to have

1 you here in Arlington, Texas. Most of you have been here
2 before, certainly the Region IV licensees have.

3 I want to extend a very special welcome to those
4 of you from our sister region, Region V, whatever state you
5 may be here from. We're glad to have you here.

6 This is the fourth and the last of this particular
7 series of workshops in this country, regional workshops on
8 the topic of backfitting and also event reporting. Both of
9 those topics will be covered in the next two days by
10 speakers up here, and we hope we will also have a good set
11 of interchange and dialogue between yourselves and
12 ourselves.

13 The backfitting issue goes back a long, long way,
14 as many of you know. It will be a good opportunity today to
15 talk about where we're at with it, your specific concerns;
16 and you'll also hear from us on where we are with it, where
17 it's going, particularly after the regulatory impact survey.

18 With that, I'd like to ask the people to introduce
19 themselves here. I know most of them. I'll try, I guess,
20 to start, to my far right, which is your far left, and then
21 come across here, and let them introduce to everybody who
22 they are.

23 Starting with Johns Jaudon.

24 MR. JAUDON: I'm Johns Jaudon, the Deputy
25 Director, Division of Reactor Safety in Region IV.

1 MR. GWYNN: Pat Gwynn, Deputy Director, Division
2 of Reactor Projects in Region IV.

3 MR. COSTANZI: I'm Nick Costanzi, Deputy Director,
4 Division of Regulatory Applications, Office of Research.

5 MR. MIZUNO: I'm Geary Mizuno in the Office of
6 General Counsel, Rulemaking and Fuel Safety Division.

7 MR. BERLINGER: Carl Berlinger, Chief of the
8 Generic Communications Branch, NRR, Headquarters.

9 MR. JORDAN: I'm Ed Jordan, Director of the Office
10 of Analysis -- of Operational Data, NRC Headquarters.

11 MR. FAULKENBERRY: I'm Bob Faulkenberry, the
12 Deputy Regional Administrator of Region V.

13 MR. BISHOP: Bob Bishop, General Counsel, NUMARC,
14 Nuclear Management and Resources Council.

15 MR. RICHARDS: I'm Stu Richards. I'm the Chief of
16 the Reactor Project Branch in Region V.

17 MR. STENGER: Dan Stenger with the law firm of
18 Winston & Strawn in Washington, counsel to the Nuclear
19 Utility Backfitting and Reform Group.

20 MR. MONTGOMERY: Okay. Thank you very much,
21 gentlemen.

22 Without further ado, I'm going to turn this over
23 to Ed Jordan, and we'll get on with the workshop. Thank
24 you.

25 MR. JORDAN: Thanks, John.

1 We appreciate your interest in this program. We
2 hope it will be satisfying and beneficial to you. We feel
3 it's NRC's opportunity to better express our program for
4 managing backfitting, and for you it's an opportunity to
5 comment and to ask your questions, communicate with us on
6 the concerns that you have about the backfitting programs.

7 The outcome should be a better understanding and
8 appreciation of the process by both the NRC and the
9 industry.

10 We hope through this process to identify areas in
11 which the NRC and industry can improve the implementation of
12 the process. We expect from the NRC's standpoint to
13 consider policy, procedure change, guidance and regulatory
14 changes. So we're really looking for the right kind of
15 fixes to the problems that are identified through this
16 particular workshop and through the three that have also
17 been held.

18 I would caution you that we don't really plan to
19 give answers to plant-specific issues. So if you have a
20 plant-specific issue, see your regional administrator or
21 deputy regional administrator and talk about it. But we're
22 not going to answer a specific plant issue.

23 As the first speaker, I have, I think, a
24 background that sort of fits with this particular program.
25 I was an NRC inspector in the Region III area for a number

1 of years. I supervised inspectors. I developed generic
2 correspondence.

3 And now as a member of the Committee to Review
4 Generic Requirements, I make comments and moderate the
5 generic requirements to assure that they fit 50.109
6 requirements.

7 Your panel members, except for the industry
8 members, are all practicing backfitters. They've learned
9 how to do it, and I hope they do it in accordance with the
10 procedures. Backfitting is not a bad word. Inappropriate
11 backfits, unreviewed, unanalyzed backfits are bad.

12 You have responsibility to identify to us, to the
13 NRC, when this occurs. And through that kind of an
14 interchange day to day, we'll come up with the right
15 answers.

16 So if you have complaints, you can identify them
17 to myself and these other gentlemen who have been
18 responsible in the past for implementing backfits on you at
19 your facilities.

20 Jim Conran, who made the introductions, is a
21 member of the CRGR Staff who researches for the CRGR issues
22 and provides documentation of the CRGR process. Jim Conran
23 and his associate, Dennis Allison, also provide training for
24 our regional people and oversight in terms of evaluations of
25 the implementation of the backfit considerations.

1 I'm going to ask the panel members as we go to
2 help respond to questions. If I get stumped and we want --
3 this is a small group; we ought to be able to communicate
4 rather informally. I hope we can manage to do that.

5 It might interest you to know that we're holding
6 the same sort of discussions with NRC Headquarters and also
7 with regional staffs so that they have the same picture of
8 the overall backfitting process and our directions for it.

9 Similar workshops were held in 1986, but much has
10 happened since then. We have transmitted to everyone, I
11 hope, a copy of the backfitting guidelines, the NUREG-1409.
12 That was communicated to all utilities, and copies of the
13 procedures, the rules themselves and other data contained in
14 that particular document.

15 Something that is happening even as we speak, you
16 might say, is the resolution of the regulatory impact
17 surveys that have been done in the past year, year and a
18 half. This was through meeting with a set of utilities in
19 each regional area and through some mail surveys to obtain
20 your concerns about the backfitting process, and in fact
21 about the regulatory impact. But a large part of it is the
22 backfit process.

23 A paper was provided to the Commission, and the
24 Commission is deliberating on it. The decisions, in terms
25 of any changes to the bulletins, generic letters, those sort

1 of documents that have communicated to you the process
2 through which we review them, are under consideration now.

3 So we hope to feed into that kind of process what
4 we learn from our discussion here.

5 I think the most frustrating thing about this
6 backfitting process is the degree of judgment that is
7 contained within it. If it were easy, then we'd reduce it
8 to a formula and put it on our PC and come out with the
9 right answer. It's not, and each one of these has to be
10 reviewed in detail and with some judgment applied as to
11 which of the elements of the backfitting criteria are
12 applicable.

13 It's generally not one; it's multiples. And
14 certainly the goal of that process is to add order,
15 discipline and predictability and to enhance the optimal use
16 of both industry and NRC resources.

17 I'd like to make a point that this process over
18 the period of years that we've been involved with, it has
19 oscillated between an industry that feels the NRC is
20 imposing new and unnecessary requirements in a willy-nilly
21 fashion without restraint, and an NRC staff that feels that
22 the NRC managers are imposing constraints on them so they
23 can't do their safety job.

24 And so we have to have an understanding of both
25 elements of that. If the NRC inspector feels a chilling

1 effect and he can't talk to the management at the plant
2 about an issue because it might be an inappropriate backfit,
3 then we're doing you and ourselves a disservice.

4 The object is, we have to communicate, and we have
5 to review and determine whether or not a particular activity
6 is a backfit, and then approach it properly if it is. We
7 have to have a stable process with an appropriate amount of
8 tension between those two extremes. That's what we're
9 trying to provide.

10 I would comment that several of us here had the
11 opportunity to examine the Soviet system of operation, of
12 management and regulation of nuclear power plants. One of
13 their biggest deficiencies was a total lack over the past
14 twenty years of a backfitting process. They really built
15 plants and operated them as though they -- as the day they
16 completed them without modification.

17 In the last two years they've really launched into
18 some very substantial changes that are backfits, and they're
19 very interested in the process that we're very involved with
20 you to do backfitting.

21 So with that, I'd like to go into the slides and
22 jump to page two, the areas that we plan to cover.

23 I'm going to emphasize the NRC's program and
24 process, plant-specific applications and generic
25 applications.

1 You should have a set of these handouts at your
2 table. We'll cover the other pieces of it in, I would say,
3 a less detailed fashion.

4 Next slide.

5 Here the backfitting is the decision process
6 through which the NRC determines what to do about new
7 requirements, which ones to impose and to what extent.

8 We do expect backfits to occur. There are many
9 each year. They're an integral part of the process.

10 They may only be imposed after a formal,
11 systematic review so that you and we both agree that the
12 changes are justified and suitably defined. When I say "you
13 and we both agree," we don't have to agree. There is a
14 requirement imposed on backfits, so the utilities may be
15 required without agreement to implement a backfit.

16 There are three possibilities of classifying
17 backfits. That's, in my simple thought process, narrowed to
18 three. I put first that it's necessary for adequate safety.
19 That's the adequate protection criteria. The next is
20 compliance, we're ensuring that existing requirements are
21 being fulfilled. That's one that through the previous
22 workshops there seems to be the greatest disagreement with.
23 Our industry members will help identify, I think, more
24 clearly where those disagreements are.

25 The third is cost-justified substantial safety

1 improvement. That's the one that is probably the easiest to
2 handle once it falls into that particular category, because
3 I think in most cases we can agree roughly on the cost.

4 Where the rub seems to come in is when we put it
5 in a generic cost. What about a plant -- individual plant
6 cost because some of our backfits are inexpensive on some
7 plants and very expensive on other plants.

8 So you come to recognize that, and people have to
9 deal with it.

10 The last one, I think, is that the 50.109 process
11 is really one regulation that's aimed directly at the NRC
12 staff, as opposed to most of the regulations that are
13 directed towards utilities.

14 So it is aimed at the NRC staff in order to
15 provide this order, discipline and predictability.

16 Next slide.

17 Very simply, there are plant-specific backfits.
18 These are implemented in accordance with our Manual Chapter
19 0514, which is contained in the guidelines that have been
20 previously communicated, and generic backfits which are more
21 frequently the generic letters and bulletins.

22 These go through a process, through the CRGR which
23 then makes recommendations to the Executive Director for
24 Operations.

25 So, for instance, the particular proposed generic

1 backfit be identified by the staff; the office director
2 would transmit it to the CRGR. The CRGR would review it and
3 then make a recommendation to the Executive Director for
4 Operations before its implementation.

5 Now, we'll try to separate our discussions between
6 plant-specific and generic backfits.

7 I'd like to skip Slide 5 and go to 6.

8 The definition of a backfit is a modification or
9 an addition to systems, structures, components or design of
10 a facility, procedures or organization required to operate
11 the facility. We're dealing mostly with operating plants
12 for backfits.

13 I would say these generally result from new
14 information through research or through operating experience
15 or analysis of operating experience and then become a new
16 staff position which may be different from previous staff
17 positions, or a new generic letter, bulletin or rule.

18 There are categories of plants in terms of
19 applicability that I won't go into, but it applies to
20 everybody. It's just different times. For instance, if a
21 plant only had a construction permit at this time.... There
22 is a difference in the way it's handled, but I think that's
23 academic for this group.

24 I'll let Geary Mineau work that over -- Mizuno.
25 Excuse me.

1 Could I have Slide 7?

2 I would have -- On this slide, since Geary is
3 going to talk quite a bit about this, let me say that
4 because of the problem with the rule and the challenge in
5 the courts, the rule was vacated in 1987 through a court
6 decision. The concern was over whether or not costs should
7 be considered in establishing and enforcing adequate
8 protection.

9 The rule was clarified and issued in 1988 and
10 subsequently that revision has been upheld by the courts.
11 The thing to remember is that backfitting shall always be
12 required if necessary for adequate protection.

13 Costs are not considered when backfitting is
14 necessary for adequate protection or when the Commission
15 defines or redefines adequate protection stands, or to
16 ensure compliance.

17 So for those, costs are not included.

18 Now, if there is a decision between two ways of
19 obtaining compliance or two ways of adequate protection,
20 costs could be considered, but not in whether or not there
21 should be backfitting.

22 And, finally, the regulation is based on a
23 determination that each plant meets an acceptable level of
24 safety, the adequate protection standard.

25 Next slide, please.

1 50.109 only applies to power reactors, not
2 research and test reactors.

3 It does not apply to voluntary or optional
4 actions.

5 It applies to all mandatory changes, but not
6 administrative changes, like numbers of copies of reports to
7 be transmitted.

8 Relaxations are generally included -- not
9 generally included. Excuse me.

10 We've had some difficulty regarding requests for
11 information. Requests for information have been confused by
12 the staff and industry as being backfits. It's, I think,
13 the fault of both parties.

14 Our wording has been poor, and your response to
15 our wording has been poor also. So if you're generous and
16 share the blame, we can fix it together so that when we're
17 requesting information, it's not a backfit. If we're
18 requiring an action after the request for information, then
19 it is a backfit.

20 50.54(F) -- Could I have the next slide?

21 The point to make here, I think, is the CRGR
22 reviews 50.54(F) requests just as vigorously as it does
23 bulletins and generic letters. The same level of review
24 occurs; different documentation is required.

25 I don't believe that we've done a good job of

1 communicating to industry the fact that those reviews have
2 occurred and what the basis for the determinations were.

3 Things that I understand are onerous to the
4 industry are the idea of responding as -- a statement under
5 oath or affirmation, and further that based on what we
6 learn, we'll decide whether to modify your license, suspend
7 your license or revoke your license.

8 Those are, unfortunately, the words of 50.54(F),
9 and they're simply picked up when we use -- cite 50.54(F) as
10 the basis for an information request.

11 We recognize that those requests do impose a
12 burden, and we're obligated to review the burden and make
13 sure that it is a cost/beneficial burden, in terms of our
14 needs and the safety of the plants.

15 We've done one thing -- and that was December a
16 year ago -- put an explicit statement in those documents
17 that gives the basis for our determination. So I hope
18 you've found that there's a little more basis in the
19 correspondence -- that's 50.54(F)'s, as well as bulletins
20 and generic letters -- since a year ago.

21 Slide 5 now.

22 These are AEOD responsibilities, my particular
23 office. We administer the -- review generic requirements,
24 and the office then has oversight of plant-specific backfit
25 process, in terms of the process itself and the process for

1 generic backfit.

2 So I have the oversight in both areas. We review
3 regional and office backfitting procedures on an annual
4 basis.

5 We conduct training on backfitting. We are
6 through this meeting and through correspondence informing
7 utilities of our program and procedures, and we do perform
8 annual assessments of the regions and the implementation of
9 these controls.

10 So that's the way that we try to maintain the
11 process in a controlled, predictable fashion.

12 Could I have Slide 10, please?

13 We feel that it's important that the necessity for
14 making backfit determinations not inhibit the normal,
15 informal dialogue between the NRC reviewers and the
16 licensee. So there should be a free discourse of dialogue
17 on the problem and the backfit that's being considered in
18 communications between the NRC and licensees.

19 The responsibility within the agency and the
20 accountability for management controls is at the highest
21 levels. It's with the office directors, the regional
22 administrators.

23 And the presence of management here, I think,
24 gives you assurance that they take it very seriously.

25 In the meeting that we had with the NRR -- in

1 fact, it was the licensing project managers -- about a month
2 and a half ago, a training session comparable to this, Frank
3 Morales participated directly in the meeting and clearly
4 communicated to his staff his responsibility for backfitting
5 and the need for his staff to take it pretty seriously.

6 It was an interesting session. It was not a
7 public meeting, but I think you would have been interested
8 to have been a fly on the wall.

9 The plant-specific backfits that occur result from
10 events, inspections, research, analysis that identify
11 deficiencies in plant design or operation.

12 We do train staff at all levels in the backfit
13 management. We've had procedures in place since 1985.

14 We also report on an annual basis to Congress on
15 backfits that were imposed during a given year. So that's a
16 public report, and Congress receives an annual one.

17 We have a centralized document system that
18 maintains each plant-specific backfit that's in process for
19 each plant and is used to monitor the status or the
20 implementation.

21 We have a -- I think a problem that I would add
22 to this list, that tacit approval of activities by the NRC
23 staff and then subsequent identification of a deficiency in
24 that particular area of activity is an ongoing source of
25 difficulty.

1 For instance, if an NRC inspector has reviewed a
2 practice of motor-operated valves and has approved it over
3 the years, nicely documented, when there is a subsequent
4 deficiency identified and we say there's a real problem with
5 that, is there a backfit.

6 To determine that, one has to get beneath the
7 surface. And through the workshops we've talked about some
8 examples like that. We'll try to enter some of them later
9 on.

10 We try to say that tacit approval is restricted to
11 cases in which the NRC has not acted in a reasonable time to
12 a written submittal, and the licensee simply moves ahead.

13 I don't have a slide for this.

14 It's not likely to be supported in instances of
15 failure to challenge the practice.

16 Could I have Slide 12, please?

17 This is to emphasize that all NRC staff members
18 are responsible to identify proposed backfits. There is a
19 process; there is analysis and documented evaluation that's
20 necessary before communicating the backfit to the licensees.

21 Now, the licensees have a right to claim that an
22 action is an unreviewed backfit. That would be your first
23 issue.

24 The agency has taken an action; you didn't call it
25 a backfit. It clearly in your mind is. You may make that

1 claim. You should make that claim if this occurs.

2 You have the right to appeal if there is a denial
3 of the claim of an unreviewed backfit. You certainly have
4 the right to appeal our determination of an adequate
5 protection or compliance exception if it doesn't meet the
6 criteria.

7 You also have the right to appeal to modify or
8 withdraw a staff-proposed backfit. There is a sequence of
9 appeals. If the backfit was issued from Headquarters, then
10 you would go to usually an office, normally NRR, with your
11 appeal. If it was an inspection-related activity or
12 enforcement-related activity, then it would be with the
13 region, and finally to the Executive Director for
14 Operations.

15 Appeals are resolved through meetings and if
16 necessary through the EDO. The EDO has used the Committee
17 to Review Generic Requirements as a body to help him in the
18 appeal process when it has gone to the EDO, to review a
19 specific appeal.

20 I would give as an example the proposal to use
21 nuclear heat in BWR hydros. That issue was discussed at
22 various levels and appealed, and an appeal was made finally
23 to the CRGR review.

24 Could we have No. 11?

25 This is just simply an outline of the activities

1 that the Manual Chapter 0514 covers in providing direction
2 to the staff and, of course, providing a record to the
3 industry of what our guidance is.

4 I'd like to talk a little more about the appeal
5 process. A claim is normally sent in writing to the office
6 director or regional administrator of the employees that
7 imposed the backfit, with a copy to the Executive Director
8 for Operations.

9 The NRC reports to the EDO and provides a response
10 to the utility within three weeks of the request. It's not
11 a resolution normally, but it's giving the schedule and
12 plans for going to resolution.

13 I essentially talked about the types. The first
14 appeal, appeal to reverse a denial and an appeal of adequate
15 protection or compliance.

16 A decision of the office director may be appealed
17 to the Executive Director for Operations.

18 I think I didn't mention that the appeal process
19 is the same for either specific or generic requirements.

20 Could I have No. 13?

21 Okay. This is the Committee to Review Generic
22 Requirements. The object is to have a nonorganizational
23 group of senior NRC personnel to review issues, propose
24 generic actions in an objective way, and to look for
25 unnecessary burdens, to look for the exposure of workers and

1 to conserve both NRC and industry resources while protecting
2 the public health and safety.

3 It is a focal point within the agency for review
4 of generic correspondence.

5 There are six members. I'm currently chairman.
6 Frank Miraglia of NRR is one of the members. Brian Sheron
7 from the Office of Research is a member. Guy Arlotto from
8 Nuclear Materials Safety and Safeguards is a member. Janice
9 Moore from the Office of General Counsel, and Luis Reyes is
10 our regional representative.

11 He will soon be replaced by Joe Callan of Region
12 IV. That's not a formal announcement, but that's going to
13 happen in the near future. Like the next meeting.

14 Joe, is that okay? Wherever you are.

15 The need to have regional representation on the
16 CRGR, not representing the region but representing regional
17 viewpoints, the inspection's viewpoint, is essential.

18 When I was first appointed to the CRGR, I had some
19 of the most current experience in Headquarters on regional
20 matters. So that's how I got there to start with, I think.

21 I've lost my regional perspective since then. And
22 so we continue to have personnel from the region. It's a
23 benefit both ways.

24 The region benefits from understanding what
25 generic actions are coming down the pike. The individual

1 benefits, and then he's able to feed back into the process
2 the regional viewpoint, "Well, if you issue the generic
3 correspondence that way, this is going to cost the region a
4 lot in inspection. And if you changed it to this, it would
5 cost less."

6 And he also feeds back, "That's an impractical way
7 for a utility to implement this particular requirement."

8 So there are great benefits for all of us.

9 Could I have 14?

10 The CRGR members are appointed by the Executive
11 Director for Operations. The OGC member is also appointed
12 by the General Counsel, since the General Counsel does not
13 report through the EDO.

14 I think most importantly the members are not
15 representing their offices. The NRR member may very well
16 vote against a generic letter that his office has
17 promulgated because he's now looking at it in a different
18 light, and that's established through records that people
19 don't support based on office; they support based on
20 background, knowledge and experience.

21 The Committee was established in November 1981,
22 well before 50.109 was revised to the state that it is now.

23 There has been a charter since its implementation
24 in 1981 that identified the scope, authorities and
25 responsibilities.

1 And, of course, the Commission reviews the charter
2 and then approves the charter as it presently stands.

3 Could I have the next slide, please?

4 These are the types of documents that are
5 considered by the CRGR in its review process. Policy
6 statements are issued generally through a Commission paper.

7 New and revised rules, including the advance
8 notice of proposed rulemaking, review of proposed regulatory
9 guides, Standard Review Plan sections, because those affect
10 you directly.

11 When a Standard Review Plan is changed or a new
12 Standard Review Plan is applied, there is the potential for
13 a backfit associated with that new SRP.

14 Branch technical positions are also subject to
15 CRGR review.

16 The ones that I think are the most apparent, and
17 in fact constitute the larger workload for the Committee,
18 are generic letters and 50.54(F) letters and bulletins.

19 Whenever there is a change to the Standard Tech
20 Spec, that's a matter that is reviewed through the CRGR, and
21 then interpretation of generic staff positions are also
22 reviewed by the Committee.

23 Could I have the next slide?

24 The considerations -- The first thing the
25 Committee is interested in: Does it really enhance safety?

1 If it does, how much? Can it be quantified?

2 And it's disappointing that in many cases we can't
3 quantify. As we get better with our PRA process, perhaps
4 we'll get better at quantifying.

5 But this is where judgment must enter in. If you
6 can't quantify, then you have to recognize, "Okay, on an
7 other-than-objective basis, what is the benefit? What are
8 the costs?"

9 And, of course, after you have made that
10 determination about enhancing safety, if it's adequate
11 protection or compliance, cost is not really an element in
12 the decision unless you have choices to make between
13 different ways of getting adequate protection or obtaining
14 compliance.

15 If it's a substantial improvement in safety, is it
16 a cost-justified substantial improvement?

17 Now, there are provisions for rare, emergency
18 actions without prior review by the CRGR. That has been
19 exercised in the past.

20 This is when we learn something new, we must
21 indicate to the industry very promptly. Then it's sent out
22 without a CRGR review.

23 However, that activity is documented and reported
24 to the Committee and to the Executive Director for
25 Operations. But it's after the document has been issued.

1 We have an expedited review process that we can
2 hold special meetings, and within days -- like two days --
3 convene and review an urgent matter. It's less urgent than
4 what I would call an emergency action.

5 Routine considerations are on the order of two to
6 four weeks. The staff provides a documentation package, and
7 many of these are voluminous.

8 The Committee members have the material for, we
9 hope, two weeks. And, Jim, you're going to have to do
10 better so we have it sooner.

11 Like everybody else, we'd like to have enough time
12 to review it thoroughly.

13 We normally have meetings scheduled for the second
14 and fourth Wednesdays of every month. We hold typically 22
15 to 25 meetings a year. There are a few special meetings
16 held.

17 So we just simply keep our calendar open for those
18 meeting days and then enough flexibility to meet more
19 promptly, if necessary.

20 The discussions are candid, intense, as any
21 committee would be with an amount of independence in it, and
22 the senior managers -- the views are strong, and I think the
23 issues are pretty well covered.

24 Could I have the next slide, please?

25 But the meeting is closed. It's not a public

1 meeting. So you'll have to take my word for what I just
2 said.

3 The Committee recommends to the Executive Director
4 for Operations through formal meeting minutes. These are
5 provided to PDR of any actions taken. So all of the CRGR
6 activities and then the supporting information is provided
7 to the Public Document Room.

8 The Committee can, and in some cases does, request
9 additional information from the staff on a particular issue,
10 when we find that we don't have enough information to make a
11 determination.

12 We have -- We can and have made requests to
13 industry on the issues where we felt that we needed
14 additional information, particularly on the cost/benefit.
15 These are fairly narrowly focus.

16 We have to be cautious of an Advisory Committee
17 Act. And, Geary, when you give your discussion, how about
18 telling how the interface of that works?

19 MR. MIZUNO: Okay.

20 MR. JORDAN: Next slide, please.

21 I think maybe it is well to mention what the
22 package does include. And, like I say, these are
23 substantial packages. They cost the staff time to prepare
24 and, of course, require detailed review by the Committee
25 itself.

1 If the actual requirement is a generic letter, a
2 draft of the letter is provided. The documentation that
3 justifies why this is needed is provided. The schedule and
4 method of implementation is provided.

5 A backfit analysis or documented evaluation,
6 depending on whether it's a 50.54(F) or a backfit, is
7 provided.

8 And a clear definition of which plants are
9 involved.

10 And we've added an element that's on your list.
11 Safety goal considerations.

12 We're using, as best we can, the safety goal
13 guidance without becoming a slave to the numbers game. I
14 don't think industry or NRC are quite ready to say that we
15 must be at five times ten to the minus five, or one times
16 six to the minus six, or some other number precisely.

17 But when we find an activity that is not going to
18 improve safety but a factor of two, that's in the noise. We
19 really don't get very excited that we've got a safety
20 justification for that kind of improvement.

21 If we have a couple of decades, then, yeah, we get
22 excited about it. And we're interested, of course, in a
23 family of plants that are particularly vulnerable to a given
24 problem.

25 And so the safety goal considerations are -- The

1 Commission has directed the staff to consider more
2 thoroughly the safety goals in their deliberations, not to
3 become a slave to the numbers game.

4 So I just bring that up for that purpose.

5 Next slide, please.

6 One of my particular views is that the CRGR,
7 because of senior members who have a great deal of
8 experience and background in the agency and in nuclear
9 activities in general, provide a technical review, in
10 addition to a backfitting review.

11 The kinds of things that the Committee has done in
12 the past, in terms of "fors" and "againsts," the Committee
13 did not support a revision to Reg Guide 1.33 on quality
14 assurance. We simply felt that it wasn't justified, that it
15 was an unnecessary embellishment that we didn't think was
16 going to bring additional safety, and there was a cost
17 associated with it.

18 We didn't support the endorsement of an ASME
19 subsection on inspection of steel containments. There we
20 felt that that revision had not kept up with science and
21 what was happening with containments. It was a backwards
22 step to what was actually being done by utilities.

23 We feel very uncomfortable going against a
24 consensus standard. Our position is that when the industry
25 and regulator have come together on a consensus standard, we

1 would like to be able to promulgate it without modification.
2 But despite that predisposition, we couldn't handle that
3 one.

4 There have been a number of cases where the
5 Committee has modified -- in fact almost every case, but
6 I'll give a couple of examples -- where we've narrowed the
7 action that was proposed by the Staff.

8 A bulletin on Rosemount Transmitters was too
9 broad. The problem was, from our understanding -- and Carl
10 Berlinger would probably argue with me here -- was confined
11 to a narrow set of specific models of Rosemount
12 Transmitters.

13 So we didn't want to extend it to a wider group of
14 Rosemount Transmitters when there wasn't evidence at this
15 point.

16 That's a place where the regulator becomes
17 uncomfortable because there may be a problem out there, and
18 we just haven't looked in that area.

19 So that's a place where you have to make a
20 decision, and it's a place where industry can help by
21 feeding back or by working with us in a narrow sampling of
22 the public utilities to make sure that we don't have a
23 problem in that kind of an area.

24 A bulletin on Channel Box Bow, that was not really
25 a big problem. But -- I mean, in terms of the change. But

1 the staff actions weren't clear that it was only for used
2 channel boxes that had to be examined more carefully.

3 In other cases, the CRGR has strengthened actions
4 proposed by the staff.

5 The bulletin on Shutdown Margin, we felt it was
6 important that training be added, that the operators be
7 specifically trained on the considerations in this
8 particular bulletin on maintaining an adequate shutdown
9 margin.

10 A proposed final rule on dry storage containers,
11 the Committee felt very uncomfortable about the testing or
12 lack of testing that was involved in some of these dry
13 storage containers.

14 So we suggested, and the staff picked up, on
15 the -- they added testing.

16 I think I will skip the rest of that and make
17 another comment about the consensus standards. That's an
18 area we do want to talk about here as being a problem.

19 Standards are very slow. Many of us participate
20 in standards committees, and there's a long lead time in
21 getting the standards modified or changed.

22 We'd like to support the standard when it has
23 gotten through the process. We like to discourage
24 exceptions, but there are cases in which we feel it's
25 necessary.

1 Now, further examples on 20 and 21, I think I'll
2 just pick one because Carl Berlinger is going to talk about
3 many of these. I'll just pick the first one on the PTS
4 considerations.

5 This is a proposed action that the Committee and
6 the staff -- We find that it was an adequate protection
7 issue. Arguably, it could be a compliance issue.

8 However, because of the extreme importance that we
9 feel about the reactor vessel and because of the substantial
10 change in the data regarding embrittlement, the Committee
11 believed that adequate protection dominated in this
12 particular case.

13 We argued internally, and it may be a useful thing
14 for us to talk about further here, if someone wants to raise
15 it.

16 But our philosophy generally is if it's a choice
17 between two, and both are involved, that it is adequate
18 protection or compliance, we pick adequate protection.

19 If it's a choice between compliance and a cost
20 beneficial safety improvement, we generally pick compliance.

21 And so the staff leans toward either adequate
22 protection or compliance when they're involved. And,
23 unfortunately, in most of the backfits you'll find elements
24 that are -- "Well, that's really compliance, but this piece
25 is a substantial safety improvement, and here's a little

1 piece that could be considered adequate protection."

2 You have to decide, and maybe through feedback
3 like this, you'll understand why we decide, and you'll
4 convince us that some of our decisions have not been as good
5 as they could have been.

6 I'm going to shuffle past pages 20 and 21 and go
7 to 22.

8 22 is pretty much an extract of the regulatory
9 impact survey and the AEOD/CRGR survey of utilities
10 regarding number and overall burden of generic
11 communications, cost and schedule impacts.

12 In terms of cost, the survey that AEOD and CRGR
13 did of utilities, we selected the cost median/mean, et
14 cetera, was not far different from what the staff selected
15 or had estimated.

16 We had had particular generic actions that there
17 has been a large gradient.

18 I think the other point is that within those costs
19 that you communicated back to us, there were many cases in
20 which some plants had a much higher cost, a much lower cost
21 than the mean or the median.

22 So we did not recognize those extremes in our
23 deliberations.

24 Schedule impacts, we now are thinking more on
25 numbers of refueling cycles or numbers of fuel cycles for

1 implementation schedules.

2 I think you're seeing more flexibility there. I
3 hope that at least is the case.

4 The basis for issuing requirements is often not
5 clear to licensees. We take an action to make that clear in
6 the communications we transmit.

7 I believe the previous workshops liked this. It
8 was recommended that we add more details so that the basis
9 was abundantly clear. So we're going to consider doing
10 that.

11 There's a concern that the use of the backfit rule
12 is not encouraged by the staff. I think there's a
13 misperception.

14 We'd like to try to do our communications to fix
15 that, and where you find instances that we're not abiding by
16 the backfit rule, you have an obligation to bring it to our
17 attention. That's in your management involvement process.

18 The fear of retaliation, if a claim is filed, by
19 training our people and by communicating with you, I hope
20 that fear goes away.

21 The independence of the appeal process, the first
22 appeal may involve individuals that in fact implemented the
23 backfit. They know the most about it. They have a chance
24 to relook.

25 The second appeal does not involve those

1 personnel. And certainly, finally, in terms of training,
2 the reason we're here is to provide communication,
3 opportunity for us to understand one another better
4 regarding backfit.

5 Could I have the next slide, please?

6 We've talked about the training that has been
7 provided, the survey of licensees, adding statements to the
8 documents that we transmit. I hope those have helped.

9 The SALP process has been revised -- I'm sorry.
10 Revision has been proposed in order to eliminate this
11 responsiveness to NRC initiatives as an explicit item.

12 I believe that is actually in place.

13 MR. GWYNN: It's in place.

14 MR. JORAN: Okay. It's in place.

15 And, finally, the 1409 NUREG that I've shown a
16 couple of times was the promulgation of information.

17 The last slide, please.

18 We expect to hold future workshops with industry
19 that we will do on a periodic basis so that we don't lose
20 touch with reality, that you folks have an opportunity to
21 bring us back to earth.

22 We are continuing to hold workshops with our own
23 staff to keep them appraised and singing from the song
24 sheet.

25 And, certainly, one of the issues is how do we

1 consider the cumulative effect of the various requirements
2 on you, and there are considerations more like the living
3 schedule program that the NRC and industry have tried
4 several years ago. Some kind of interchange so that we know
5 what you consider high priority, and we know what we
6 consider high priority, and those are considered together.

7 We're considering the need for changes to our
8 charter, the CRGR, to help make the process work better, and
9 considering whether or not revisions to 50.109 are
10 appropriate at this time.

11 So that's an overview I would be pleased to
12 entertain questions or comments at this point, and then
13 we'll have a break. We're pretty much on schedule. And
14 then we'll pick up with Geary Mizuno on the legal aspects
15 and also our NUBARG/NUMARC representatives.

16 So are there comments or questions from the
17 participants?

18 MR. VASSELLO: Jim Vassello from Beaver Valley.

19 Just one quick question for you. I understand
20 that the CRGR has been a damned good thing for us for a long
21 time. You came on the scene, and I think you presented some
22 good options for us, and, let's say, sobering implements
23 from the Commission.

24 But you did help in the Bulletin 90-01, Rosemount
25 issue. I had some question.

1 I guess your charter talks about the tools you
2 use, that you look at the PRA aspect. Did you guys actually
3 look at the PRA on those Rosemount issues?

4 MR. JORDAN: I'm trying to recall.

5 Jim --

6 MR. CONRAN: I don't recall.

7 MR. JORDAN: I don't recall that it was part of
8 the package, and Jim Conran does not either.

9 MR. VASSELLO: Okay. I was just wondering what
10 was unacceptable about that.

11 MR. JORDAN: Normally, we are looking for some
12 kind of a basis, in terms of risk; and so if we missed a
13 document, I'd like to look at it.

14 Okay.

15 MR. SORENSON: Jerry Sorenson from Washington
16 Public Power. A couple of questions.

17 On one of your slides it states that there's a
18 centralized agency-wide records system that documents plant-
19 specific backfits that are in process. Is this something
20 that's publicly available, or is that closed within the
21 agency?

22 MR. JORDAN: It's closed within the agency.
23 Printouts from it are reachable under FOIA.

24 MR. SORENSON: Okay. Thank you.

25 Another question --

1 MR. JORDAN: Wait just a moment. Let me make sure
2 through Carl that there's not a periodic document that's
3 publicly available.

4 MR. BERLINGER: I don't think so.

5 MR. JORDAN: Okay. The answer stands.

6 MR. SORENSON: A second question. You talked
7 about the process for CRGR review and such. Is there a
8 mechanism for utilities to provide some input while that's
9 going on on new issues?

10 I know you issue a periodic letter to the industry
11 that says, "Here are proposed generic letters and such that
12 are coming out in the future."

13 But is there a way for us to have some influence
14 on those discussions as they go on? And is it okay to lobby
15 with members of the CRGR at that time?

16 MR. JORDAN: No, we won't talk to you.

17 The staff does solicit specific information from
18 industry, if we have a need for, let's say, an information
19 survey, a 50.54(F) type survey before some other stronger
20 document is issued.

21 Then that would be an opportunity for industry,
22 individually or collectively, to respond.

23 But that's where we do get into the advisory
24 committee problem of having an industry lobbying affect a
25 regulatory decision without it being a public process.

1 MR. SORENSON: Okay. Thank you.

2 MR. BERLINGER: Just to add one thing. From the
3 standpoint of the staff and the interaction between the
4 staff and agency representatives, whether it be utilities,
5 owners groups, NUMARC, INPO, EPRI, we have on occasion,
6 especially with the more sensitive issues, such as service
7 water system, Rosemount transmitter, air system problems,
8 interacted directly with the industry.

9 And on occasion we have made available draft
10 documents which are also put in the public document room.
11 So even though we may be interacting with, say, EPRI service
12 water system working group, we also could be receiving
13 comments, criticisms and suggestions from anyone else who
14 obtains the document from the public document room.

15 MR. JORDAN: And I think that's a consideration
16 we're making right now is should there be a wider
17 dissemination of proposed actions and a comment period; and
18 if so, it has to be a fully public -- like a Federal
19 Register type notice, in order to be legal and aboveboard.

20 And so the Commission and staff are looking at
21 what's the right balance here, so that you haven't
22 handcuffed the staff to go ahead and proceed for a safety
23 issue, and yet you have provided appropriate opportunity for
24 industry and the public to interact on issues that don't
25 require prompt action.

1 And I think we're probably leaning more in the way
2 of a comment period.

3 Your discussions here may help me, because this is
4 a public meeting.

5 Other comments?

6 Yes.

7 MR. BETHAY: I'm Steve Bethay. I'm eavesdropping
8 from Region II. I didn't get to go to the meeting there.

9 Could you talk a little more about the tacit
10 approval and later finding a problem? That's one that seems
11 to come up from time to time.

12 MR. JORDAN: Yeah. I guess I could give other
13 examples, and it's a source of friction between the staff
14 and the utilities, I believe, that in some cases there has
15 been a review -- let's say an inspection of an activity --
16 and no problems were found

17 There may be a brief note in the inspection
18 report, "Reviewed X. Found no problems."

19 Two years later a different inspector goes in and
20 reviews X and finds a bushel of problems. That's where the
21 utility believes that there's a tacit approval, and the
22 staff believes they were doing a sampling and didn't look at
23 that particular activity.

24 So there is tension on those.

25 Okay. And, Bobby, I'll get to you -- Why don't

1 you go ahead and comment.

2 MR. BETHAY: Let me change my question just a
3 little bit. I understand what you're saying, and that I
4 really don't have much of a problem with.

5 I'm wondering more about the things where we
6 submit or something to NRR for review. And then it stays
7 there a long time with no action back, so we go do it.

8 MR. JORDAN: Yeah. I'll give you the example
9 there. In reviewing in-service testing at utilities, we
10 found that in-service testing in many cases wasn't
11 implemented.

12 The utility said, "Well, we didn't implement it
13 because we submitted a program, and the NRC didn't approve
14 it. So we felt that there was no action."

15 Well, other utilities submitted -- There was no
16 action and they implemented it, and the NRC didn't like it.

17 That's the one where --

18 MR. BETHAY: That's the problem.

19 MR. JORDAN: That's the tacit approval one. And I
20 think the utilities do have a basis for saying, "Well, you
21 didn't act in a reasonable time. You have tacitly approved
22 that particular program."

23 The NRC is trying to control its own processes so
24 that there are fewer of those instances that occur.

25 Bobby, you had some comments.

1 MR. FAULKENBERRY: I just had an inspection
2 example. I think the commercial grade procurement issue --
3 Jerry from WNP-2 I think will talk about this later -- but
4 that's an element of this tacit approval.

5 I think there was an element in that in which
6 possibly this utility had a commercial grade procurement
7 program in effect for a number of years. It was inspected a
8 number of times, and there was, I think, some certain
9 feelings that we had in essence seen it, bought off on it
10 and what have you; and then at a later time, a different set
11 of bodies and a different period and so forth, came and look
12 at it and was dissatisfied.

13 So that's, I think, an example where that happens.

14 MR. JORDAN: The way I like to look at it is, is
15 there a problem -- is there an actual safety problem here;
16 and if so, what should be done about it.

17 If there is a difference between whether a
18 particular element should be signed or some administrative
19 process, then I don't really think we would argue very long
20 about it.

21 But the thing I would urge is where there is an
22 issue like that, that the utility and the NRC get together
23 and understand it in great detail and decide if there is a
24 problem related to safety that ought to be fixed, and try to
25 stay away from the backfit legal determination as long as

1 you can and work on safety determinations.

2 If you can't work it out in that fashion, then,
3 sure, we'll do the 50.109 consideration as a way of getting
4 a resolution.

5 Other comments?

6 Comments from the panel?

7 MR. MONTGOMERY: I've got one. From the
8 standpoint of plant-specific backfits and the process of
9 getting a dialogue going between a utility and at least the
10 region, the one disappointment I think we have at least in
11 Region IV -- whether it has gotten better or not, I don't
12 know; I hope it will get better in the future -- is I would
13 encourage you again, and we've done it before and will
14 continue to do it, to make sure that you at least bring
15 issues to us.

16 One plant-specific backfit -- one of two in the
17 last three years is one in which a plant felt that an
18 inspection result was in fact a backfit and did not raise
19 the issue with region.

20 It was only some time at a later date when Mr.
21 Jordan in his role as the program office at Headquarters
22 sent out a questionnaire to all utilities asking about their
23 experiences with backfit, that the utility said, "Oh, by the
24 way, we think that this one that went on at some such time
25 before might be a backfit," that it got itself into the

1 process where we could sit and have that dialogue.

2 The thing that will make this work, both for your
3 benefit and for our benefit, is to have that discussion and
4 make sure that specific issues that come out of the
5 inspection program are discussed at management level.

6 That's the message I would leave here.

7 And if a utility does not bring those to either
8 regional management attention or probably to headquarters
9 management attention, we can't have that dialogue. If we
10 don't know there's a problem or a potential problem, we
11 can't deal with it.

12 MR. JORDAN: And I hope what you're seeing is a
13 friendlier face on this side to hear your problems without
14 jumping down your throat, that we're committed to that.

15 Other panel member comments?

16 MR. GWYNN: I would like to take the opportunity
17 to just make an observation for you all.

18 In my previous life working on the Commission
19 staff before I came to work in Region IV, I had the
20 opportunity to observe independently the function of the
21 CRGR.

22 I know that Mr. Jordan is reluctant to toot his
23 own horn, but because the meeting is closed to you and you
24 don't have the opportunity to look at that process, I'd just
25 like to note that my view -- and the Commission itself is

1 very interested in the functioning of this process -- my
2 view was that those meetings are very rigorous, both in the
3 depth and breadth of the review and the inquiry that they
4 bring to the issues that comes before the Committee.

5 And I found that the process was somewhat similar
6 to the scientific peer review process in that rather than
7 the plant operations review committee type processes that
8 I've seen ongoing at the plants, this is a much more
9 rigorous approach than what I've generally seen applied in
10 the safety review process that's done at the facilities.

11 So I just wanted to make that observation.

12 Clearly, an item that comes to the CRGR and does
13 not receive its endorsement essentially has received a death
14 knell. That's an important factor.

15 I just wanted to share that.

16 MR. JORDAN: I appreciate the comments. We tried
17 to exclude the Commission staff from those meetings. We can
18 keep the public out, but we couldn't keep the Commission
19 staff out.

20 Any comments from other panel members?

21 MR. BERLINGER: You need a bigger bouncer.

22 MR. JORDAN: Right. Conran is the biggest we
23 could find.

24 It's 2:45. I can't believe we're exactly on
25 schedule. We have a 15-minute break and will resume at 3:00

1 on legal aspects.

2 [Recess taken from 2:45 p.m. to 3:00 p.m.]

3 MR. MIZUNO: Good afternoon. My name is Geary
4 Mizuno, and I'm from the Rulemaking and Fuel Safety Division
5 of the Office of General Counsel of the Nuclear Regulatory
6 Commission.

7 My division is the division that has primary
8 responsibility for reviewing generic letters and rulemakings
9 to determine whether backfit rule implications are raised,
10 and if so, whether the staff is complying with the rule.

11 We interact also with the other divisions of the
12 General Counsel's office. Usually we have backfitting
13 concerns which are raised on a plant-specific basis by the
14 Hearing Division of Office of General Counsel, because they
15 tend to be the counsel for the office, NRR.

16 And so the individual plant managers or the
17 product directors in NRR will take a backfitting issue that
18 is raised by the utility and then bring it to the Hearing
19 Division. Then the Hearing Division will then consult with
20 our division about it.

21 I just wanted to assure you that we do communicate
22 within OGC and try to have a broad perspective on these
23 backfitting issues. I'm not sitting up here in my ivory
24 tower considering these things in the abstract.

25 Today I want to provide a legal perspective on the

1 purpose of the backfit rule, briefly summarize the
2 regulatory history of the rule and discuss what the NRC must
3 do to comply with the requirements of the rule.

4 I would also like to address the backfit
5 implications of generic letters which request information
6 pursuant to 10 CFR 50.54(F).

7 I will not discuss the backfit provision
8 applicable to design specifications under Part 52. You
9 should simply know that there are special backfit provisions
10 that are applicable there, and it's probably not relevant to
11 this group of people here.

12 Finally, because Ed Jordan wanted me to address
13 it, I'll discuss a little bit about the Federal Advisory
14 Committee Act, also known as FACA, and the implications of
15 FACA for rulemaking.

16 The backfit rule represents the agency's method
17 for assuring that backfits are not imposed without due
18 consideration of their relationship to protection of the
19 public health and safety and their impact upon licensees.

20 Now, early in the history of nuclear power plant
21 regulation, there was relatively little concern about
22 backfits. However, in the late 1960s the number of
23 applications for construction permits had increased
24 substantially, and concerns were raised by licensees about
25 requirements which were being imposed by the AEC on the

1 nuclear power industry.

2 To address these concerns, in 1970 the AEC adopted
3 the very first backfit rule, 10 CFR 50.109.

4 For those of you who have a legal bent, you can
5 look up the first backfit rule at 35 Federal Register 5317
6 dated March 31, 1970.

7 The original backfit rule simply said that the
8 Commission may "require the backfitting of a facility if it
9 finds that such action will provide substantial, additional
10 protection which is required for the public health and
11 safety, or the common defense and security."

12 Relatively simple wording, but you can see that
13 the standards of backfitting were basically developed as
14 early as the 1970 rule.

15 Backfitting itself was simply defined as "the
16 addition, elimination or modification of structures, systems
17 or components of a facility after the construction permit
18 has been issued."

19 The Commission also indicated that it had the
20 right to require licensees to submit information on
21 additions, eliminations or modifications to systems,
22 structures and components of a facility.

23 Now, in the late 1970s the NRC embarked on an
24 effort to reexamine the 1970 rule because of complaints that
25 the agency was not complying with the 1970 rule.

1 In 1983 the NRC published an advance notice of
2 public rulemaking asking the public to comment on the need
3 for a new backfitting rule. That was published at 40
4 Federal Register 44217.

5 In 1984 a proposed rule was published. The final
6 rule was published in 1985. That's at 50 Federal Register
7 38097, and that final rule and its accompanying statement of
8 consideration is reproduced in the backfitting guidelines
9 document, NUREG-1409, which I believe all of you have.

10 The Union of Concerned Scientists, UCS, appealed
11 the 1985 rule on the basis that the rule impermissibly
12 allowed the agency to consider cost in making safety
13 decisions.

14 The D.C. Court of Appeals rejected the UCS
15 position. Instead, the Court accepted the NRC's central
16 proposition that it could, where adequate protection or
17 regulatory compliance was not in issue, consider cost.

18 However, the Court vacated the '85 rule because it
19 felt that there was an ambiguity in the rule and the
20 accompanying statement of considerations, which suggested
21 that the agency could consider cost in considering whether
22 to impose backfits necessary for adequate protection.

23 The case is Union of Concerned Scientists versus
24 U.S. Nuclear Regulatory Commission at 824 F.2d. 108. That's
25 the D.C. Circuit, 1987.

1 We commonly refer to this case as UCS-1.

2 In response to UCS-1, the agency modified the
3 backfit rule, the '85 backfit rule, to make clear that costs
4 will not be taken into account where the backfit is either
5 necessary to protect the public health and safety or common
6 defense and security, or it is needed to assure compliance
7 with NRC requirements.

8 The proposed rule was published in 1987, and the
9 final rule was adopted on June 6th, 1988, at 53 Federal
10 Register 20603.

11 Again, the 1988 final rule and its accompanying
12 statement of considerations is reproduced in Appendix B of
13 the backfitting guidelines, that NUREG.

14 UCS again appealed the 1988 rule to the D.C. Court
15 of Appeals. However, the Court upheld the revised rule,
16 Union of Concerned Scientists versus NRC at 880 F.2d. 552.

17 So the 1988 rule is still in effect today. Now
18 how does the NRC apply the backfit rule in evaluating a
19 proposed agency action?

20 I believe that it is probably easiest to
21 understand the NRC's compliance with the backfit rule as a
22 series of steps which the agency must traverse.

23 The first step is to determine whether the
24 proposed agency action, or rather it's to determine exactly
25 what it is to define. What is the agency actually trying to

1 do?

2 And then once you have determined or defined the
3 proposed agency action, compare it against the definition of
4 the backfit in 50.109(A)(1) and determine whether it falls
5 within the definition of a backfit.

6 For example, if a proposed agency action is merely
7 to send up an advisory or recommendation, that action would
8 not be considered a backfit because it is not a requirement
9 that is being imposed upon a licensee.

10 I believe that Mr. Jordan discussed the definition
11 of a backfit, but I'll just go over it briefly.

12 There are essentially three parts to determining
13 whether an agency action falls within the definition of a
14 backfit.

15 First is that there be an NRC-required
16 modification or addition to a system, structure or
17 component, design, plant procedure or plant organization.

18 The second part of the definition focuses on
19 whether there has been a change to an NRC requirement or
20 staff position.

21 Finally, the rule requires that the change occur
22 after the issuance of a CP for CPs issued before October 21,
23 1985. That basically means all of you out there.

24 Now, if the proposed agency action meets the test
25 of a backfit as defined in 50.109(A)(1), the next step that

1 the agency has to do is to determine whether one or more of
2 the three exceptions in Section 50.109(A)(4) apply to the
3 proposed action.

4 You should understand that there may be cases
5 where a proposed agency action can fall into one or two or
6 perhaps even three exceptions. The agency is free to choose
7 which exception, if more than one exception applies.

8 Now, if one of these exceptions applies, then a
9 backfit analysis need not be prepared, and the standards for
10 imposition of a backfit under Section 50.109(A)(3), which I
11 will discuss later, need not be addressed.

12 The important thing to understand, though, is that
13 the agency has to develop a, quote, documented evaluation
14 showing that one of the three exceptions applies.

15 These three exceptions are, first of all, that the
16 modification is necessary to assure compliance, compliance
17 exception.

18 The second one is that the regulatory action is
19 necessary to assure adequate protection. And the final one
20 is where regulatory action involves defining or redefining
21 the level of protection that is necessary for adequate
22 protection.

23 In some people's mind, exceptions two and three
24 tend to grade into each other. At least from my perspective
25 they do represent different approaches or different

1 concerns.

2 If someone wants to ask me about that in the
3 question-and-answer period, we can go into that a little.

4 Now, if the backfit does not fall into one of
5 these exceptions, then the agency must go ahead and prepare
6 a backfit analysis. The purpose or function of this
7 analysis is to demonstrate that the standard in 50.109(A)(3)
8 has been met.

9 That standard is, quote, that there is a
10 substantial increase in the overall protection of the public
11 health and safety, or the common defense and security, to be
12 derived from the backfit; and that the direct and indirect
13 costs of the implementation for that facility are justified
14 in view of this increased protection.

15 As you can see, that standard basically has two
16 elements to it. First of all, that there is a substantial
17 increase in protection.

18 If the agency cannot show in its backfit analysis
19 that there is going to be a substantial increase in
20 protection, then the analysis that is there, the agency
21 cannot impose the backfit.

22 Now, assuming that the agency can show that there
23 is going to be a substantial increase, it then must
24 demonstrate that the benefit to be derived is justified in
25 light of the cost of implementation to be imposed upon the

1 licensee.

2 Now, as a practical matter, the CRGR not only
3 considers the costs that are to be imposed upon the
4 licensees, but also considers the internal costs within the
5 NRC.

6 Is that true, Mr. Jordan?

7 MR. JORDAN: [Nods head.]

8 MR. MIZUNO: Now, what is the content of this
9 backfit analysis, and what information can the Commission
10 consider in determining whether the substantial protection
11 and the cost/benefit has been met?

12 Well, basically the Commission can consider any
13 and all information available to it, including any or all of
14 the factors which are relevant as set forth in Section
15 50.109(C)(1) through (9).

16 I would like to correct a misapprehension among
17 some people, both within the staff and from licensees that
18 I've talked to, where they have suggested that each and
19 every one of the elements in 50.109(C)(1) through (9) have
20 to be addressed. That's not true.

21 It's only those elements which are relevant to the
22 actual action being proposed, the backfit being proposed by
23 the agency need be addressed.

24 The other thing that I'd like to suggest is that
25 the agency need not perform an actual mathematical

1 cost/benefit analysis in determining whether the costs of
2 implementation are substantial, whether they override the
3 safety benefit to be derived.

4 The agency is free to consider nonquantifiable
5 benefits and costs.

6 Okay. I guess we should now go on to a very
7 controversial area involving the use of generic letters and
8 the 50.54(F) information requests.

9 It's my understanding that the licensees believe
10 that the NRC is using 50.54(F) improperly as a basis for
11 imposing requirements upon the licensees.

12 The use of a 50.54(F) letter to impose a
13 requirement, an action, asking you to do something,
14 requiring you to do something would be improper.

15 A properly formulated 50.54(F) information request
16 can merely request information from the licensee to
17 determine whether a license needs to be modified, suspended
18 or revoked.

19 An information request is not a backfit because an
20 information request does not impose an NRC-required change
21 or addition to a nuclear power plant system, structure,
22 component, design procedure or licensee organization.

23 Now, I guess I need to emphasize again that these
24 generic requests, although they request information, you are
25 required to respond to them.

1 And in the course of issuing a 50.54(F) letter,
2 what the staff should do is to offer a recommended course of
3 action, and then in its information request query as to
4 whether you intend to implement that request or not.

5 From OGC's standpoint, if the letter does that, it
6 makes a recommendation and then asks you pursuant to
7 50.54(F) to tell us whether or not you intend to implement
8 that recommended action, that would be an acceptable
9 50.54(F) request.

10 What would not be acceptable is if the letter
11 simply said, "This is what the staff believes is necessary.
12 You shall implement it. Please tell us in your response
13 when you're going to do it." That would be improper.

14 Now, having said that you only can request this
15 information, it should be pretty clear that the staff does
16 not go out with 50.54(F) requests recommending action unless
17 it really believes that this action is necessary or
18 desirable.

19 So after having said all these things, I don't
20 want to leave you with the misimpression that you can ignore
21 these letters. We really do want you to read them and to
22 consider the recommended action. And, hopefully, you will
23 agree with us that they are either necessary for adequate
24 protection or are cost -- are a cost-justified safety
25 enhancement.

1 Normally, the 50.54(F) letter should state whether
2 the actions that are being recommended in the letter
3 represent something which is necessary for adequate
4 protection, for compliance, or whether it represents an
5 enhancement.

6 Now, OGC recognizes that 50.54(F) requests can be
7 burdensome and impose substantial resource costs on
8 licensees. A good example is the IPE and IPEEE. Those are
9 information requests. They don't actually require you to
10 make any changes in your hardware or your procedures.

11 However, to conduct an IPE or an IPEEE can, for
12 some facilities, be substantial, in the millions of dollars.
13 And I think that there is some tension here or some concern
14 upon licensees that we do not issue these kinds of requests
15 without consideration.

16 I want to make clear that the 50.54(F) requires
17 the agency to consider the impact or the burden of
18 responding to these information requests.

19 These requests have to be accompanied with a
20 statement setting forth the reasons for the information in
21 order to, quote, ensure that the burden to be imposed on
22 respondents is justified in view of the potential safety
23 significance of the issue to be addressed in the requested
24 information.

25 The only exception to this is where the

1 information is necessary to determine whether the licensee
2 is in compliance with his licensing basis.

3 At one of these previous workshops, a licensee has
4 suggested that a distinction be made between simply
5 collating existing information and providing it to the NRC
6 in response to a 50.54(F) request versus actually generating
7 new information, i.e., performing an IPE, performing a new
8 analysis.

9 In my mind, it's not clear that you can
10 distinguish -- or that there's a clear or right distinction
11 between simply collating information and providing it to the
12 NRC versus, quote, generating new information.

13 But even if you could make this distinction, I'm
14 not sure that it's really relevant because, as I indicated
15 earlier, the agency has to consider the burden on the
16 licensee of providing the information.

17 If the cost of providing the information is
18 substantial, it will be considered. If you have to perform
19 a new analysis, and if that involves a substantial increase
20 or devotion of resources and time, then that should properly
21 be considered by the NRC before it issues that request.

22 So I don't think this distinction between simply
23 collating information and generating information is a useful
24 one.

25 Okay. I think I have finished my discussion of

1 the backfit rule per se. Let me just talk a little bit
2 about the Federal Advisory Committee Act, FACA.

3 I am not the FACA expert within the Office of
4 General Counsel. We have an attorney that addresses these
5 issues, and I'm constantly referring over to them situations
6 that come up that I find out, sometimes inadvertently, where
7 I think there may be a FACA issue involved.

8 Generally, the Federal Advisory Committee Act
9 indicates that if you have an advisory committee, that
10 certain requirements are imposed upon any kind of meeting
11 involving that advisory committee.

12 The Act's definition of what an advisory committee
13 is is rather broad. It does not have to be a formally
14 constituted group. It can be as informal as five people who
15 decide to sit down -- from the industry, sitting down with
16 members of NRC and decide to talk about a particular
17 problem.

18 Under the situation where there is an advisory
19 committee, in accordance with the definition under FACA, and
20 if there is a meeting, basically what has to be done is that
21 there be a Federal Register notice published, that the
22 meeting be open, and that a transcript be compiled, or at
23 least a meeting summary be compiled.

24 We have generally tried to advise the staff that
25 notices should be made of meetings, that if, for some reason

1 or another, a Federal Register notice can't be made, that at
2 least a meeting notice be published and be posted in the
3 Public Document Rooms, and that the meetings be open to the
4 public.

5 We instruct the guards that meetings are going to
6 be held in a certain area and that they are open.

7 As a practical matter, there isn't much likelihood
8 of any -- I guess I would call them public interest groups
9 or concerns ... public individual bringing a lawsuit against
10 the agency under FACA, because the remedies under FACA are
11 not very strong. They're not very effective.

12 You can spend a lot of money and end up with the
13 agency simply agreeing to say, "Yes, in the future we'll
14 hold meetings openly."

15 But let me provide you with at least my own
16 personal belief as to why FACA has been a concern.

17 The idea is that the agency -- any agency should
18 not have private meetings in a rulemaking context, because
19 there is the danger of what they call private law, that
20 certain groups of the public might have special access to
21 agency decision makers and have an inordinate and improper
22 influence upon the rulemaking process.

23 I think that FACA is a concern -- It certainly is
24 a concern with the Commission. They've issued a policy
25 statement on public meetings, and I urge you to review that.

1 I don't think that FACA should be looked at as
2 something which should inhibit appropriate meetings between
3 the NRC staff and industry groups.

4 I guess my final point is that FACA, at least the
5 way that OGC has interpreted it, does not apply to where an
6 individual licensee is meeting with the NRC to discuss a
7 specific action that affects their plant.

8 That just makes sense because you're dealing with
9 a specific plant. You're not dealing with generic
10 rulemaking or something that only has generic implications.

11 That ends my presentation and I'm open to
12 questions.

13 MR. BETHAY: Steve Bethay with Georgia Power.

14 I guess this is the most recent generic letter
15 you've got out, 89-10, Supplement 3. I'm not going to talk
16 about the technical aspects of it.

17 But an administrative question: This was issued
18 as a 50.54(F) request, but it also has a pretty good backfit
19 discussion. So which is it?

20 And the second one is, on the very last page you
21 talk about the burden estimate. This says, "Estimated
22 average burden hours are 150 person-hours for each licensee
23 response, including assessment and recommendations. These
24 average burden hours pertain only to the identified
25 response-related matters, but do not include the time for

1 action, implementation or action."

2 What does that mean? Does that mean development
3 of a letter to send to you? Does that mean going and doing
4 all the research to develop the letter to send to you, or
5 does that mean going and fixing the valves?

6 We are always confused, and where the heck do they
7 come up with 150 hours?

8 MR. MIZUNO: Okay. Mr. Jordan, do you want to
9 answer the question about why the backfit analysis is
10 included with the generic letter, or I can give it an
11 initial stab?

12 I can tell you it's a matter of policy. I don't
13 know who set the policy.

14 But as a matter of policy, they're now requiring
15 the NRC staff to develop the backfit analysis, even though
16 the 50.54(F) letter does not actually impose a requirement.

17 That's because -- I guess I would say -- I guess a
18 matter of agency resource intensiveness and making sure that
19 we do things efficiently, because if a licensee decides not
20 to implement the recommendations in one form or another, and
21 the agency disagrees with it, the next step is to issue a
22 plant-specific order directing that licensee to take certain
23 actions.

24 If we do that and it falls into the definition of
25 a backfit, in which a backfit analysis is required, then the

1 time between getting the response back and issuing the order
2 will be lengthened, because the staff would then have to
3 actually prepare that backfit analysis.

4 If that backfit analysis were prepared ahead of
5 time, you know, you save that amount of time.

6 I think in addition it just -- It makes very
7 clear, at least to all the licensees, that we are taking our
8 backfit responsibilities seriously, and they can see for
9 themselves whether that agency has done its job.

10 And if they have any concerns about the backfit as
11 applied to their plant -- In other words, normally these
12 backfit analyses are generic. If they believe that, as
13 applied to their plant, a backfit is not cost justified,
14 then they can....

15 You know, it helps the licensee begin the process
16 for pursuing a plant-specific backfit appeal.

17 MR. BERLINGER: Let me address the other part of
18 your question about the estimate of burden hours.

19 That is intended to just represent an estimate of
20 number of hours required to prepare the response to the
21 50.54(F) request.

22 It does not include any hours for engineering or
23 for maintenance or hardware changes or even doing
24 calculations, unless you must do the calculations in order
25 to prepare the response.

1 Generally, we list the activities that are
2 included in that estimate of burden hours. It will be
3 specifically stated in that paragraph.

4 MR. MIZUNO: Let me expand upon that.

5 That estimate of burden is separate from the
6 backfit rule. That's required by, I believe, the Paperwork
7 Reduction Act.

8 MR. BERLINGER: Yes.

9 MR. MIZUNO: And I believe that all of these
10 statements -- that Paperwork Reduction Act for responding to
11 the information requests also, one, should include a
12 statement that says if you have any comments on burden, that
13 you are to refer them to the agency, as I recall, and to
14 OMB.

15 I can personally attest to one rulemaking where
16 licensees did avail themselves of the right to comment
17 directly to OMB on the burden question.

18 MR. JORDAN: Let me try to answer directly on 89-
19 10. This is the motor-operated valve under design basis
20 accident condition.

21 That correspondence was a generic letter that was
22 both a 50.54(F) letter, in terms of the need for the staff
23 to have more information. And it was a backfit under the
24 compliance exemption.

25 So we've muddied the water with you by having both

1 pieces in one piece of correspondence. And so we recognize
2 there was a backfit.

3 Our judgment was, it was a compliance exception,
4 that there was an intent initially that those valves be
5 operated under their design conditions.

6 And information that we had obtained through
7 testing and through experience indicated that there was a
8 likelihood that many valves, in fact, would not be able to
9 operate under their design condition.

10 So that was the reason and basis for that
11 particular generic letter. That followed a bulletin which
12 was only directed to rods valves that are in high-pressure
13 situations, IPSI type injection valves.

14 I have to say that the limitation of the bulletin
15 -- and I forgot the bulletin number --

16 MR. BERLINGER: 85-03.

17 MR. JORDAN: 85-03.

18 -- was in fact CRGR limitation. I was on the
19 other end of the stick at that point. I was proposing the
20 particular bulletin, and I wanted it to apply to all motor-
21 operated valves.

22 The CRGR reviewed it and limited it to the high-
23 pressure valves at the time, because it was believed that it
24 was not going to be in fact an even achievable effort by
25 industry in the time frame that was allotted.

1 That determination by the CRGR at the time....
2 There was an expectation under this one that industry --
3 once you've identified the problems under 85-03 would extend
4 it to all valves. Some utilities did. But industry in
5 general did not.

6 So that was the reason for issuing the 89-10 as a
7 generic letter, which gave you more flexibility in terms of
8 responding on what your plans and actions were going to be
9 than the original bulletin did, had we simply expanded the
10 scope within the bulletin.

11 So there was a lot of interaction on that one.

12 But the short answer is, it was both a 50.54(F)
13 and a backfit.

14 MR. BERLINGER: Let me add one more item in answer
15 to your question.

16 As Geary indicated, there was a policy decision
17 made -- the policy decision was made within OGC -- that all
18 generic letters and bulletins would be issued as 50.54(F)
19 letters under Section 182 of the Code of Federal Regulations
20 -- No, the Atomic Energy Act.

21 And so if you look at the wording of each and
22 every one of the bulletins and generic letters, you're
23 required to respond, and you're requested to consider the
24 recommendations presented by the staff.

25 MR. JORDAN: Be careful. The bulletins and

1 generic letters that are a backfit request you to take the
2 action. They don't require you to take the action.

3 So being careful with words, you're required to
4 respond. You're requested to take the action.

5 And if you don't take the action that's requested,
6 then your response is to identify what you do plan.

7 MR. CONRAN: Could I add a comment to that?

8 MR. JORDAN: Sure. If you clarify.

9 MR. CONRAN: I think Geary from the legal
10 perspective has indicated that proposed action by the staff
11 -- a new position that the staff informs you of in a generic
12 letter and asks you to implement, we treat that as a
13 backfit.

14 The Commission has told us and given us the
15 instruction in the CRGR charter internally, even though
16 we're working up to issuing a generic letter, not an order
17 or a rule which would be a legal requirement. A generic
18 letter requests action. It informs you of a new staff
19 position and a request that you implement it.

20 Geary has made a distinction that I think it
21 should be said that the generic letter -- Geary is right.
22 The generic letter is not like an order or a rule. It does
23 not require you to take an action.

24 The backfit rule -- The wording of the backfit
25 rule indicates that it's not a backfit unless it's imposed,

1 a legal requirement, unless it's made a legal requirement.

2 Internally, however, the staff has instructed,
3 when we're preparing a request or something that the agency
4 thinks is important enough to be addressed -- we're
5 preparing a generic letter or a bulletin -- the staff is to
6 prepare an evaluation that would, in effect, support an
7 order, if you didn't implement what we were requesting that
8 you implement, if there were not a good reason.

9 And I think there's some fuzziness or some
10 misunderstanding that's evident in this discussion because
11 of the way the word "imposed" is used.

12 Geary makes the distinction again that the actions
13 proposed by the staff or that the staff requests licensees
14 to take in a generic letter, in the language of the backfit
15 rule would not be backfits because we're not imposing them
16 by generic letter, but we treat them as though they were
17 backfits, working up to the issuance of a generic letter on
18 the instruction of the Commission.

19 They have said, "Do an evaluation that would
20 justify imposing this, that it's necessary."

21 So we call it a backfit, even though in the
22 terminology as Geary used it today, it's not really a
23 backfit until the agency imposes it by rule or by order.

24 MR. MIZUNO: Any other questions?

25 I guess I should say, you seem to be reticent

1 about asking questions. But the true purpose -- the value
2 of these workshops will only be realized if you raise
3 issues.

4 I know from my own experience that licensees have
5 a lot of confusion; the staff internally has some confusion
6 over the backfit rule, so don't be shy.

7 MR. STENGER: Geary, if you don't mind, Dan
8 Stenger with the Winston & Strawn law firm. Maybe you could
9 expand upon that a little bit, Jim or Geary.

10 Are you saying that unless there is a legal
11 requirement to do something, there is no backfit?

12 MR. MIZUNO: Yes. Legally required action, no
13 backfit is a legal matter.

14 But I think, as was clear here, that as a matter
15 of policy the agency is undertaking backfit analysis under
16 certain instances because it feels that it would help both
17 the agency, as well as the industry, understand how the
18 agency is going about doing its regulatory tasks.

19 MR. CONRAN: At the same time, Ed referred to the
20 NOV generic letter as a backfit. That's because in
21 generating that generic letter, the staff did an evaluation
22 that would justify a backfit action.

23 But the first step was to request that licensees
24 do it, and the agency was very serious about that request.

25 And implicit was that if you say no, we won't do

1 it, and there's not a very good reason -- but some parameter
2 of the evaluation just doesn't fit your specific situation
3 -- that the agency is likely to move with either a rule or
4 an order to impose the fixes that we're talking about and
5 take the actions that we're talking about.

6 So in that sense, we refer to it as a backfit.

7 MR. JORDAN: Okay. Dan or Bob, who's going to go
8 first?

9 MR. BISHOP: I am.

10 MR. JORDAN: I will just say that the
11 participation by Bob and Dan through these workshops has
12 been very beneficial and stimulated discussions between the
13 staff themselves and with the group. So I do appreciate
14 that.

15 MR. BISHOP: Thank you, Ed.

16 My name is Bob Bishop. I'm general counsel with
17 NUMARC. For those of you who haven't dealt with us in the
18 past, let me just give you a little quick precis of what
19 NUMARC is all about.

20 It was formed three years ago by the industry, for
21 the industry. Our board of directors is either the CEO, COO
22 or senior nuclear executive for each of the utilities
23 responsible for operating a power plant.

24 That type of focus comes particularly near to me
25 when my board meeting is a week off and I'm also corporate

1 secretary.

2 With me, if you haven't met him yet, is Mike Kirk
3 sitting over in the corner. His responsibility is, one, to
4 make sure I get to these places on time. But more
5 importantly, he's going to be following this issue from here
6 on whatever else happens.

7 I hope we don't bog you down with what may appear
8 to be kind of legal esoterica. But I assure you that these
9 distinctions we're making -- and I think we've learned a lot
10 from one another, as Ed has suggested, in the course of this
11 now the fourth workshop.

12 I think these are very important. I think they're
13 material to what you do and what you should be doing.

14 Geary's job was to provide a background. I think
15 he has done, again, an excellent job of doing that. Dan
16 Stenger from Winston & Strawn -- the new name for the old
17 firm of Bishop, Cook, Purcell & Reynolds -- will be talking
18 about the practical application and implications of the
19 process, specifically the appeal process.

20 I'm going to focus in on generic communications,
21 one, because I think it's misunderstood; and I want to kind
22 of pull up on some of the lines that Jim and Geary have laid
23 out here so well, just to make sure we all agree as to what
24 these distinctions are and how I think -- how important they
25 are; and because, frankly, that's what NUMARC does.

1 NUMARC is involved on generic regulatory issues,
2 and it's our job to deal with those and try to address and
3 resolve those issues.

4 I also want to spend a moment talking about FACA.
5 I can't let Geary be the only one to have an opinion on
6 this.

7 By way of quick background, I'm one of those Navy
8 "nukes" who didn't turn out so good. I became a lawyer.

9 I spent four years in combustion engineering and
10 three years with the State of Connecticut on energy policy
11 during what even then we in the state agency of the
12 Connecticut Energy Agency referred to as the Arab Oil
13 Embargo Roman Numeral One.

14 Unfortunately, the fates have proven that we were
15 right to so number them.

16 Ten years at Northeast Utilities, and I joined
17 NUMARC now three years ago.

18 I want to go quickly -- Jim, if you would, please
19 -- to just quickly walk through the relevant statutory
20 authority for the NRC, because I think it's important for
21 you -- and if you don't have a copy, there are extra copies
22 of these slides on the back table -- just so you can get an
23 understanding of at least my perspective of how this all
24 came about.

25 The first thing, of course, is looking at what the

1 statutory authority for a federal agency is. There are four
2 things that I think are material to this discussion, one of
3 which is Section 161(B), frequently paraphrased as the
4 authority of the NRC to deal with issues to control
5 operations associated with public health and safety. And
6 that's the paraphrase of those last two and a half lines
7 there.

8 What I'd like you to get out of that is the
9 responsibility or the authority of the NRC to establish by
10 rule, regulation and order standards and requirements.
11 Those are critical words to me.

12 The second, 161(P), embellishes upon that; and so
13 in a similar way does Section 182, that rules and
14 regulations -- the agency has the authority to adopt those
15 rules and regulations -- notice those two words, "rules and
16 regulations" -- that the agency deems to be necessary to
17 carry out the purposes of the Act.

18 Then you go to the Administrative Procedures Act
19 for a moment, and you see that that requires federal
20 agencies to establish procedural requirements for the
21 promulgation of rules and regulations.

22 And then we close that off by the Atomic Energy
23 Act, Section 181, which says that the APA applies to all
24 rulemaking activities that the NRC does.

25 So the NRC acts, imposes requirements -- picking

1 up on some of those words you've already heard -- by way of
2 rules or regulations and orders. The rules and regulations
3 must comply with the Administrative Procedures Act.

4 The flip side of that is anything that an agency
5 does -- the NRC or any other federal agency -- that purports
6 to be a rule or regulation that is not adopted in accordance
7 with the Administrative Procedure Act is not a valid rule or
8 regulation and not imposed by any requirement. That's the
9 critical distinction that I think it's necessary to remind
10 you of and to lay out for you.

11 We'll come back to the point in a moment, but
12 that's where I have a problem with a generic communication,
13 which I believe under 50.54(F), which I'll discuss in a
14 second, can levy a responsibility for you to respond, but
15 can't impose a requirement.

16 We'll kind of talk around that. We all have
17 different words that we might use to describe the same
18 thing.

19 But I think Jim captured it well. You might best
20 look at it as an anticipated order. If they believe that
21 this is so critical that a backfit analysis is done or
22 applies, or there's indications from the NRC's communication
23 that if you do not do what they recommend, you will be so
24 ordered or they will adopt a rule or regulation to do it,
25 that's another thing you have to consider.

1 But the letter itself, the generic communication
2 itself, cannot impose a requirement. That's my view of what
3 the law requires.

4 Next slide, please.

5 Just briefly going over generic letters and
6 bulletins and information notices. Their purpose -- I think
7 no one would argue with -- to communicate the NRC's position
8 on issues of import.

9 They are no different in terms of their authority.
10 The only difference is the gradation that the NRC imposes
11 through its issuance process.

12 Information notices are things that they want to
13 bring to your attention. Generic letters are things of the
14 same ilk, but of greater significance. Bulletins is that
15 one step further.

16 There are differences in the NRC's internal
17 procedures about who can issue what and who can sign it off.
18 But there's no difference in their statutory authority.
19 They are as a group generic communications.

20 They are not rules, regulations or orders, any of
21 them.

22 I think it's fair to say that bulletins certainly
23 have more weight in the NRC's eyes, and therefore they
24 certainly should in a licensee's eyes, with respect to the
25 significance of the issue they're addressing.

1 But just because it's a bulletin doesn't mean that
2 somehow that has some greater legal significance. It is a
3 communication mechanism that the NRC chooses to identify
4 issues to licensees.

5 If we could have the next slide, please.

6 Section 50.54(F). As Geary so well explained, it
7 is used to request licensees to do one of two things, either
8 to submit information to the NRC, ostensibly to enable it to
9 complete its evaluation or to ascertain whether you're in
10 conformance with rules or regulations previously issued, or
11 orders for that matter; or to request confirmation that
12 you're going to do certain things.

13 But, as Geary highlighted, it can only require you
14 to respond. It cannot require a substantive commitment from
15 you, other than responding.

16 Anything that you do choose to do -- and Geary and
17 I are also deeply involved in the license renewal
18 proceeding, and that's where the words, "current licensing
19 basis," typically comes from.

20 I think you'll hear more of that, if you're not
21 used to it already.

22 But that basically is a combination of the NRC's
23 rules and requirements, those things that are imposed upon
24 you, and commitments that you make, those things that you
25 impose on yourself.

1 That together, simply stated, comprises the
2 current licensing basis.

3 Enforcement actions can be taken against the
4 current licensing basis. You respond to a generic letter
5 that says the NRC's request is that you do items A, B and C.

6 You respond to the NRC and say, "I intend to do
7 items A, B and C."

8 That is now a commitment. You may be enforced
9 against that commitment; a violation can issue.

10 If your response instead was, "I've evaluated my
11 plant, and I think for these circumstances and based on this
12 analysis, A, B and C don't apply," then A, B and C do not
13 apply.

14 That's a critical distinction that I'd ask you to
15 think about.

16 "Legal Analysis," if we could.

17 This is my attempt to kind of summarize the legal
18 basis for this process.

19 Simply stated, none of the generic communications,
20 as I mentioned, are rules of general applicability. They're
21 not issued in accordance with the Administrative Procedure's
22 Act; therefore, they are not binding rules or regulations.

23 As I mentioned, Section 50.54(F) requires you to
24 respond. It does not require that you do any of the things
25 that are recommended or requested.

1 Those words, frankly, in my view do not have any
2 dramatic legal significance between them. The NRC's
3 wording, that they suggest, recommend, request, do not in
4 some magical way transform them from one category to
5 another.

6 Those, in my view, are all ways of them
7 suggesting, "These are things that in our view are important
8 for you to evaluate. You have the responsibility to either
9 evaluate them or to answer up for the reason why you do
10 not."

11 The mere fact that a generic communication may
12 cite 50.54(F) does not also somehow magically turn that into
13 a regulatory requirement. A generic letter, bulletin or
14 information notice is just a generic communication, whether
15 it cites 50.54(F) or not.

16 50.54(F) is used if they want information back.
17 That's the distinction.

18 And just to go back to a comment that Ed made
19 earlier, just to reinforce it, that's why 50.109 does not
20 apply to a generic communication because it does not impose
21 a legal requirement. 50.109 is limited to the imposition of
22 requirements, things that you must do.

23 If I could have the next slide, please.

24 Let me just phrase it quickly if you can't read
25 it, if you don't have copies. You can be required -- You

1 are required to respond to a 50.54(F), but not to take any
2 particular action other than that response.

3 You're free to make whatever commitments you
4 choose to make, to -- in my draft said "propose," but since
5 you're in charge, it's not proposing -- to promulgate
6 whatever schedule you think is appropriate for whatever
7 actions you believe are appropriate in response to that
8 communication.

9 A common complaint that typically has surfaced
10 from time to time is that the NRC has not evaluated the
11 cumulative effects of these communications. That becomes
12 particularly sensitive on the scheduler's side.

13 There may be no disagreement that this is a
14 critical issue that needs to be evaluated, and you intend to
15 do each of those things that the NRC has suggested you
16 should look at, but compared to an outage, for instance,
17 compared to resource commitments to respond to other
18 bulletins, generic letters or information notices, you may
19 deem that schedule not to be the right thing to do.

20 I would advocate that that's what you ought to
21 inform the NRC about; that's what you ought to talk to them
22 about.

23 I think in the course of these workshops --
24 They've been productive for those of us that seem to be
25 traveling across the country together, to get to know one

1 another.

2 I have to tell you my feeling is that these folks
3 should be believed. I think they mean what they say. That
4 shouldn't be a surprise perhaps.

5 But I think their encouragement that you enter
6 into dialogue with them where you have a problem, when you
7 think you have a difference of opinion is the only way
8 you're going to solve the problem.

9 By the time you get the lawyers involved, the
10 situation is typically untenable. It's going to take you
11 too much time and too many resources and bodies strewn in
12 the path, even if you win you may ultimately lose.

13 I say that not out of any great disrespect for my
14 brothers in the legal community, but I think technical
15 issues are best resolved by technical people.

16 That may just be part of a hangup from my sordid
17 past.

18 I think the law is clear. I think the only issue
19 is what you do with it, how you respond, what you respond.
20 But don't mischaracterize my words and my comments. The
21 responsibility is yours.

22 In my view the responsibility for the safe
23 operation of that plant is yours. It's not the NRC's. You
24 will not do well in any court if you took an action because
25 the NRC recommended that you do it, and to do so, you

1 jeopardized that facility's operations or its personnel.

2 I would ask you to remember that responsibility.
3 That is not one that you can delegate out to the NRC or
4 anyone else.

5 I, unfortunately, am not going to be able to stay
6 around through the prospect of tomorrow. I would ask if you
7 have any questions, that you bring them to me later on today
8 or give me a holler.

9 I have one of those conflicts that you can't avoid
10 from time to time. We're making a filing with the Supreme
11 Court tomorrow on the operator training litigation.

12 That is something that certainly affects us in our
13 day-to-day operations. It's one of those kinds of things, I
14 hate to have checks go out with my name on them without me
15 being around; so I hate to have briefs filed that I'm
16 responsible for without having some role to play in their
17 drafting and promulgation.

18 As this workshop progresses, both today, tomorrow
19 and into the next day on event reporting, I would encourage
20 you to heed the advice you've been given. Let's talk about
21 these issues.

22 Let's firm them up. That's the only way we're
23 ever going to try to resolve these issues. I would suggest
24 to you again, emphasize perhaps, that a court case is not
25 the way to do that.

1 Now on the FACA. The Federal Advisory Committee
2 Act briefly, in my view, has two empirical aspects to this
3 discussion. It says that if an agency uses an organization,
4 a group of people, some subsystem of that type, as a
5 preferred source of information, that is de facto an
6 advisory committee; and you must comply with the Federal
7 Advisory Committee Act, all those things that Geary
8 outlined.

9 You've got to have a federal representative;
10 you've got to take minutes; you've got to prenotice the
11 meeting; you've got to give the public an opportunity to
12 participate if you deem that appropriate, on and on and on.

13 However, the Federal Advisory Committee Act has an
14 exception for federal agency activities. And if the federal
15 agency's activities are for the exchange of information, for
16 dialogue with individuals or groups about things of mutual
17 interest to the agency and that group, there's an exception
18 to the FACA requirement.

19 We're very sensitive to that issue. That's why
20 I've done a little bit of looking and work. I promised
21 Geary we'd get together and I'd leave him with this stuff,
22 as soon as we found out it was going to come up today.

23 We've adopted that policy and made that
24 distinction in a policy note that describes and limits our
25 interactions with the NRC.

1 The way we use it in practice is that if a meeting
2 is for an exchange of information, we comply with FACA. And
3 in that context, FACA does not require that it be publicly
4 noticed, minutes kept, et cetera, et cetera.

5 If the purpose of that meeting is to advise the
6 NRC on policy matter, to advocate adoption of a position,
7 that is a different category.

8 Then we -- whether or not one is formally
9 chartered as an advisory committee -- as Geary mentioned,
10 the only redress to somebody who claims that this was really
11 a FACA and you didn't comply with the requirements is a
12 court order that says comply with the requirements. So
13 we'll cut that short.

14 What we do is then attempt to comply with the
15 requirements about public notice of public meetings, et
16 cetera.

17 Geary and I can meet, even though we represent, in
18 one case a federal agency, and in another case an
19 organization in the nuclear industry. Our meeting doesn't
20 have to be publicly noticed. That's presumably for an
21 exchange of information.

22 If, however, we have a meeting to try to convince
23 the NRC to adopt a rule or regulation, to change a policy,
24 then I believe FACA applies and requires that that be
25 publicly noticed, such as the meeting we had with the NRC

1 now about two weeks ago.

2 That is how I read the distinction. I'm helped in
3 that by a 1985 policy statement adopted by the Nuclear
4 Regulatory Commission, which talks -- and presumably there
5 are some fax machines around that we can make copies of
6 this, if appropriate -- but it talks about meetings of
7 coordination and talks about the value to the NRC of
8 facilitating information exchange meetings with groups such
9 as Government Accountability Project, NUMARC, INPO, EEI,
10 Critical Mass.

11 The rules apply equally to everybody. It isn't
12 just that we're a member of the industry, and some other
13 group represents some other faction.

14 The principle behind FACA is special issue groups
15 advocating policy, direction, guidance, accomplishment. All
16 of that ought to be in the public.

17 And I would demand the same requirements that the
18 NRC imposed upon Critical Mass, that they would impose upon
19 us because that's what the law requires under FACA.

20 Okay. Any questions?

21 MR. JORDAN: Just a comment, Bob. I think that's
22 a very helpful discussion about FACA.

23 That's the way I see it as well. Let's talk about
24 the PTS problems. If we're talking the technical side of
25 the problem, then there is an opportunity for exchange, and

1 FACA is not a problem.

2 As soon as the Commission decides, or the staff is
3 trying to decide what the action is going to be, in terms of
4 a bulletin or generic letter or a rule change, then the
5 content of those documents would not be able to be discussed
6 without FACA considerations.

7 That's the cut that I make in it. I'd be
8 interested in your NUMARC policy. That sounds interesting.

9 MR. BISHOP: Sure. We can do that.

10 We've certainly given copies to the Commissioners,
11 and it's a publicly available document.

12 Let me step back just a second, because I agree, I
13 think, with almost all of what you've said, but I'd phrase
14 it a little differently.

15 There are really three acts that play: FACA, FOIA
16 and Government in the Sunshine.

17 Let's work our way from the back first.
18 Government in the Sunshine says that any deliberative body,
19 the decision maker must hold its deliberative sessions in
20 the public view, subject to public scrutiny.

21 I think the law is well settled that that applies
22 to the Commissioners and their deliberations, because they
23 are the ones that adopt rules, regulations and policies for
24 the Commission.

25 That does not apply to interactions with staff.

1 That's my....

2 Second, Freedom of Information Act. The Freedom
3 of Information Act talks about documents and documents being
4 made public. And that's where I think we get into a lot of
5 this.

6 One of the reasons why CRGR doesn't have open
7 meetings, doesn't make its internal documents or the staff
8 its internal documents public unless they choose to do so,
9 are not required to make them public, is because the Freedom
10 of Information Act protects the inner workings of the
11 agency, the deliberative process, whereby the staff can have
12 the freedom, without being subject to criticism from the
13 outside world and the press, of providing brainstorming on
14 an issue, providing three alternatives even though they know
15 that one might be illegal perhaps, but for the purposes of
16 discussion, being able to have a free and open flow of
17 communication between the staff and between the staff and
18 the Commission.

19 That deliberative information is protected under
20 the -- or can be protected under the Freedom of Information
21 Act. It doesn't have to be. The NRC can choose.

22 If they're looking at a generic letter that they
23 want to issue, they could either keep it internal because
24 they want to make sure that this all works and they don't
25 send the wrong signal out before the policy makers decide

1 that that's something that should be issued; or in the
2 alternative, they could decide in this context, "This is
3 something we really need the input from the industry or
4 other groups of the public on, so we will broadcast it more
5 openly during that deliberative process or some piece of
6 it."

7 But that is the agency's choice, whether they want
8 to protect it or promulgate it or some variation in between.

9 MR. JORDAN: Yeah. We are in agreement.

10 Any questions?

11 MR. BISHOP: Again, if you have any -- Yes.

12 MR. BETHAY: Along those same lines. I know
13 who the PM is responsible for a particular generic
14 communication, is it illegal for me to call him and say, you
15 know, "Here's a problem with what I think you're going to
16 do"?

17 I mean, I know he can't give it to me because it's
18 predecisional, but I can talk to him about it, can't I?

19 MR. BISHOP: Yes.

20 MR. JORDAN: Wait. You can call him, but if he's
21 in the process of developing it, he really shouldn't discuss
22 it with you.

MR. BISHOP: But he can. That's his choice or our
choice.

The law doesn't preclude them from doing that.

1 MR. MIZUNO: He's confused.

2 MR. BERLINGER: When I send out that letter every
3 two weeks that lists all the proposed generic communications
4 under consideration, it's for several reasons.

5 One is to exchange -- identify subject matter with
6 the industry particularly, so that we can eliminate
7 duplication of effort, if it's appropriate.

8 On the other hand, we have another purpose. And
9 that is, by identifying the subject and the lead technical
10 person, it does provide an opportunity for people to all
11 who have questions about the subject and that particular
12 action that the staff is working towards.

13 However, the individual that may answer that phone
14 call has been more or less instructed that if it gets into a
15 policy decision mode, that the discussion is ended.

16 If you want to ask a question with regard to
17 technical issues, feel free; and you'll get as much or more
18 information than you want.

19 MR. BETHAY: I realize you get what you pay for.
20 It's not you issue things and you're asking for that
21 person's opinion. I think we all understand that.

22 MR. BISHOP: Questions, comments?

23 MR. BERLINGER: I have one.

24 MR. BISHOP: Sure.

25 MR. BERLINGER: Let's say that the NRC issues a

1 generic communication, a bulletin or generic letter, and in
2 it it informs the industry of a technical issue, a problem,
3 and suggests action that can solve that problem.

4 What's the legal requirement that a licensee would
5 have had, once it knows about a safety problem under
6 regulation? What are they required to do once they know
7 about it?

8 MR. BISHOP: They have to satisfy themselves that
9 what they're doing is consistent -- or what they would
10 propose to do, what their resolution of that issue is, is
11 consistent with their responsibility; and that's to protect
12 public health and safety in the operation of that plant.

13 It is to evaluate, as one must evaluate any source
14 of information.

15 Whether you've got it on the back of an envelope
16 that says, you know, just redid the calculation and the
17 computer had a glitch in it.

18 We had a problem at Northeast Utilities with a
19 mechanical calculator that added two numbers wrong, believe
20 it or not. It resulted in a \$1.5 million dollar error in
21 our rate case.

22 There was no question. We did quality control.
23 We had two different people run the numbers, ran them on the
24 same calculator.

25 Any information that comes to your attention I

1 think is the licensee's responsibility to deal with. I
2 think the mere fact that the NRC brings it to your attention
3 (if you see something -- you go to an A&S meeting; you're on
4 a code committee for ASME, and somebody mentions something
5 in the corridor.

6 Whatever the source of the information, I think
7 you have a responsibility to respond to it, even though it
8 is not a rule, regulation or order.

9 Your fundamental responsibility is to make sure
10 the public health and safety is protected; and that is very
11 broad in my view.

12 The requirement that you do specific things is
13 very narrow. That is to do what rules and regulations
14 require.

15 Remember, the NRC is in an oversight role. Their
16 job is not to operate that reactor. Your job is to do that.
17 Your job is to do the technical analysis that justifies that
18 operation, not the NRC's.

19 MR. BERLINGER: The safe operation of that plant
20 is the responsibility of the utility.

21 MR. BISHOP: And only the utility.

22 I can get in a lot of trouble if I go much further
23 telling you how strongly I feel about this. Maybe we'll do
24 that off the transcript.

25 Thank you.

1 MR. JORDAN: Thank you, Bob; that was great.
2 Dan Stenger.

3 MR. STENGER: Thank you, Ed. I appreciate the
4 kind comments as well.

5 I'm going to focus today on implementation of the
6 backfitting rule in practice. Let me just first say, as
7 Geary mentioned, that I strongly encourage participation by
8 the audience. Please feel free to interrupt me at any time.
9 This is really for your benefit. This workshop will be
10 better, according to how much participation we get from the
11 audience.

12 Bob Bishop already gave some free advertising for
13 my firm. We are counsel to the Nuclear Utility Backfitting
14 and Reform Group, which is a consortium of 25 nuclear
15 utilities, which actively participated in the development of
16 the backfitting rule, and since the rule's adoption in '85
17 has closely followed the NRC's implementation.

18 It's useful just to review quickly the purpose of
19 the backfitting rule. When the NRC adopted the new and
20 improved rule in 1985, it acted to restore stability and
21 predictability to a regulatory process that had all but
22 hemorrhaged with the proliferation of new requirements in
23 the early 1980s.

24 In 1981 a very important survey by senior NRC
25 management had concluded, "Notwithstanding the competence

1 and good intentions of the staff ... the pace and nature of
2 regulatory actions have created a potential safety problem
3 of unknown dimensions."

4 What the Commission had in mind in adopting the
5 backfitting rule, and in particular in building in a
6 cost/benefit analysis approach to analyzing proposed
7 backfits, once that -- If the NRC requires a licensee to
8 spend \$10 million on a fix that will not produce a
9 comparable benefit in safety, that in itself is not just a
10 matter of economics. That's a matter of safety.

11 \$10 million is a large chunk of the capital budget
12 for a utility in a year. If those funds are burned up where
13 it's not going to produce a benefit in safety, that's a
14 safety concern.

15 The same if the NRC requires a utility to spend
16 \$10 million for a program where you could get all the safety
17 benefit through a one million dollar program.

18 That again in the Commission's own judgment in '85
19 was a safety concern that led to development of the
20 backfitting rule.

21 In the words of the United States Court of Appeals
22 for the District of Columbia Circuit, which affirmed the
23 rule on all counts in a July '89 decision, the rule was
24 needed to systemize or rationalize the Commission's
25 backfitting process. That is to say, to impose some

1 discipline on the implementation of backfits.

2 Now that five years have passed since the rule was
3 put into place, it is useful to review the records on how it
4 has been implemented.

5 I will first discuss the generic backfitting
6 process and then go on to some plant-specific
7 considerations.

8 A major finding of the NRC's recent regulatory
9 impact survey was the view that the NRC does not adequately
10 consider the cumulative impact of major new initiatives,
11 such as those that are adopted by a generic letter or
12 bulletin.

13 We can get a very, very rough idea of the
14 cumulative impact by reviewing a few statistics. For the
15 period from October '88 to mid September 1990, roughly two
16 years, a rough estimate of the burden can be derived from
17 looking at the response burden of the major generic
18 communications.

19 As the gentleman from Georgia Power brought out,
20 these NRC estimates are for responding to the generic letter
21 or bulletin, not necessarily implementing the actions
22 requested.

23 In addition, I should note that the period where
24 we began counting comes after efforts on fraudulent
25 equipment, Bulletin 88-05 and its supplements. The numbers

1 would be much higher if you included those actions.

2 While we all know that not every generic letter or
3 bulletin applies equally to each and every plant, there are
4 some interesting facts.

5 Of 18 major generic letters issued over the two-
6 year period, the NPC estimate of the response burden was
7 roughly between 13,000 and 17,000 person-hours per plant.

8 Of seven major bulletins, the response burden was
9 7,500 to 17,000 person-hours per plant for a total of some
10 20,000 to 34,000 person-hours per each plant.

11 And, remember, this is the response burden. Many
12 licensees have indicated that they believe even those
13 estimates are significantly low.

14 This does not include the continuing burden of
15 implementing ongoing programs. If you take, for example,
16 Generic Letter 89-10 on MOV testing, while I don't have any
17 estimates of the actual burden of implementing that program,
18 the cost by the NRC's own estimate is something like \$6
19 million per unit.

20 That's an order of magnitude above the cost of
21 implementing the station blackout rule, for example.

22 So some of these generic communications have had a
23 major impact.

24 Significantly, of these 25, as is shown in the
25 right-hand column here, backfitting or regulatory

1 analysis -- I use backfitting analysis in the sense of a
2 50.109 analysis -- were performed for only six of the 25
3 major generic communications.

4 Now, why were backfitting analyses not done? Why
5 were these issues not treated as backfits? There are
6 basically two reasons.

7 First, many of the generic communications are
8 issued as, quote, information requests, unquote, under
9 Section 50.54(F), rather than as backfits under 50.109.

10 Examples would include Generic Letter 89-07 on
11 truck bombs, 89-19 on steam generator vessel over-fill.

12 In addition, the proposed IPEEE is proposed to be
13 treated as an information request, although by the NRC's own
14 estimates, it will cost roughly one million dollars per
15 plant and six person-years of effort.

16 I should note that NUMARC's estimates are
17 substantially higher for implementing that program.

18 The subject of 50.54(F) versus 50.109 has been
19 addressed in all of the workshops in a lot of detail. It's
20 also being considered by the NRC at this time in response to
21 some comments we've provided on the draft IPEEE generic
22 letter.

23 I don't want to belabor the point, but let me --
24 I think it was covered very well by Geary and Bob. Let me
25 offer three other observations in connection with 50.54(F).

1 As everyone recognizes, the only requirement in
2 dealing with such a letter is to file a response. You're
3 not required to take any particular action.

4 However, as a practical matter in many of the -- I
5 won't say "many" -- but in some of these 50.54(F) requests,
6 in order to respond you have to implement some sort of
7 program.

8 The NRC asks for information that you can only get
9 through testing, which may require plant modification or a
10 new testing program, or in the case of IPEEE, doing the new
11 analysis against new criteria.

12 In effect then, the recommended actions in the
13 generic letter or bulletin can in our view in some cases
14 become required. That's what has created the issue here.

15 Secondly, as Geary mentioned, there is a built-in
16 provision in 50.54(F) that says that the NRC must weigh the
17 burden against the potential safety significance.

18 But it's not just the burden we're looking at.
19 The 50.54(F) analysis, I think everyone recognizes, is not
20 of the same rigor or discipline as the 50.109 backfitting
21 analysis. You don't have the same finding hoops to go
22 through.

23 But it's not just the burden. If you take the
24 IPEEE program, for example, and others where what is really
25 happening at bottom is the plant is being judged -- the

1 acceptability of the plant is being judged against new
2 criteria, criteria not reflected in the plant's licensing
3 basis.

4 So the fact that the NRC may take a look at the
5 burden of that action doesn't quite get there. In our view
6 asking the plant to be reviewed against new criteria is, in
7 and of itself and should be treated, as a backfit.

8 And, finally, the third point on the 50.54(F)
9 request is that it leads to confusion.

10 When a request like that comes out, it's telling
11 the licensee what the NRC wants is information. All they
12 want is some data, existing data or something we can gin
13 out.

14 If the NRC's intent is to request a new program,
15 if you want a new program, new testing program, justify it
16 as a backfit; and if you do that, then 50.109 is designed to
17 allow those types of new programs to be implemented.

18 That's why we've gone round and round about this
19 issue. Those are some important points I wanted to make
20 that I don't think have come out.

21 Next slide, Jim.

22 To sum it all up, I really cannot put it any
23 better than what CRGR said back in October 1986 when it
24 ruled that the proposed resolution of USI A-46 on seismic
25 qualification should be justified under the standards of

1 50.109 rather than 50.54(F).

2 At that time CRGR stated, "Under the proposed
3 resolution the adequacy of the design of a licensee's
4 facility would be judged against significantly different
5 criteria than were used by the Staff in licensing the
6 facility initially ... these were clearly the type of
7 circumstances contemplated by the Commission in approving
8 the Backfit Rule. Secondly, the time and expense involved
9 [in performing the analyses] is greater than the
10 'Information Request' contemplated by the Commission in
11 approving Section 50.54(F)."

12 This is an important precedent that the NRC should
13 continue to follow in our view.

14 Next slide, Jim.

15 The second reason many generic initiatives do not
16 receive a backfitting analysis, are not treated as backfits,
17 is that they are issued under the compliance exception in
18 Section 50.109(a)(4)(i).

19 Some examples are Generic Letter 89-04 on in-
20 service testing and 89-13 on service water.

21 With all due respect, NUBARG believes that the NRC
22 in some cases has stretched the compliance exception beyond
23 its proper bounds.

24 The Commission itself explained the scope of the
25 exception in adopting the 1985 backfitting rule when it

1 stated, "The compliance exception is intended to address
2 situations where the licensee has failed to meet known and
3 established standards of the Commission because of omission
4 or mistake of fact. It should be noted that new or modified
5 interpretations of what constitutes compliance would not
6 fall within the exception."

7 In view of this expression of Commission intent,
8 we believe two principles should be borne in mind. First,
9 there must be a known and established standard that the
10 licensee has failed to meet.

11 There must be an explicit regulatory requirement
12 that the NRC can point to and say, "You have not met that."
13 That would be a compliance factor or a compliance action.

14 Using broad standards, such as the general design
15 criteria or Appendix B, while that may be appropriate in
16 some cases ought to be used very cautiously.

17 Using the GDC to call for a new program that has
18 never been required before is really a reinterpretation of
19 the GDC and is therefore a backfit.

20 Secondly, the reinterpretation of existing
21 requirements can be a backfit. The fact that the underlying
22 requirement stays the same doesn't answer the question.

23 You can take the same requirement, but a new staff
24 position interpreting the regulation is a backfit. That's
25 part of the definition of backfitting in 50.109(a)(1).

1 Let me say a few brief words about the general
2 design criteria, the basis for a compliance finding. That
3 gets very, very tricky and creates very complicated issues.

4 But let's go back to the fact that the general
5 design criteria were met by the licensee at initial
6 licensing by demonstrating that it had done what the staff
7 required, to do the standard review plan, branch technical
8 position, et cetera, to meet the GDC.

9 The staff at the time of licensing reviewed the
10 licensee's approach to compliance with the GDC, and approval
11 was issued in an SER before initial licensing.

12 Now, if the staff has reason to believe that its
13 approach to demonstrating compliance with the GDC requires a
14 change, that's what the backfit rule was designed and
15 intended by the Commission to provide protection against.

16 The rule established a disciplined decision-making
17 process for the NRC to change its position on what's
18 necessary to demonstrate compliance.

19 With respect to plant-specific changes, the rule
20 prevents the staff from requiring a licensee to comply with
21 the new position unless the full analysis of 50.109 is first
22 performed.

23 It's not sufficient for the staff to claim that
24 the change is justified, based on the compliance exception
25 to the rule, because the licensee has already demonstrated

1 compliance at the time of initial licensing.

2 In other words, the staff may not move the target
3 on what you need to do to demonstrate compliance, and then
4 complain that the licensee is not on target.

5 The compliance exception in our view is properly
6 invoked where the licensee is not doing what it said it
7 would do to comply with the NRC requirements, and the staff
8 wishes to compel a licensee to come into compliance with
9 that licensing basis.

10 To interpret the compliance exception otherwise
11 will eventually allow that exception to swallow the rule and
12 render false the promise of licensing stability embodied in
13 the rule.

14 I'm going to go to the plant-specific backfitting
15 process now.

16 As the table shows, from a plant-specific
17 perspective, there have been about 20 what I'd call formal
18 appeals, formal backfitting appeals since the rule was
19 adopted in 1985.

20 By our count some ten of these appeals have been
21 essentially granted by the staff, identifying the matter as
22 a backfit, finding that the proposed action was not
23 justified or by achieving another acceptable resolution with
24 the licensee.

25 Seven were denied; three are currently pending.

1 These cases include some that may not strictly be
2 backfitting appeals. For example, it includes success by
3 two licensees in contesting on backfitting grounds escalated
4 enforcement action for commercial grade procurement
5 practices.

6 As you know and as you'll hear about later in the
7 program, in the face of arguments by two licensees that the
8 enforcement actions were essentially backfits, the NRC
9 withdrew the violations and imposed a hiatus industry-wide
10 on the procurement enforcement activity.

11 I should also note that in addition to these
12 numbers, there have been a considerable number of
13 backfitting issues that have been raised and resolved
14 informally without resort to a written appeal.

15 What do the statistics tell us? The relatively
16 low number of appeals suggests perhaps three things. First,
17 that the rule has brought about some greater stability and
18 that on the whole the staff is doing a better job of
19 identifying backfit positions before they are imposed.

20 Secondly, it suggests that many issues are being
21 resolved informally or as technical appeals rather than
22 backfit appeals.

23 Thirdly, it also suggests that licensees may well
24 choose not to exercise their rights under the backfitting
25 rule, either because of a management decision or in some

1 cases a concern that the staff might resent it.

2 From our experience in working on a number of
3 backfitting issues, there is clearly still some room for
4 improvement in the plant-specific process.

5 Jim.

6 First of all, there is still a need for better
7 identification of backfits in significant items of plant-
8 specific correspondence. If the rule is to work properly,
9 it is essential that both the staff and licensee personnel
10 be capable of recognizing a backfit when they see it.

11 Some sources of potential backfits include
12 inspections and inspection reports, notices of violations,
13 SERs, requests for additional information and other
14 significant plant-specific correspondence.

15 It has been our experience that many of these do
16 not receive adequate review for backfitting implications
17 before being transmitted to the licensees.

18 For example, we've seen a notice of a violation in
19 which the violation was based on an alleged failure to meet
20 a draft of the general design criteria, which was no part of
21 the licensing basis for the plant.

22 There's another case that we know of in which a
23 licensee program was accepted by the staff on three
24 occasions; and yet the issue was reopened a fourth time.

25 This is not an exhaustive list, by any means; and

1 I encourage licensee people in the audience, if you have
2 issues that you want to discuss, to bring some of those out.
3 These workshops have been an excellent forum for discussing
4 some of these issues and getting a good dialogue going.

5 We also know that NRC inspection efforts are
6 intentionally designed in part to encourage licensees to
7 take actions above and beyond the regulations. That creates
8 some tension with the staff's responsibility to identify
9 backfits.

10 As a result, the burden falls all too often on
11 licensees to complain when they believe a backfit is being
12 imposed.

13 The NRC's Manual chapter on backfitting, however,
14 emphasizes that it's the staff's responsibility, stating,
15 "The NRC Staff shall be responsible for identifying proposed
16 plant-specific backfits ... the Staff at all levels will
17 evaluate any proposed plant-specific position with respect
18 to whether or not the position qualifies as a proposed
19 backfit...."

20 That is to occur before the position is
21 transmitted to the licensee.

22 We encourage NRC management to take a look at how
23 well their staff is doing in identifying or reviewing
24 significant pieces of plant-specific correspondence for
25 backfitting implications before they go out.

1 Next slide, Jim.

2 Another area needing better understanding is the
3 appeal process for backfits. I don't have time to go into
4 it in too much detail, but a couple of points I really want
5 to stress.

6 As Ed Jordan mentioned, "backfit" is not a bad
7 word. Licensees should not be afraid to point out when they
8 believe the staff is backfitting the plant without adequate
9 justification.

10 And the staff certainly should not resent it when
11 a licensee does raise a backfitting concern.

12 I agree with Bob that I think we are seeing a -- I
13 won't call it a kinder and gentler NRC -- but an effort to
14 be very receptive and more understanding in this area; and
15 licensees should not be afraid to claim backfit when
16 something arises where they feel the staff is improperly
17 imposing a backfit without adequate justification.

18 The history of the rule, as we went through
19 earlier, teaches that there is nothing incompatible between
20 a safety-first philosophy at a utility and insisting that
21 NRC-proposed changes be adequately justified under the
22 backfitting rule.

23 Now, secondly, let me say a few words about the
24 informal use of the backfitting rule. Many times the most
25 efficient way to address the backfitting issue is not

1 through a formal written appeal.

2 Before generating paper, the licensee and the
3 staff should be able to sit down and discuss a potential
4 backfit in an open dialogue without the need for a written
5 appeal.

6 This can be a very efficient way to handle the
7 issues before positions get hardened in writing. I would
8 encourage licensees -- and I think the NRC management in the
9 workshops has echoed this -- that using the rule informally
10 in that way is often the best way to do it.

11 In conclusion, NUBARG has made some suggestions
12 for certain actions to improve the backfitting process. We
13 first believe on the generic side that the NRC should
14 continue its efforts to improve the generic communications
15 process, or I really should say the generic backfitting
16 process. It's not just generic communications.

17 We've seen a trend in recent years for the NRC to
18 make drafts, proposed generic communications publicly
19 available for comment. We urge that that be continued.

20 In addition, the NRC should continue to take a
21 hard look at its use of 50.54(F) information requests and
22 the compliance exception to the rule.

23 On the plant-specific side, we urge the NRC to
24 continue to improve the process for NRC staff identification
25 of plant-specific backfits. That is to say, reviewing

1 significant pieces of plant-specific correspondence before
2 they're issued to the licensee.

3 And, finally, as I mentioned, the focus should be
4 on resolving issues informally, in a professional and open
5 dialogue such as we've had in these workshops. I think
6 that's the most efficient way to use the rule.

7 Thank you. I'd be happy to take any questions.
8 For all of us, I might add, especially for Bob.

9 VOICE: Look at your Slide 7, that's what we have
10 as an industry. It represents to me a lack of us really
11 using this process, and I think it does to you.

12 What I'd like to know from Ed is one of your
13 responsibilities is to audit the offices for information for
14 the program. Have you found during your audits, both of the
15 regions and Headquarters, that you found correspondence that
16 went out with backfits, and the licensee didn't appeal and
17 it was implemented, and what did you do about it?

18 MR. JORDAN: Okay. The audits that we're doing
19 are not reviewing large quantities of correspondence for
20 undisclosed backfits, but to ascertain that the regional
21 office and NRR have procedures and training in handling
22 backfits, and that, for instance, backfit appeals that they
23 do receive, that they handle them in a timely way and that
24 in taking a second look at them, that the results were, you
25 know, of good quality.

1 And I have to say, everybody sees statistics in a
2 different way. One of the statistics out of the appeal
3 process I see is that information has been -- I think we've
4 seen somewhat open ... and have found appeals in favor of
5 utilities in a larger number of instances that perhaps the
6 industry thought.

7 So I see that as perhaps an encouragement that the
8 appeal process does work, is beneficial, and I hope will
9 take away the picture that if the utility appeals that there
10 is a potential for the utility then being persecuted in some
11 way, or your interactions with the NRC subsequently to be
12 affected.

13 So I look at the optimistic side of that.

14 In future reviews of both the regions and NRR, our
15 scope of review is not limited. But the object is to make
16 the most out of a small amount of audit, just like the NRC
17 tries to do when it audits a utility.

18 So spot checks of documents would not be an
19 appropriate item.

20 I'm a little bit sensitive to the enforcement
21 areas in which it's indicated that we have given potential
22 backfits through enforcement enforcing its things that are
23 not really true requirements.

24 That might be an interesting place for us to look.
25 We can get a lot of material in a short period of time that

1 way.

2 So that would be the picture I would give you
3 back.

4 MR. BISHOP: Ed, may I respond?

5 MR. JORDAN: Sure.

6 MR. BISHOP: Let me just share with you a small
7 vignette which I think puts a different facet on the
8 problem.

9 We get a lot of feedback from a lot of you folks
10 that call and tell us about problems because, for whatever
11 reason, you're not comfortable with sharing those problems
12 with the regional inspector, Headquarters, NRR or whoever

13 We got a number of calls on a particular problem.
14 It just so happened that shortly thereafter we had a small
15 delegation that went to see the Chairman to talk about
16 what's going on in the industry, as the law allows us to do,
17 to exchange information.

18 And we described to him the problem, the feedback
19 that we were getting about people were -- inspectors or
20 through the enforcement mechanism, they were kind of saying,
21 "Look, you either do what this generic letter said or else,
22 or else it will show up in your SALP report, or else come
23 down hard on you, or else whatever." And the facts are not
24 material.

25 But we got a whole variety -- a variation on that

1 theme.

2 And the Chairman said, "Okay. Tell me where the
3 problem is. Give me the facts."

4 And we said, "Well, you know, they told us that
5 they were concerned because you've got to live with the
6 inspectors, and this is an ongoing relationship that they
7 have to worry about."

8 And the Chairman used a few kind of favored
9 nautical terms to express his dismay and said, "How
10 expect me to solve a problem if you don't let me find out
11 where I've got the problem?"

12 I think that's one of our responsibilities. T
13 responsibility is you've got to stand up and be counted.
14 You've got to be ready to face the heat. Then you've one
15 the justification and, by God, you're right; and that person
16 over there that wants you to do something different is
17 wrong.

18 If you're not willing to stand the heat, as the
19 Chairman said, you ought to get out of the kitchen.

20 But if you are right, you've got the
21 responsibility to identify that, because if not, nobody at
22 the NRC can help solve the problem.

23 They can't deal with this amorphous-kind of "Well,
24 I can't tell you the who and the what and the where and why,
25 but, gee, we've got a problem here."

1 So I think you have to be sensitive to that
2 aspect, too. It's not an easy equation. Life ain't
3 perfect. There are very few -- well, except maybe with the
4 exception of my colleagues here on the panel -- of us who
5 are perfect.

6 But you've got -- And, believe me, I recognize
7 that equation. You've got to play that equation out.
8 You've got to balance that equation.

9 You've got to continue to work with the people you
10 have to work with.

11 But by the same token, you've got to be ready to
12 stand up when it's time to be counted because we can't do
13 that job for you. None of us can. The NRC or NUMARC or
14 NUBARG or anybody else.

15 MR. GWYNN: I would like to make a comment if I
16 could.

17 In the regional perspective, we do see this
18 backfit process as a self-disciplining process. The
19 training that has been provided to our people has been
20 somewhat effective.

21 However, my boss and I, who review every report
22 that goes out of Region IV, look at those reports with
23 respect to backfit issues. Items that could be construed as
24 having backfit implications are given further review, and
25 changes have been made to inspection reports based on

1 concerns with respect to backfitting issues.

2 So it's a self-disciplining process. We think
3 that it has been somewhat effective. Of course, as in all
4 processes, there are errors made.

5 So the appeal process that is being talked about
6 here is all important. But we consider it to be an
7 important part of our process, and you should see that
8 process working.

9 MR. MIZUNO: I would like to respond to three
10 points made by Dan Stenger, and I think I'm going to take
11 issue with him on them.

12 I think that's part of the purpose of this
13 workshop.

14 I guess the first thing that you suggested was
15 that a 50.54(F) request that requested information, which
16 essentially required the licensee to evaluate their plant
17 against new criteria which is not within their current
18 licensing basis, is a backfit.

19 My response to that is it does not fall within the
20 definition of a backfit. So, therefore, a backfit analysis
21 need not be done for that.

22 Now, having said that, I recognize that there are
23 backfit kind of concerns there. And certainly the concern
24 is why is the licensee being asked to spend money to
25 evaluate its plant when the NRC previously had found the

1 plant to be acceptable against whatever criteria and
2 requirements are in your licensing basis.

3 I think that that is a valid issue, but I think
4 the appropriate way of handling that is not to twist the
5 backfit rule and the definition of a backfit to cover this,
6 but rather I think the industry should pursue this either
7 through -- well, basically through a petition for rulemaking
8 or discussing this in your meetings with the Commission as
9 an issue which may require the Commission to address it.

10 They might, in fact, direct the staff to address
11 this issue and propose ways of addressing it.

12 I do not think that the way of addressing the
13 issue is through twisting the definition of a backfit to
14 cover a problem which is not within the exact defines of the
15 definition of a backfit.

16 The second thing that you raised was that --

17 MR. STENGER: Can we take up the first one first,
18 or do you want to go through them all?

19 MR. MIZUNO: I guess it would be easier if we went
20 issue by issue.

21 MR. STENGER: If you ask a plant to do an analysis
22 against new criteria, why isn't that the imposition of a
23 regulatory staff position interpreting the regulations in
24 50.109(A)(1)?

25 MR. MIZUNO: Because you are not being asked to

1 modify your design approval, your --

2 MR. STENGER: Why are you doing the analysis then?

3 MR. MIZUNO: Because the staff has to determine
4 whether it's going to require you through order or through
5 modification of your license or revocation of your license,
6 because your license does not provide adequate protection or
7 for whatever other reason. I mean, within the purview of
8 the NRC.

9 That's the whole purpose. We are asking you to
10 determine whether you are meeting these, quote, new criteria
11 which are admittedly beyond your design basis, to determine
12 whether we are going to take further regulatory action with
13 regard to your license to assure adequate protection and
14 compliance with the Atomic Energy Act.

15 MR. STENGER: The thing is, though, Geary, if you
16 look at it in terms of burden shifting, doesn't the NRC have
17 to have some reason and justification for asking for that
18 new analysis?

19 MR. MIZUNO: Yes.

20 MR. STENGER: Why do you put the burden --

21 MR. MIZUNO: No. The burden is not -- The burden
22 for asking that information is not being shifted to the
23 licensee. And I indicated -- and this goes to my second
24 point.

25 Before the NRC staff or the Commission, the

1 agency, can ask for information under 50.54(F), it has to go
2 through this process and justify that the burden to be
3 imposed in collecting that information is justified in view
4 of the potential safety significance of the issue.

5 Now, this gets to my second point, which is you
6 indicated that that's not as rigorous a process as the
7 backfit rule, and perhaps the NRC is not even complying with
8 that. I mean, it's not doing very good analysis to show
9 that the burden or the information request is justified in
10 light of the potential safety significance of the issue to
11 be addressed.

12 I think those are valid issues; I mean, they're
13 valid conceptually. I don't know whether it's in fact true.

14 But if that is the case, I think again the
15 industry -- it shouldn't be any burden on the industry to
16 either propose a rulemaking or to, in your meetings with the
17 Commission where you talk about issues of industry concern,
18 that you raise NRC staff compliance with 50.54(F), or if you
19 feel that the standards there are not sufficient, do not
20 impose a rigorous process, to suggest that the Commission
21 look at that area and consider further rulemaking to require
22 a higher burden.

23 I'm not sure whether the Commission would be
24 amenable to that. I know that the staff would not be in
25 favor of that because they feel that they're already been

1 burdened by the backfit analysis.

2 But I think that that's the proper way of doing
3 it.

4 Again, there are regulatory methods for the
5 industry to address these issues that's not through again
6 what I would consider twisting of the existing 50.109
7 process.

8 MR. MONTGOMERY: If I could respond briefly, I
9 find this all very interesting and instructive. It's kind
10 of by accident that I'm here today, only because my regional
11 administrator is out of town.

12 But I think I'm the only one in the room, if my
13 memory still serves as to who was on the Regulatory Reform
14 Task Force and drafted the rule, the only one in the room
15 who did: myself, Jim Turlock, Frank Miraglia and two other
16 individuals.

17 And it's interesting to find what it is we meant
18 by it now six years later hearing it from other people.

19 But in any event, on this particular issue I can
20 tell you at least from the standpoint of the drafters, and
21 from the standpoint of my recollection of the Commission
22 deliberations, that this different point of view is not in
23 fact addressed by the rule.

24 What the rule deals with on this particular point
25 is established staff positions. And what I think we're

1 talking about is not whether or not there is a new staff
2 position. What we're talking about is what does the
3 Commission do and what does the staff do when for some
4 reason they begin to question or lose confidence in existing
5 staff positions.

6 The rule was not intended to deal with that. It
7 was not intended to deal with whether or not it is
8 appropriate to require additional information gathering or
9 additional analysis.

10 Therefore, I think I have to agree with you,
11 Gary, that if in fact that is a continuing issue and one of
12 importance, that it needed to be dealt with as a revision of
13 the rule.

14 That's my only comment.

15 MR. MIZUNO: Dan, I guess -- That's my second
16 point, so I guess it's your turn to respond.

17 MR. STENGER: I think if you look at the 1985 rule
18 -- and all we can go by is what the Commission said. They
19 left kind of a blurry line between -- They addressed the
20 issue of 30.54(F) and 109 and discussed it in the
21 statement of considerations.

22 It's not crystal clear -- and we could try and
23 parse out the words forever, in terms of the definitions, et
24 cetera -- but the intent and what comes through for me --
25 and I think it's a fair reading of what the Commission

1 said -- was that we're concerned that information requests
2 not be overly burdensome.

3 There is a line at some point -- and they didn't
4 define it -- where you're going to cross the line from an
5 information request to a 50.109 backfit.

6 And it was not just the burden. But, in addition,
7 if backfits are expected to follow from the information
8 request, the staff should come down on the side of doing the
9 50.109 analysis.

10 That was stated in the statement of
11 considerations. I think that's probably the best way you
12 can draw the line. It's clear, and I can go back to that
13 expression of Commission intent and what CRGR said in the
14 846 resolution context.

15 MR. MIZUNO: I guess I'm sorry that you're not
16 taking up my suggestion to consider the possibility of
17 having the industry petition for rulemaking.

18 I do think if you think it's a real problem that
19 you're free to do that.

20 And like I said, I do agree that there's a
21 blurriness there, but it's not going to be resolved through
22 informal processes, at least in this case.

23 It is a problem, and I think it needs to be
24 addressed formally.

25 MR. JORDAN: Maybe we can reduce this argument a

1 bit.

2 The CRGR review of a 50.54(F) request under
3 generic letter and a bulletin or a generic letter that's
4 clearly identified as a backfit is no different. The
5 process you go through is exactly the same.

6 The only difference is whether or not a
7 cost/benefit analysis is attached and the degree of the
8 cost/benefit analysis.

9 So it is a very, very small difference. We spend
10 the same amount of time deliberating on it and are as
11 concerned about that particular document as another.

12 Part of it is label. I think in the past we have
13 made some mistakes, I agree, and in the future we'll
14 continue to. But we're trying to establish a consistent
15 pattern and do it in the same way.

16 Now where we do have a disagreement, I think, is
17 on where we draw the line between compliance determinations
18 and others, adequate safety, cost/beneficial, particularly
19 with respect to the general design criteria.

20 Whenever we have new information that says that
21 the judgment that the NRC and the industry made on, let's
22 say, general design criteria is in question, then it's
23 incumbent on us and on you to try to understand and
24 technically solve the problem.

25 If you no longer meet specific general design

1 criteria because of the new information, it is a compliance
2 problem.

3 I in my mind can simplify it very easily at that
4 point. And so I think where we disagree is exactly where
5 the line is in between here.

6 And the discussions have sensitized me so that
7 perhaps personally I'll be more careful. But I still have,
8 I think, a difference with you.

9 MR. MIZUNO: I guess my final thing is -- That's
10 a good lead-in, because my final point is on the compliance
11 exception.

12 I know we discussed this before, but let me
13 respond to say that I disagree with Dan Stenger's
14 understanding of what the compliance exception is.

15 Let me say that I think it at least means, even if
16 you accept the 1985 Stenger considerations discussion about
17 that, and then indicate that the agency -- at least Office
18 of General Counsel has come to the conclusion that the
19 compliance exception embraces what Mr. Jordan indicated it
20 would embrace.

21 Dan, you suggested that the compliance exception
22 applied to the situation where a licensee made a commitment
23 in its license, either as part of its original application
24 or subsequently thereafter; and the licensee is now failing
25 to comply with that commitment.

1 I suggest that that is not an exception -- a
2 compliance exception to the backfit rule for us to tell a
3 licensee to comply with the commitment. That is a pure
4 enforcement matter.

5 You made a commitment, whether it be in your
6 application, your FSAR or FSAR Supplement, whatever; you
7 failed to comply with the commitment.

8 Everyone knows what that commitment is. You
9 failed to comply with that. That's not the backfit. There
10 is no change in position on the part of the staff. We are
11 simply requiring you to comply with what you said you were
12 going to do.

13 Now, I guess Mr. Stenger then raised -- said,
14 "Let's go back to the 1985 statement of consideration." And
15 you saw the words there that the compliance exception was
16 intended to apply to omissions or mistakes.

17 Let's assume that that is, in fact, the entire
18 scope of the compliance exception, and I don't accept that,
19 and the Office of General Counsel doesn't accept that.

20 At minimum, what we believe the compliance
21 exception would cover is where there was information that
22 was known or should have been known to the licensee, but the
23 licensee either mistakenly misrepresented information to us,
24 or failed to disclose -- omitted to disclose relevant
25 information as regards the licensing decision to be made, or

1 it also applies to the situation where information was
2 disclosed -- admittedly, correct information was disclosed
3 to the NRC, but it was misunderstood by the NRC for whatever
4 reason.

5 In those cases at minimum that's what the
6 compliance exception -- accepting the 1985 words as to what
7 the coverage of it is.

8 I think that the compliance exception goes beyond
9 that. And I believe that the General Counsel's Office has
10 come to the conclusion that, in fact, it also applies to the
11 situation where the NRC and licensee understood that there
12 was going to be compliance with the regulations and the
13 requirements of the NRC, but subsequent to that time, new
14 information has come to the attention of the NRC, increases
15 in -- you know, advances in the state of knowledge of
16 certain phenomena, past performance that has been collected,
17 operating experience.

18 All of this kind of information, if it leads the
19 NRC to believe that our original decision that you were in
20 compliance with a requirement is no longer -- is incorrect.
21 We believe that you are no longer in compliance with the
22 requirements and regulations.

23 We're not per se changing the idea of what is
24 neces . . . to assure adequate protection. That would fall
25 into a different exception.

1 But everyone agrees that this is the level of
2 protection that needs to be reached, and this is the
3 appropriate requirement.

4 But the question is, now we know that there's new
5 information out there which suggests that you are not
6 meeting it. Okay.

7 A good example would be where you receive new
8 information with regards to the metallic content of your
9 reactor vessels, that you know you are no longer in
10 compliance with the PTS.

11 Okay. Under those circumstances, NRC believes
12 that it would be -- It wouldn't be a backfit, but it would
13 fall into the compliance exception where the NRC issued an
14 order to you or required you to evaluate and to take
15 appropriate action to address this particular, apparent
16 noncompliance with the Commission's regulations.

17 MR. BISHOP: My turn?

18 MR. MIZUNO: Your turn.

19 MR. BISHOP: The lawyers are going to stop having
20 fun in short order, I promise you.

21 I think Dan and I agree with everything you said,
22 Geary, up until the last example. Let me try a torture
23 hypothetical.

24 I've got a four-loop plant, and I've got four main
25 coolant pumps. I built them; they work; everything is fine.

1 I counted them; there are four of them. I mean, I'm in
2 compliance with my license.

3 The NRC gets recent information and says, "Gee,
4 we're not sure in this kind of context whether you really
5 don't need a fifth main coolant pump."

6 In my view, I still comply with my license. The
7 mere fact that the NRC has new information that suggests
8 something more need be done, in my view there ought to be a
9 rule, requirement or an order that would require me to do
10 something more, because I'm still complying with my license
11 even though there's new information around.

12 MR. MIZUNO: I agree. A rule or order will be
13 required. The question is not whether we're going to
14 require that through rule or order. I mean, it's clear, I
15 think.

16 We're not dealing with generic letters at this
17 point. The question is whether that rule or order is going
18 to be subject to a backfit analysis, or whether it's going
19 to be exempt from backfit analysis pursuant to the one of
20 the three exceptions, in this case the compliance exception.

21 Now, it's hard -- Using your example, it's very
22 difficult to actually get down and say, "Yes, it's
23 compliance," or "No, we're dealing with a backfit," because
24 it's unclear.

25 I mean, we thought that four loops were good.

1 There was a particular GDC that was applicable, okay.

2 If we are saying that no, the GDCs are no longer
3 good enough, then we need something. Your compliance with
4 the GDCs is not being questioned, but we need something else
5 to assure adequate safety.

6 Then I would agree that that's not within the
7 compliance exception.

8 But if the question is, we know new information
9 that shows that the GDC is not being met -- there's no
10 question that the GDC applies to your plant, assuming that
11 your plant is subject to the GDCs -- then I would say that
12 that is a compliance exception.

13 MR. BISHOP: I don't understand the distinction
14 you just made.

15 MR. STENGER: I don't either. I'm lost.

16 MR. BISHOP: Anyway, maybe this fascinating
17 discussion should --

18 MR. NANDY: Excuse me for interrupting. I'm Fred
19 Nandy, Southern California Edison Company.

20 You just went through a very long discussion of
21 what a compliance exception was, and I got lost about the
22 first ten minutes. Maybe it's because I don't have any
23 legal training.

24 Is there some way you could simply state it? I
25 understand Mr. Bishop's comment fairly clearly. It was

1 pretty succinct.

2 But it took you about twenty minutes to make a
3 point and I got lost, and I didn't follow it.

4 MR. MIZUNO: Okay. Shall I start with what I
5 consider not to be within the compliance exception?

6 MR. NANDY: Yes.

7 MR. MIZUNO: Okay. Let us assume that you made a
8 commitment in your FSAR to have a diesel generator that is
9 available 95 percent of the time. Okay. That is a
10 commitment that you made in your FSAR.

11 Now, we approved that as meeting whatever GDC may
12 be applicable to that.

13 Ten years later we find out that you did not
14 install the generator. We then issue an order to you
15 saying, "Put in that generator." Okay?

16 MR. NANDY: No problem so far.

17 MR. MIZUNO: That does not fall within the
18 compliance exception to the backfit rule. That's not even a
19 backfit is what I'm saying, because that's a simple
20 enforcement matter.

21 MR. BISHOP: Stop there for a second.

22 Now, let's say the NRC decides that 95 percent
23 just isn't good enough anymore. We've got some other
24 accident scenarios. We're concerned about SBO. 95½ percent
25 is what we now think is appropriate.

1 MR. MIZUNO: That would not fall into the
2 compliance exception.

3 MR. JORDAN: That would be the case where you
4 would clear --

5 MR. MIZUNO: That would clearly be a backfit.

6 MR. JORDAN: Yes. It's a backfit, and it would be
7 an adequate safety because in my view adequate safety would
8 dominate. And even if you could make some kind of a goofy
9 argument, based on an existing GDC, that would still be....

10 MR. NANDY: I think we're all talking the same
11 thing. It's just that I got lost because -- You know, if
12 you've committed to do something and you haven't done it,
13 you had better go do it because it's a compliance issue.

14 But if you have got that new information that the
15 old regulation, the design criteria do not apply, then it's
16 incumbent on the NRC to advise the licensees that that
17 additional activity, step or whatever, needed to bring back
18 into play that ... what I'll call adequate health and
19 protection of the public, by modification or change in
20 criteria, then the NRC needs to do whatever they need to do,
21 whether it's backfit evaluation or a new rulemaking
22 activity, whatever it is.

23 I think we're all talking the same language.

24 MR. MIZUNO: Well, no, not necessarily, because
25 let me show you what --

1 MR. JORDAN: Let me -- I think we are talking the
2 same language.

3 MR. NANDY: I think we are, too.

4 MR. JORDAN: It's the label we put on it, and the
5 label is -- It's partly in terms of the process. And the
6 industry and the NRC, I think, have a gray zone here that we
7 have difficulty deciding which of the labels is the right
8 label.

9 MR. NANDY: That's why we're having so much
10 difficulty right now.

11 MR. JORDAN: Right. So if we have the same
12 definition and it's a decision process, then you guys can
13 tell us -- and nobody has been bashful so far -- when we've
14 strayed over the line.

15 And I think that's the right way to have it.
16 We've leaned too far in that direction, and now we'll
17 correct the process.

18 And I think you see when you look at CRGR-type
19 recommendations over time, we've changed our path a little.

20 MR. NANDY: We're trying to make something very
21 complex that doesn't necessarily have to be complex. It's a
22 set of rules that you committed to do; and if you didn't
23 meet the requirement, even though you said you would, you've
24 got to go fix it. The requirement is not going to change.

25 You have to be told the requirement has been

1 changed --

2 MR. JORDAN: What's the basis for change? We're
3 obligated to explain to you the basis, and if the basis
4 doesn't make sense, you're obligated to tell us, "Hey, this
5 is goofy. You don't really have an adequate safety issue,"
6 or "You pulled compliance out of the air with respect to the
7 GDC," and we have to look at that.

8 We missed the break. I forgot to tell you that.

9 MR. BERLINGER: If I ask a question, are you going
10 to miss my presentation?

11 MR. JORDAN: We could.

12 MR. BERLINGER: Stop. [Laughter]

13 MR. JORDAN: What I'd like to do if possible, Bob,
14 you're not going to be here tomorrow. If you have anything
15 to add to this particular facet of the discussion, I'd ask
16 you to add it briefly.

17 MR. BISHOP: Boy, that's -- You know, lawyers
18 call 60-page documents briefs, so that's a real challenge.

19 A couple of quick observations, one of which I
20 guess is, fundamentally, I mean, I think this workshop is a
21 good example of the value of dialogue. We may be thinking
22 the same way, and we may not be able to express it quite as
23 well, so we think we're talking about different concepts.

24 I guess I would always advocate that the NRC
25 should opt on these close calls on this admittedly gray

1 area, do the backfit analysis. I mean, to force yourself
2 into the discipline of seeing how that works out.

3 They talk in the legal context about a judge who
4 has made up his mind about whether this particular defendant
5 is innocent or guilty, and then sits down and tries to write
6 the opinion and has a hard time coming to that prejudgment,
7 that conclusion.

8 I would advocate as a matter of principle, that
9 when in doubt a backfit analysis ought to be done. You
10 might learn from that process. You might think, "Well, now
11 that we've really looked at it, I'm not real comfortable
12 we've got the right justification," or "We've analyzed that
13 directly," or "This aspect has been well done."

14 The second thing -- and I made the comment
15 earlier, but just to share with you folks -- I think a lot
16 of insight can be gained by the licensee, if at the time a
17 generic communication were issued, the cost/benefit
18 analysis, if one is done under 50.109, the justification
19 that's done -- what has to be done under 50.54(F), any of
20 that supplementary information, if that could be issued at
21 the same time as the generic communication as part of that
22 package, it will cut down on the possible misconceptions
23 because you'll now be able to see exactly what the NRC had
24 in mind when it did this analysis.

25 And if their analysis says it's going to take

1 two person-weeks to do this job, and you look at it and say,
2 "My God, there's no way that could be done in less than five
3 person-years," there's something you need to talk about.

4 Without that, if all you have are the words about
5 "Well, why don't you look at this," you may have a far
6 different scope of what that look is going to be required to
7 be and what the staff has.

8 So I've asked Ed, and he has agreed, that that's
9 one of these things that has come out of these workshops
10 that they'll take into consideration about the opportunity,
11 the wisdom, if you will -- my word -- of issuing those
12 things contemporaneously, because I think we could all learn
13 a lot from that process.

14 Thank you.

15 MR. JORDAN: Thank you.

16 Dan, are you going to be here tomorrow?

17 MR. STENGER: I will be. If I could take five
18 seconds to follow up on Bob's comment.

19 MR. JORDAN: All right.

20 MR. STENGER: I think that's a very perceptive
21 point; that's an excellent point.

22 And also having that analysis can give you a sense
23 for what the priority is that the NRC places on this issue
24 in terms of other ongoing work you have. That can be very
25 beneficial as well.

1 MR. JORDAN: Good. Okay.

2 Then I'd like to transfer it over to Bob Berlinger
3 and ask him to go through the bulletins and generic letters
4 and end his presentation by 6:00.

5 Then I would ask that -- Everybody shouldn't
6 leave.

7 VOICE: You can only drink so much of that water.

8 VOICE: How about a five-minute break?

9 VOICE: We'll be more attentive.

10 MR. JORDAN: All right. A five-minute break.

11 [Recess taken from 5:10 p.m. to 5:15 p.m.]

12 MR. BERLINGER: The subject of my presentation, as
13 shown on your agenda, is "Bulletins and Generic Letters."
14 I'll also be addressing information notices for several
15 reasons.

16 First of all, the NRC issues approximately a
17 hundred each year, and each of these has an effect on
18 licensees.

19 Secondly, by including a number of information
20 notices, it will be possible to get a good feel for the
21 kinds of information that we at the NRC consider -- that we
22 obtain from various sources and the analyses that we use to
23 decide whether we should issue an information notice or a
24 bulletin or a generic letter.

25 On the first slide, the NRC frequently responds to

1 events and other safety issues by issuing either an
2 information notice or a bulletin or a generic letter.

3 What I intend to do is to briefly discuss each of
4 these generic communications. I will discuss several
5 specific examples, the reasons each were issued and how they
6 were considered from the standpoint of the backfit rule.

7 Next slide, please.

8 Information notices notify utilities of problems
9 that could affect their plants. Information notices
10 generally describe an event or a problem or several related
11 events and problems.

12 They may delineate corrective actions taken by one
13 or more utilities. It has been said, at least to me, that
14 when we delineate corrective actions taken, we serve a very
15 useful purpose, probably the best reason for issuing an
16 information notice.

17 Information notices do not prescribe any specific
18 actions. They do not require a response, and they do not
19 convey any changes to staff positions.

20 Information notices are not reviewed by the CRGR
21 and are not covered by the backfit rule. The NRC does
22 expect each information notice to be reviewed as a part of
23 the licensee's programs to review operating experience.
24 This was a post-TMI requirement.

25 Next slide.

1 Bulletins request actions in response to an event
2 or problem or several related events and problems.
3 Bulletins may request utilities to determine appropriate
4 proposed corrective actions.

5 They sometimes will do this within general
6 guidelines, and they may request the licensee to submit a
7 proposed action for NRC approval.

8 Bulletins may contain specific corrective actions
9 and ask utilities to confirm to the NRC that the actions
10 have been or will be taken.

11 Bulletins may convey a change in staff position.
12 Although bulletins request specific action, they require a
13 written response.

14 Bulletins are reviewed by CRGR before they are
15 issued.

16 Next slide, please.

17 Generic letters. Generic letters request actions
18 in response to programmatic problems or issues. A previous
19 presenter tried to differentiate between information
20 notices, bulletins and generic letters, going up in
21 significance in that order.

22 That's really not the way I perceive them.
23 Information notices send out information. Bulletins
24 generally respond to a specific incident or event, whereas
25 generic letters are generally issued to address programmatic

1 problems. They're more longer term.

2 Generic letters -- Okay. I want to do this next
3 item here.

4 The actions requested in a generic letter are
5 generally of a continuing nature, and they may convey a
6 change in staff position, and a written response is
7 generally required.

8 Any generic letter which requests action is
9 reviewed by CRGR. For example, the generic letters
10 delineating voluntary relaxations in technical
11 specifications are reviewed by the CRGR.

12 In particular, tech spec line item improvers
13 addressing the lengthening of surveillance test intervals
14 are reviewed by the CRGR.

15 Next slide, please.

16 I'm going to briefly discuss several information
17 notices, bulletins and generic letters and indicate the
18 basic reason each was issued. You will see that information
19 on events and problems leading to the issuance of a generic
20 communication come from a variety of sources.

21 I will also point this out as I discuss each of
22 these generic communications.

23 The first one shown on this slide is Information
24 Notice 89-07. It's an information notice describing
25 failures in tubing of instrumentation and control air

1 systems, as well as in fuel oil and lube oil systems
2 apparently caused by vibration.

3 These failures can render emergency diesel
4 generators, as an example, to be inoperable.

5 This information notice was issued as a result of
6 several related events and problems that were found during
7 the normal NRC review of an event.

8 Tomorrow beginning in the afternoon that session
9 will cover event reporting and how NRC reviews 50.72 and
10 50.73 event reports.

11 But this was one of our generic communications
12 that resulted from an event report.

13 Next slide, please.

14 This addresses Information Notice 89-15 which
15 described an apparent decoupling of a reactor coolant pump
16 shaft and impeller at the Crystal River Unit 3 plant.

17 This information notice was issued as a result of
18 one specific event. However, other information notices had
19 been issued discussing previous reactor coolant pump shaft
20 failures.

21 This information notice was issued to convey
22 information on the particular event at Crystal River 3, to
23 ensure that everybody in the industry knew about the problem
24 so that they could determine whether they needed or wanted
25 to do something about it at their particular plant, to see

1 whether at least it was appropriate at their plant.

2 Next slide, please.

3 Information Notice 89-20 described weld failures
4 in primary loop recirculation pumps of Byron-Jackson design
5 that had been experienced by owners of BWRs in a foreign
6 country.

7 This information notice was issued as a result of
8 several related problems occurring overseas.

9 In the NRC's process of reviewing events, we do
10 look at the more important events that occur in other
11 countries. When we find something we believe should be
12 shared with US utilities, we would issue an information
13 notice.

14 Also, if the problem is significant enough of a
15 generic nature to warrant that a bulletin or a generic
16 letter be issued, we would issue one.

17 Next slide, please.

18 Information Notice 89-21 describes vendor
19 practices in which changes to molded case circuit breaker
20 time-current characteristic curves were made without
21 changing either the part number of the breaker or without
22 giving any specific notification to their particular
23 customers.

24 This information notice was issued as a result of
25 findings from NRC inspections of equipment vendors. A

1 vendor inspection.

2 When we find information during inspections that
3 we feel is safety significant and potentially applicable to
4 other licensees, we will issue an information notice.

5 Next slide.

6 Information Notice 89-22 addressed problems with
7 the certification of bolts, nuts and studs that had been
8 furnished by Hardware Specialty Company.

9 It was issued as a result of findings from an NRC
10 inspection at both the Waterford site and at Hardware
11 Specialty Company.

12 Next slide, please.

13 Information Notice 89-26 describes problems found
14 when performing actions requested in a generic letter
15 entitled "Instrument Air Supply System Problems Affecting
16 Safety-Related Equipment."

17 The purpose of this information notice was to make
18 licensees aware of the kinds of problems that utilities were
19 actually finding during their implementation of the generic
20 letter on air system problems.

21 Most of the problems described in this information
22 notice were from the regional offices and the work that they
23 have been doing in looking at what utilities had done in
24 response to this particular generic letter.

25 Information Notice 89-29 was issued as a result of

1 a vendor report to the NRC which was required under 10 CFR
2 Part 21.

3 As part of NRC's review of Part 21 reports, if we
4 find a problem that we feel is significant, that all
5 utilities may not be aware of, we will issue an information
6 notice.

7 If we find a problem in a Part 21 report that is
8 of a high enough safety significance that we feel every
9 utility should address it, then we would probably issue a
10 bulletin.

11 Next slide, please.

12 Information Notice 87-28 was issued as a result of
13 an in-depth, systematic review performed by the Office of
14 Analysis and Evaluation of Operational Data.

15 This review was of problems occurring over several
16 years -- I think it was seven or eight years, maybe even ten
17 -- problems occurring in air systems.

18 The information notice was followed up with a --
19 or by a generic letter requesting specific utility actions.
20 The actions were to address the problems identified in air
21 systems.

22 The generic letter required a response from each
23 utility.

24 The reasons for and the sources of information
25 regarding safety problems which lead frequently to issuance

1 of bulletins or generic letters are similar to what I've
2 discussed with regard to information notices.

3 The difference, however, is that bulletins and
4 generic letters request licensee actions to ensure that the
5 problems are addressed and corrected.

6 So when we issue a bulletin or a generic letter
7 rather than an information notice, we've made a decision
8 that the problem is significant enough for us to make sure
9 that licensees take actions to correct the problem.

10 Next slide, please.

11 This slide addresses backfit considerations
12 regarding bulletins and generic letters. The backfit rule
13 must be considered if a generic communication involves any
14 change in applicable regulatory staff position.

15 Every bulletin and generic letter is presented to
16 the CRGR. Generally, it is accompanied by an information
17 package that includes responses to the required questions
18 identified in 10 CFR 50.109, the backfit rule.

19 Even if the proposed backfit involves an adequate
20 protection or compliance issue, the staff tries to include
21 as part of this information package estimates of the cost to
22 be incurred.

23 Sometimes we issue supplements to bulletins and
24 generic letters. Sometimes these supplements only convey
25 information.

1 Even in these cases we would -- we being the staff
2 -- would go before CRGR to confirm that a full-blown review
3 of the particular supplement is not needed. We interact
4 with the CRGR staff and with the members of the CRGR in
5 order to make a determination even if we're requesting a
6 waiver of CRGR review

7 One additional point, which is the last one on
8 this slide, is that the CRGR meeting minutes and the
9 material that is submitted by the staff to CRGR are made
10 publicly available, but generally they're made publicly
11 available when either the bulletin or generic letter is
12 issued and not before.

13 Prior to that point in time, the information is
14 still considered to be predecisional.

15 Now what I would like to do is talk about some of
16 the specific bulletins and generic letters which we have
17 issued.

18 Next slide, please.

19 The first one is about Bulletin 88-08. This was
20 issued at the request of the utilities to review their
21 reactor coolant systems to identify any connected,
22 unisolable piping that could be subjected to temperature
23 distributions that could possibly result in unacceptable
24 thermal stresses and to request action by utilities to
25 ensure that the piping would not be subjected to such

1 stress.

2 The bulletin was issued as a result of a specific
3 event involving loss of integrity of the reactor coolant
4 system pressure boundary.

5 Because of the nature of the event, there was
6 little question that the problem was generic and safety
7 significant.

8 In addition to this bulletin, two bulletin
9 supplements were issued that provided information on other
10 similar events that had been identified at foreign reactors.

11 In addition, one supplement was issued to
12 emphasize the need for enhanced ultrasonic testing and the
13 use of experienced personnel in conducting those inspections
14 to assure that cracks in stainless steel piping would be
15 detected.

16 This bulletin was issued under the compliance
17 justification or compliance exception in the backfit rule.
18 The compliance was to General Design Criteria 14, which
19 addresses reactor coolant pressure boundary.

20 Next slide.

21 MR. JORDAN: While you're on that one --

22 MR. BERLINGER: On the previous one?

23 MR. JORDAN: 88-08.

24 That's one that you got new information and it was
25 a mode of failure that for older plants hadn't been

1 anticipated. It was also one for which some older plants,
2 in retrospect should have been considered in compliance
3 because they really were not licensed under GDC.

4 And so this is a case where, if we get down to
5 particulars, we could cut this one in several different pies
6 and go different ways. And perhaps we will in the future.

7 But I think it's well to recognize that the reason
8 we're bringing these up is sort of looking at them in
9 retrospect.

10 If you have comments or questions either today or
11 tomorrow, then we could consider it based on your experience
12 with those particular bulletins.

13 MR. BERLINGER: The next one is Bulletin 88-C7.

14 This bulletin was issued to request that utilities
15 with boiling water reactors ensure the availability of
16 adequate procedures, instrumentation and training to prevent
17 occurrence of uncontrolled power oscillations.

18 The bulletin was issued as a result of a specific
19 abnormal operating event indicating that past licensing
20 calculations had not been or were not reliable in
21 determining that a core would be stable under all operating
22 conditions during a fuel cycle.

23 The amplitude of the power oscillations was found
24 to be greater than previously experienced during U.S.
25 special stability tests and also for known foreign operating

1 reactor events and tests.

2 A bulletin supplement was issued to this bulletin
3 to provide additional information concerning power
4 oscillations in BWRs and to request actions to ensure that
5 the safety limit for minimum critical power ratio was not
6 violated.

7 Both the bulletin and the supplement required
8 action. So both the bulletin and the supplement went before
9 CRGR for their review

10 It was issued under the compliance justification
11 for compliance exception to the backfit rule. Exception was
12 taken to -- Excuse me.

13 The compliance was with General Design Criteria 12
14 on suppression of reactor power oscillations.

15 Next slide, please.

16 Bulletin 89-03 requested actions by utilities with
17 PWRs to prevent potential violations of required shutdown
18 margin and in extreme cases inadvertent criticality during
19 refueling operations.

20 The bulletin was issued as a result of 10 CFR Part
21 21 report which was filed with the NRC regarding the
22 potential loss of shutdown margin during refueling
23 operations at Calvert Cliffs.

24 The bulletin was issued on the basis of the need
25 to provide adequate protection.

1 Next slide.

2 This addresses Bulletin 90-01. This bulletin was
3 issued to request that addressees promptly identify and take
4 appropriate corrective actions for selected pressure and
5 differential pressure transmitters manufactured by
6 Rossmount.

7 This bulletin was preceded by an information
8 notice approximately one year earlier. The bulletin was
9 issued as a result of a series of reported failures of
10 transmitters and after extensive discussions with Rossmount
11 and with the nuclear utilities concerning the cause of these
12 failures, the detection of the failures and corrective
13 actions.

14 The transmitter failures were caused by leaking --
15 what they call fill oil, and by virtue of the failure mode
16 are not readily detectable and thereby increase the
17 potential for common mode failures which may result in the
18 affected safety system not performing its intended safety
19 function.

20 This was an instance where we issued an
21 information notice fairly early on to inform the industry of
22 the particular problem.

23 Then we had extensive discussions with the
24 industry and with the vendor. And at a point in time when
25 we concluded that it was a big enough safety problem and

1 hard enough to identify, and when it got to the point where
2 we had questions in our own minds as to what the utilities
3 were actually doing in response to the initial information
4 notice, we issued a bulletin.

5 And the reason we issued it was to ensure that
6 licensees were taking appropriate corrective actions.

7 Now, before I go on to discuss the generic letter
8 examples, I want to clarify a few things.

9 First, I'd like to say that the NRC tries to avoid
10 issuing bulletins which are directed at compliance. And we
11 try to avoid issuing bulletins using this compliance
12 exception unless we feel that the safety issue is
13 significant.

14 So we don't issue bulletins or generic letters
15 just to bring a plant into compliance. We can take that
16 problem and solve it directly with the plant; we don't need
17 to issue a generic communication, even if it were to apply
18 to more than a handful of plants.

19 If it is a pure compliance issue and the safety
20 problem is not significant, we may just issue an information
21 notice, just to inform licensees of the issue, or we may
22 issue nothing.

23 And we may address the compliance issue or the
24 compliance problem on a plant-specific basis.

25 Also, I'd like to point out that we try to rely to

1 as great an extent as possible on INPO reports that they may
2 send out to inform licensees of problems.

3 As I mentioned earlier this afternoon, we exchange
4 information with INPO, identifying the proposed generic
5 communications that are under consideration on either a
6 weekly or biweekly basis.

7 The main purpose for that is to identify issues
8 that we are working on as organizations and to be able to
9 exchange information. And in that way, if a particular
10 report or two reports are going to be issued simultaneously
11 which essentially address the same issue and the perspective
12 from a safety issue standpoint is satisfactory from the
13 NRC's perspective within that INPO report, we don't
14 necessarily duplicate what they have done and issue an
15 information notice or some other communication.

16 We do rely on INPO reports to disseminate
17 information, and in some cases we do waive issuance of an
18 information notice based on the existence of an INPO report.

19 MR. JORDAN: Carl, could I interrupt and make a
20 couple of comments about the 90-017

21 This is the kind of a bulletin that seems like ho-
22 hum when you get it, but the way it was presented to the
23 CRGR was that here were a large set of transducers that are
24 out in the industry; and there are a lot of the same lot
25 numbers of transducers out there.

1 And when we looked at failure rates of certain lot
2 numbers of these transducers, we found that there was indeed
3 a very high failure rate and one which is not detected by
4 normal surveillance.

5 And so you then had the capability of accumulating
6 detectors that would not operate during an operating cycle
7 in a -- in giving you a protective action. And you wouldn't
8 know it.

9 And the only way of knowing it would be to go
10 through the right tests.

11 And, further, that utilities changed -- in terms
12 of having large batches of a given type of transistor --
13 transmitter as a result of equipment qualification programs
14 that the NRC had imposed some years back.

15 So this was sort of an insidious thing. You had a
16 large group of the same lot number in given plants that
17 really had an extraordinarily high failure rate. So we were
18 very uneasy, and that was the basis for making this bulletin
19 and getting it fixed, in addition to just promulgating
20 information.

21 I think this is a case where industry and
22 regulatory worked pretty well together, because the
23 information notice identified further failures when
24 utilities did do testing. And that allowed the
25 understanding of what the true failure rate was.

1 This is one of the -- what I would call pretty
2 strong common mode failure problems that we've seen in
3 recent times.

4 MR. BERLINGER: If I could add one other comment
5 with regard to this bulletin. One of the ways in which
6 Rosemount transmitter problems broke more broadly than were
7 described or acted upon in this bulletin were in fact
8 addressed as follow-up to issuance of this bulletin is by
9 the staff relying to great degree on the industry, and
10 particularly NUMARC, of coordinating some of the industry
11 efforts in either responding to this bulletin or in
12 analyzing the data and in collecting data that went beyond
13 the requested information from the bulletin.

14 And so I think this follow-up to issuance of this
15 bulletin, we would hope in the near term to have additional
16 information provided by the industry through NUMARC.

17 One of the bits of information that will be
18 available from their work or the additional work done with
19 Rosemount is the identification of additional suspect lots
20 beyond those that were identified at the time of issuance of
21 the bulletin.

22 They would then have to be addressed in accordance
23 with Bulletin 90-01.

24 The next slide is the first generic letter, right?
25 Generic Letter 88-14 addressed actions to ensure

1 the performance of air systems. The generic letter was
2 issued as a result of an AEOD report, a study, indicating
3 persistent air system problems which were frequently
4 occurring, and they had a high -- a potential for a high
5 safety significance.

6 The generic letter implemented existing
7 requirements based on FSAR commitments on the design basis
8 for air systems.

9 This generic letter was issued using the
10 compliance exception, 50.109.

11 Next slide.

12 Generic Letter 89-10 requested that licensees
13 develop and implement programs to assure that motor-operated
14 valves will perform their intended safety functions. The
15 generic letter was issued to complement the requirements of
16 ASME Section XI testing and to resolve generic issues 87 and
17 II.E.6.1, and also to maintain the failure rates of MOVs
18 within acceptable limits.

19 This generic letter was issued as a sequel to
20 Bulletin 85-03. It extended Bulletin 85-03 actions to all
21 safety-related motor-operated valves.

22 It was issued after it was apparent that there
23 were numerous problems being found with motor-operated
24 valves in the field as people were responding to Bulletin
25 85-03, and that there would likely be a significant number

1 of motor-operated valves in operating plants that might not
2 perform their required safety functions under design basis
3 accident conditions.

4 The generic letter was issued under justification
5 of compliance exception to the backfit rule.

6 The general design criteria, numbers 1, 4, 18 and
7 21, were the GDCs and Appendix B to Part 50 was the other
8 part of the compliance issue.

9 Next slide.

10 Generic Letter 89-13 requested that licensees
11 establish programs that would include features to assure the
12 adequacy of the service water system. A generic letter was
13 issued in response to a large number of operational events.

14 It resolved generic issue 51 and responded to an
15 AEOD case study performed on service water systems, and also
16 responded to numerous regional -- NRC regional office
17 recommendations regarding specific generic action.

18 The generic letter was justified on the basis of
19 compliance and addressed GDC 44, 45 and 46, which are
20 related to heat removal capability requirements, and also
21 with Appendix B to Part 50.

22 In summary, I have given you an overview on how we
23 consider the backfit rule when considering the need for
24 issuance of an information notice, a bulletin or a generic
25 letter.

1 I have given you a number of very specific
2 examples showing why we issued various generic letters or
3 generic communications and where the information came from
4 in developing these generic communications.

5 When we consider issuing a bulletin or a generic
6 letter, we look very carefully at how pervasive and how
7 significant we believe the safety problems to be.

8 We go to CRGR and must justify that there is a
9 significant safety problem which will likely exist on a
10 generic broad basis.

11 We would issue a generic letter or a bulletin
12 based on compliance exception to the backfit rule whenever
13 it was clear that the identified safety problem was in fact
14 pervasive and that the required safety equipment was likely
15 not to function or to perform its safety function when
16 called upon.

17 I could add one other point, and that is that
18 issuance of a generic letter or bulletin on an issue which
19 we feel is necessary in order to provide adequate protection
20 would be issued in order to provide assurance that there is
21 adequate protection. That sort of goes without saying.

22 At this point that's the end of my formal
23 presentation. I'll be glad to answer any questions.

24 MR. BISHOP: Let me just quickly try to put some
25 words in Carl's mouth and see if we can once again assure

1 that it's just a question of using different words but we
2 mean the same thing.

3 A lot of these generic letters and bulletins, the
4 last paragraph as you've described and talk about it was
5 justified in conformance with this ... like the compliance
6 exception, backfit or whatever.

7 Let me try a different phrasing on you and see if
8 you agree.

9 We've issued this generic letter or bulletin,
10 whatever it is, and recommended actions that should be
11 considered by licensees. We've done a backfit analysis
12 because we believe that if appropriate action is not taken,
13 that we have grounds in conformance with the backfit rule to
14 impose by rule, regulation or order an obligation for
15 something to be done to address this issue to our
16 satisfaction.

17 MR. BERLINGER: Uh-huh.

18 MR. BISHOP: Does everybody understand why it's
19 stated that way?

20 I'm just a poor binary guy in a multivariable
21 world here, and I just grasp simple concepts more readily
22 than some of these complex ones.

23 MR. BETHAY: I have one comment and one question
24 that have absolutely nothing to do with backfitting, but
25 they're generic communication.

1 One, the ability to get generic communications off
2 the computer is great. Keep that up.

3 The other one is a question that has long bothered
4 me. Why do we have to submit responses to generic letters
5 and bulletins under oath or affirmation? Are we not just as
6 liable for things we say in an LER or violation response?
7 Is there anything beyond just because the good book says so?

8 MR. MIZUNO: It's because the statutory authority
9 for 50.54(F) derives from the Atomic Energy Act. I think
10 it's Section 182.

11 And under Section 182 the NRC can require
12 responses -- information for the purposes of modifying or
13 revoking a license, the statutory authority says that the
14 responses can be under oath or affirmation, or should be
15 under oath or affirmation.

16 MR. BETHAY: You've just regurgitated what the
17 regulation is.

18 MR. MIZUNO: The statute says we can do it that
19 way. We can't issue a regulation unless we have a statutory
20 basis for it.

21 MR. BETHAY: The question is not what. I know
22 what it says.

23 The question is why does it say that? I mean,
24 doesn't a violation response, for example, or an allegation
25 response or an LER constitute the same thing?

1 You could modify my license based on what I tell
2 you in a violation response, too. You don't ask for those
3 under oath or affirmation. I'm just asking why.

4 MR. NANDY: I think 50.109 applies whether it's
5 under 50.54(F) or under --

6 MR. MIZUNO: It does.

7 VOICE: His question is why do you do it on some
8 generic letters and not on other generic letters? Is there
9 any methodology behind this?

10 MR. MIZUNO: I think in the past it has been --
11 There were a lot of different questions.

12 The reason why there hasn't been consistent -- or
13 reference to oath or affirmation was -- where responses were
14 actually required under 50.54(F).

15 I would say that was inadvertence. Internally
16 within the Office of General Counsel, different portions of
17 the office have looked at letters depending upon whether the
18 originating office was comfortable with -- the Hearing
19 Division or whatever.

20 But I think no, we have some common understanding
21 that they all -- all these generic letters which require a
22 response pursuant to 50.54(F) cite both to Section 182 of
23 the act, as well as 50.54(F), and that they say that they be
24 submitted under oath or affirmation.

25 Now the question about why it is that we do that

1 way, I think we're just being consistent with the statute.

2 MR. BERLINGER: You're not being honest. The
3 rules were written by lawyers.

4 MR. MONTGOMERY: Let me ask the question one more
5 time. Would it be fair to say that the reason is, at least
6 with respect to my understanding, because OGC likes it that
7 way?

8 MR. NANDY: The problem is trying to find a notary
9 at the end of the day. The letter is sitting on my desk,
10 and the notary went home.

11 MR. BISHOP: I think in practical context we're
12 long past the point where there's a significant difference
13 in the responsibility of the person who's signing the
14 letter.

15 MR. BETHAY: Just a suggestion: When you get
16 around to changing the rules, take that out. It's useless.

17 MR. JORDAN: It has been an onerous thing. We've
18 heard a lot of comments like that, so we appreciate hearing
19 it again.

20 MR. NANDY: I just sent my secretary out to become
21 a notary, so I don't care anymore.

22 MR. MIZUNO: I guess I should say that I
23 personally am not really truly familiar with why it's -- I
24 mean, the enforcement aspects of it. I think there might be
25 some implication for criminal referrals or whatever, but I

1 doubt it.

2 So I will definitely consider that, take it back
3 to the office and research it. And if it does represent a
4 burden --

5 MR. BISHOP: If it's a burden without a benefit,
6 then we ought to look at change.

7 MR. JORDAN: That's right.

8 MR. BERLINGER: One other comment. I appreciate
9 your favorable comments with regard to EMAL system.

10 I don't know if everybody is aware of the
11 existence of EMAL, but we do have a computer data base of
12 information notices, bulletins and circulars, and we're
13 adding on generic letters, which will go back many, many
14 years, sometime around January of 1991.

15 So effective, let's say, January, we should be
16 able to get you a hard copy of just about every generic
17 communication that has been issued since 1971.

18 VOICE: The EMAL gives us two weeks more time.
19 The letter says within 60 days.

20 MR. BERLINGER: The EMAL lets you have a copy the
21 day it's issued.

22 VOICE: Right. Two weeks before --

23 MR. BERLINGER: But it also gives you the ability
24 to go back and find old generic communications.

25 VOICE: I'll just second the comment, that we find

1 that very useful in going back and picking up the old ones
2 and being able to put those into a computer data base that
3 we keep on our own files, so that when it comes time to cert
4 some of these things, it's an easy thing to do.

5 We certainly appreciate the fact that you put
6 those things out.

7 Another comment, Carl. When you issue a bulletin
8 and it says for pressurized water reactor licensees only, is
9 it fair to assume that you do enough of an analysis of
10 boiling water reactors that we can assume that there's
11 nothing in our systems at all that would be affected by
12 what's in there and not applicable to an appropriate
13 response in our own OER system?

14 MR. BERLINGER: Well, I could never say never.

15 MR. JORDAN: I've got a good answer for that.
16 Treat those that are not addressed to you as an information
17 notice and you won't go wrong, so that you've established
18 for yourself that yeah, this really isn't applicable
19 because --

20 VOICE: I think that's what we do currently. So
21 my question was really is it fair to assume it really is not
22 applicable. But you're saying --

23 MR. BERLINGER: We've done enough of our own
24 homework to identify -- if it's addressed to PWRs or is
25 applicable to PWR owners.

1 Generally, let's say it's something that has to do
2 with pumps or diesel generator, it will be addressed to
3 everybody and his uncle.

4 MR. JORDAN: There is a risk, though, because
5 there are some components that cross plants that may not be
6 apparent or the vendor has provided a particular component
7 that could be in both Ps and Bs, and they've addressed it to
8 Bs.

9 So that's why we say treat it like an information
10 notice. And if, in fact, you find that it is applicable
11 that you would advise us.

12 MR. SIMMONS: William Simmons, Gulf States
13 Utilities.

14 You mentioned your coordination with INPO. Has
15 anyone developed a data base to cross-reference subjects
16 that were common?

17 MR. BERLINGER: You mean in INPO reports?

18 MR. SIMMONS: In, you know, SERs, SEORs,
19 bulletins, circulars, generic letters.

20 MR. BERLINGER: I would say no from the standpoint
21 of NRC. INPO may have.

22 We're not allowed, because of the proprietary
23 nature of the INPO reports, to put them onto a computer data
24 base that can be accessed from outside our organization.

25 So we don't have anything, but INPO maybe.

1 VOICE: Are you satisfied that you're putting out
2 Part 21 information to the utilities in a timely fashion?

3 MR. BERLINGER: That we're putting out Part 21?

4 Part 21 reports come into the NRC from either
5 vendors or utilities. When we review those reports as
6 they're received, one of the things we try to determine
7 almost immediately is whether or not all the people that
8 should know about the information have been informed, either
9 by the vendor or by the utility.

10 In those cases where we identify a Part 21
11 reportable issue that we feel has not been broadly
12 disseminated, we will issue an information notice. We
13 generally do it fairly quickly, within I would say two or
14 four weeks after we receive the report.

15 There are other cases where we have learned about
16 an old Part 21 by getting a new one, that we hadn't been
17 aware of. And the net result was that we issued an
18 information notice now on an issue that probably should have
19 been addressed a long time ago.

20 MR. BISHOP: I believe there has been more than
21 one example where the NRC has suggested to the vendor, for
22 instance, that they ought to be communicating this
23 immediately to their customers while the NRC evaluates it
24 further; and that has typically been done.

25 MR. BERLINGER: Any other questions?

1 MR. STENGER: Carl, I have a question. I can't
2 let you leave yet. You got your one lawyer's joke in.

3 Maybe this goes to Ed as much as to you, Carl, but
4 can you say a few words about what the staff does in terms
5 of trying to manage the cumulative impact of generic
6 communications, coordinating, integrating the things. What
7 is being done?

8 MR. JORDAN: Maybe I should answer that. They
9 were identified through the regulatory impact survey and the
10 NRC has taken it seriously. I can only tell you that there
11 will be a process to do it, but I can't tell you exactly
12 what it will be. We have not provided the answer, but we
13 have agreed that there's a problem that has to be handled.

14 MR. BERLINGER: So we all work on it.

15 MR. JORDAN: Okay. We ran over. I appreciate
16 people's staying here. We'll resume at 9:00 in the morning.
17 If you have any further questions on bulletins, generic
18 letters or any of the other topics that we've had today, we
19 will be glad to receive those tomorrow.

20 There should be sufficient time tomorrow to finish
21 without rushing too much by 11:30. So we'll try to run on
22 that schedule so that the reporting workshop can start on
23 time.

24 [Whereupon, at 6:10 p.m. the workshop was
25 adjourned.]

REPORTER'S CERTIFICATE

This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of Workshop on Backfitting, held on November 7, 1990, in Arlington, Texas, were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken by me and thereafter reduced to typewriting by me, and that the transcript is a true and accurate record of the foregoing proceedings.

Betty Morgan

Betty Morgan Official Reporter
ANN RILEY & ASSOCIATES, LTD.

ATTENDANCE LIST

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PUBLIC AND LICENSEE MEETING ON
BACKFIT AND EVENT REPORTING

DATE: November 7-9, 1990

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REGION IV
PUBLIC AND LICENSEE MEETING ON
BACKFIT AND EVENT REPORTING

DATE: November 7-9, 1990

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(1)

NRC PROGRAM AND ACTIVITIES ON
BACKFITTING

Edward L. Jordan

Director

Office for Analysis and Evaluation
of Operational Data

NRC/Industry Backfitting Workshop

November 7-8, 1990

Sheraton Centre Park Hotel, Arlington, TX

OVERVIEW OF BACKFITTING

- 0 Background
- 0 Backfit Rule
- 0 NRC's Program and Process
 - Plant-specific applications
 - Generic applications
- 0 Perceptions of Licensees
- 0 Recent Initiatives
- 0 Future Staff Activities

BACKGROUND

- 0 Backfitting is the decision process by which the NRC decides whether to impose new requirements on nuclear power licensees.

- 0 Backfits are expected to occur and are an inherent part of the regulatory process.

- 0 Backfits are imposed only after a formal, systematic review to assure that changes are justified and suitably defined.
 - Necessary for public health and safety, common defense and security
 - Ensure compliance with rules and commitments
 - Cost-justified substantial safety improvement

- 0 Backfit process is imposed on the NRC to provide for order, discipline and predictability and optimal utilization of staff and licensee resources.

BACKGROUND

0 There are two different types of backfitting.

- Plant-specific backfits are applicable to one facility only.

- Proposed backfits are handled in accordance with a specific staff procedure (Manual Chapter 0514).

- Generic backfits are applicable to more than one facility.

- Proposed backfits undergo review by the Committee to Review Generic Requirements (CRGR), which makes recommendations to the Executive Director for Operations (EDO).

0 These backfits will be discussed separately because of the difference in the way they are reviewed and imposed.

AEOD RESPONSIBILITIES IN MONITORING OF PLANT-SPECIFIC BACKFITS

- 0 Director of AEOD assigned oversight of plant-specific backfit process.
- 0 Assure adequacy of regional and office backfitting procedures.
- 0 Conduct training on plant-specific backfitting for staff and industry.
- 0 Inform licensees of NRC program and procedures (e.g., Manual Chapter 0514).
- 0 Conduct annual assessment of office and regional programs for implementation of NRC program controls.
 - Reviews all staff or industry identified plant-specific backfits.
 - Review office procedures and selected records of inspection reports, notices of violation, confirmatory action letters, and licensing actions.
 - Interview regional and office staff on understanding of the program.
 - Obtain industry feedback on the backfitting process.

BACKFIT RULE

0 Backfit Definition

- Modification of or addition to
 - (a) systems, structures, components or design of a facility; or
 - (b) the design approval or manufacturing license for a facility; or
 - (c) the procedures or organization required to design, construct or operate a facility
- Which may result from
 - (a) a new or amended provision in Commission rules; or
 - (b) imposition of a regulatory staff position that is either new or different from a previously applicable staff position
- Imposed after
 - (a) issuance of a construction permit*
 - (b) six months before docketing of the operating license application**
 - (c) issuance of the operating license
 - (d) issuance of the design approval for standard plants***

* CP issued after 10/21/85

** CP issued before 10/21/85

*** Some certificates and permits are subject to more stringent rules

BACKFIT RULE

- 0 Revised backfit rule (10 CFR 50.109) has been in place since 1985.
 - Provides specific guidance for backfits.
 - Provides for management control and accountability.

- 0 1985 rule was vacated by U.S. courts in 1987.
 - Not clear that costs could not be considered in establishing or enforcing adequate protection of the public health and safety.

- 0 Clarified rule was issued in 1988 - upheld by court.
 - Backfitting shall always be required if necessary for adequate protection.
 - Costs not considered when backfitting is necessary to ensure adequate protection or when Commission defines or redefines adequate protection standard or to ensure compliance with Commission rules or licensee commitments.

- 0 Applies to generic and plant-specific actions.

- 0 Regulation is based on the fact that each plant, as initially licensed, meets a then-acceptable level of safety -- an adequate protection standard.

BACKFIT RULE

- 0 Applies only to power reactors.
- 0 Applies only to positions or requirements imposed on licenses.
 - Not actions which are optional or voluntary.
- 0 Applies to all mandatory changes.
 - Reductions of requirements have been troublesome.
- 0 Does not apply to requirements imposed by laws passed by Congress.
- 0 All backfits require a documented justification.
- 0 No cost benefit analysis required for the following:
 - For compliance with license, rules or written licensee commitments.
 - To ensure adequate protection.
 - When defining or redefining what constitutes adequate protection.
- 0 Has been applied since effective date of rule (October 21, 1985).
- 0 Does not apply to requests for information.

REQUESTS FOR INFORMATION

- 0 Commission may require licensee statement under oath or affirmation (10 CFR 50.54(f)).

- 0 Purpose: to determine
 - Modification of license
 - Suspension of license
 - Revocation of license

- 0 Requests for information are not a backfit, but do impose a burden on licensees.

- 0 Covered by a rule (10 CFR 50.54f) and use involves an analysis and justification of the burden to be imposed.

- 0 Justification for request includes:
 - Definition of burden to be imposed
 - Potential safety significance of information

- 0 Review by CRGR required (if generic).

PRINCIPLES OF PLANT-SPECIFIC BACKFIT MANAGEMENT

1. Responsibility and accountability for management controls starts at highest levels in the NRC.
2. Plant-specific backfits result from events, revisions or inspections which uncover deficiencies in specific plant design or operation.
3. NRC trains staff at all levels in the principles of plant-specific backfit management.
4. Procedures have been in place since 1985. NRC Manual Chapter 0514 applies. Each operating office has approved procedures.
5. NRC conducts an annual assessment, and reports to Congress each year on backfits imposed during that year.
6. There is a centralized, agency-wide record system that documents each plant-specific backfit in process, for each plant, and is used to monitor status.

NRC MANUAL CHAPTER 0514

MC-0514 covers these activities:

- 0 Responsibilities and Authorities
- 0 Identifying Backfits
- 0 Preparing Regulatory (Backfit) Analyses
- 0 Preparing Documented Evaluations
- 0 Appeal Processes
- 0 Implementing Backfits
- 0 Recordkeeping and Reporting
- 0 Exceptions to the Process
- 0 Definitions of Backfit
- 0 Guidance for Making Backfit Determinations

PLANT-SPECIFIC BACKFITS

1. NRC staff members, at all levels, are responsible to identify proposed backfits.
2. NRC staff completes a regulatory (backfit) analysis or documented evaluation before communicating backfit to licensee.
3. Licensees have a right to claim:
 - That an action is a backfit
4. Licensees have the right to appeal:
 - To reverse a denial of licensee claim of backfit
 - That an adequate protection or compliance exception does not meet the criteria
 - To modify or withdraw a staff proposed backfit
 - Normal levels of appeal are Region/NRR, EDO
5. Appeals are resolved through meetings and are resolved, if necessary, by EDO.

GENERIC BACKFITTINGCRGR Process

- 0 Objective is to eliminate unnecessary burdens on licensees, reduce exposure of workers to radiation in implementing requirements, and conserve NRC resources - while ensuring public health and protection.

- 0 Provides single agency-wide point of review for all generic correspondence requiring power reactor licensee action.

- 0 Committee is composed of six members -
 - Chairman - Director, AEGD (Ed Jordan)
 - Member - Deputy Director, NRR (Frank Miraglia)
 - Member - Division Director, RES (Brian Sheron)
 - Member - Deputy Director, NMSS (Guy Arlotto)
 - Member - Deputy Assistant General Counsel, OGC (Janice Moore)
 - Member - Regional Office Division Director (Luis Reyes)

GENERIC BACKFITTINGCRGR Process

- 0 Members appointed by EDO (General Counsel concurs for OGC member).
- 0 Members are individual contributors, and not office representatives.
- 0 Committee was established in November 1981.
- 0 Charter established scope, responsibilities and authorities of Committee.
- 0 Charter established under Commission authority and review.

TYPES OF DOCUMENTS TO BE CONSIDERED BY CRGR

- 0 The types of documents to be considered by the CRGR include the following:
1. Staff papers proposing the adoption of rules or policy statements affecting power reactors.
 2. Staff papers proposing new or revised rules including Advanced Notices.
 3. Proposed new or revised regulatory guides, Standard Review Plan (SRP) sections, and branch technical positions.
 4. Proposed generic letters, multiplant orders, show cause orders, and generic information requests under 50.54(f).
 5. Proposed bulletins.
 6. New or revised Standard Technical Specifications.
 7. Any correspondence to licensees which may reflect or interpret new generic NRC staff positions.

CRGR REVIEWS

0 Focus is on Justification:

- Need for requirement - does it enhance safety?
- If not required for adequate protection or compliance, does it provide a substantial improvement in safety and is the cost justified?

0 No prior review is necessary for items involving emergency action.

0 Urgent matters are considered within two days.

0 Routine items are usually considered within 2 to 4 weeks.

0 Meetings are held at scheduled two-week intervals.

- Agendas and background material provided sufficiently in advance to allow detailed review.

0 Items are carefully reviewed on the basis of oral discussion and written justification.

CRGR REVIEWS

- 0 Meetings are closed.
- 0 Committee recommends approval, revision, or disapproval of office proposals to EDO through formal meeting minutes.
- 0 Committee can request additional information from staff or industry prior to making recommendations.
- 0 A written response is requested from cognizant office to report agreement or disagreement with CRGR recommendations.
- 0 Cognizant office can disagree with CRGR recommendations, and refer issue to EDO.
- 0 CRGR staff maintains records and prepares minutes (AEOD responsibility).
- 0 When action is completed, review packages, presentations and meeting minutes are placed in Public Document Room.

CRGR REVIEWS

0 Review packages include the following information:

- Proposed generic requirement
- Supporting document justifying need
- Proposed method and schedule of implementation
- Regulatory (backfit) analysis or documented evaluation
- Category of reactors to which the requirement applies
- Safety goal considerations

EXAMPLES OF TYPICAL CRGR RECOMMENDATIONS OR COMMENTS

0 Against taking proposed action

- Proposed revision to Reg Guide 1.33 on QA (not justified)
- Proposed endorsement of ASME Subsection IWE on inspection of steel containments (not justified)

0 Narrowing proposed action

- Bulletin 90-01 on Rosemount Transmitters (narrow actions to specific models)
- Bulletin 90-02 on Channel Box Bow (narrow actions to re-used channel boxes)

0 Strengthening Proposed Actions

- Bulletin 89-03 on Shutdown Margin (add training)
- Proposed final rule on dry storage (add testing)

0 General

- Proposed NUREG 1385 on Implementation of Fitness for Duty Rule (remove all hints of new requirements)
- Proposal to drop CRGR review of routine endorsements of ASME Code in 10 CFR 50.55(a)(g) (CRGR review should continue)

EXAMPLES OF BACKFITTING CONSIDERATIONS

(For Items With Favorable CRGR Recommendations)

ACTION	ISSUE	BACKFITTING BASIS
Proposed rule change (50.61) on criteria for pressurized thermal shock considerations	New data on reactor vessel embrittlement	Adequate protection exception (at some future time)
Bulletin 89-03 on shutdown margin in spent fuel pool (PWR's)	Use of higher enriched fuel requires additional measures to ensure shutdown margin	Adequate protection exception
Generic letter 89-10 on testing of motor operated valves (MOV's)	Capability of MOV's under design basis accident conditions	Compliance exception
Generic letter 89-13 on service water systems	Capability of service water systems for design basis conditions	Compliance exception

EXAMPLES OF BACKFITTING CONSIDERATIONS
(For Items With Favorable CRGR Recommendations)

ACTION	ISSUE	BACKFITTING BASIS
Proposed rule change (App. E, 50.72) on Emergency Response Data System (ERDS)	Enhanced data transmittal to NRC during emergencies	Cost justified enhancement
Generic letter 90-06 on PORV block valve reliability and low temperature overpressure protection	Enhanced procedural requirements for some plants	Cost justified enhancement
Proposed rule (Part 54) on license renewal	Standards and procedures for license renewal	Not backfitting (prospective action)
Revised regulatory guides 1.35 and 1.35.1 on inservice inspection of ungrouted tendons	Improvements in inservice inspection program	Not backfitting (voluntary)

PERCEPTION OF LICENSEES

- 0 The number and overall burden of recent generic communications is of concern to many , licensees.
- 0 The consideration of cost and schedule impacts are often thought to be inadequate.
- 0 The basis for issuing requirements involving backfits is often not clear to licensees.
- 0 Licensees believe that use of the backfit rule is not encouraged.
- 0 Some licensees fear retaliation if a backfit claim is filed.
- 0 The appeal process for backfit claims is of concern since it may not be independent, i.e., involves the same individuals that imposed the requirement.
- 0 Many licensees believe that both the NRC staff and licensees could benefit from additional training on backfitting.

RECENT INITIATIVES

- 0 Presentations on the NRC's backfit program given to Regional and Headquarters offices in 1989.
- 0 Licensees were surveyed in April 1989 to obtain their perception of the backfit program and specific cost information.
- 0 A statement highlighting the basis for issuance in terms of 50.109 - and a supporting analysis was added to generic correspondence beginning in December 1989.
- 0 Overall regulatory impact including backfits was the subject of a survey conducted in late 1989 and early 1990. Licensee perceptions were generally confirmed.
- 0 A SALP revision was proposed in May 1990 to eliminate "responsiveness to NRC initiatives" as an explicit item.
- 0 NUREG-1409 was issued in July 1990 to explain backfitting and answer questions raised in NRC staff training and from industry.

FUTURE STAFF ACTIVITIES

- 0 Hold periodic workshops with industry.
- 0 Conduct periodic workshops with NRC staff.
- 0 Examine ways to better consider cumulative impact of new requirements.
- 0 Consider need for changes to CRGR Charter.
- 0 Consider need for revisions to 50.109.

BACKFITTING WORKSHOP

**ARLINGTON, TEXAS
NOVEMBER 7, 1990**

**ROBERT W. BISHOP, GENERAL COUNSEL
NUCLEAR MANAGEMENT AND RESOURCES COUNCIL, INC.**

RELEVANT STATUTORY AUTHORITY

- ATOMIC ENERGY ACT SECTION 161(B) -- TO "ESTABLISH BY RULE, REGULATION, OR ORDER, SUCH STANDARDS AND INSTRUCTIONS... AS THE COMMISSION MAY DEEM NECESSARY OR DESIRABLE TO PROMOTE THE COMMON DEFENSE AND SECURITY OR TO PROTECT HEALTH OR TO MINIMIZE DANGER TO LIFE OR PROPERTY."
- ATOMIC ENERGY ACT SECTION 161(P) -- TO ISSUE "SUCH RULES AND REGULATIONS AS MAY BE NECESSARY TO CARRY OUT THE PURPOSES OF THIS ACT."
- ADMINISTRATIVE PROCEDURE ACT SECTION 553 -- REQUIRES AGENCIES TO PROVIDE NOTICE AND COMPLY WITH OTHER PROCEDURAL REQUIREMENTS FOR SUBSTANTIVE RULES.
- ATOMIC ENERGY ACT SECTION 181 -- THE ADMINISTRATIVE PROCEDURE ACT "SHALL APPLY TO ALL AGENCY ACTION TAKEN" UNDER THE ATOMIC ENERGY ACT.

UTILIZATION OF GENERIC LETTERS, INFORMATION NOTICES AND BULLETINS

- **GENERIC COMMUNICATIONS -- TO COMMUNICATE NRC'S POSITION ON GENERIC ISSUES.**
 - **INFORMATION NOTICES -- ALERT LICENSEES TO AN EVENT OR CONDITION THE NRC BELIEVES MAY BE IMPORTANT TO SAFETY.**
 - **GENERIC LETTERS -- SIMILAR IN PURPOSE TO INs BUT GENERALLY ADDRESS SITUATIONS OF GREATER SIGNIFICANCE THAN INs.**
 - **BULLETINS -- ISSUED WHEN THE NRC BELIEVES THE SITUATION IS IMPORTANT TO SAFETY, TIMELY ACTION IS NECESSARY, OR TIMELY INFORMATION IS NEEDED BY THE NRC TO ASSESS THE SITUATION.**

SECTION 50.54(F)

- TO REQUEST EITHER THE SUBMITTAL OF INFORMATION OR A CONFIRMATION THAT CERTAIN ACTIONS HAVE BEEN TAKEN.
- TO ENABLE THE NRC TO DETERMINE WHETHER OR NOT A LICENSE SHOULD BE MODIFIED, SUSPENDED OR REVOKED.
- EXCEPT FOR INFORMATION TO VERIFY LICENSEE COMPLIANCE WITH ITS CURRENT LICENSING BASIS, NRC MUST DETERMINE THAT THE BURDEN IMPOSED UPON RESPONDENTS IS JUSTIFIED IN VIEW OF THE POTENTIAL SAFETY SIGNIFICANCE.

LEGAL ANALYSIS

- NONE OF THE GENERIC COMMUNICATIONS ARE RULES OF GENERAL APPLICABILITY WITHIN THE MEANING OF THE APA.
- SECTION 50.54(F) REQUIRES THAT A LICENSEE RESPOND -- IT DOES NOT REQUIRE THAT THE LICENSEE CONDUCT ANY ACTIVITIES "RECOMMENDED" OR "REQUESTED" BY THE NRC.
- THE FACT THAT A GENERIC COMMUNICATION MAY CITE SECTION 50.54(F) DOES NOT CONVERT IT INTO A BINDING REQUIREMENT.

CONCLUSION

- LICENSEES MAY BE REQUIRED UNDER SECTION 50.54(F) TO SUBMIT A RESPONSE TO THE NRC, BUT NO ACTION OTHER THAN RESPONDING IS REQUIRED.
- A LICENSEE IS FREE TO MAKE WHATEVER COMMITMENTS IT BELIEVES ARE APPROPRIATE, AND MAY ESTABLISH AN ALTERNATE SCHEDULE AND DESCRIBE ACTIONS IT INTENDS TO TAKE OTHER THAN ANY OR ALL OF THE ACTIONS RECOMMENDED OR REQUESTED BY THE NRC.

LEGAL ASPECTS OF BACKFITTING --
THE EXPERIENCE WITH IMPLEMENTATION
OF SECTION 50.109

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Counsel To Nuclear Utility
Backfitting And Reform Group

NRC REGIONAL WORKSHOPS
ON BACKFITTING

1990

PURPOSE OF SECTION 50.109

- To restore stability and predictability to the regulatory process

- 1981 Senior NRC Management Survey:

"Notwithstanding the competence and good intentions of the Staff . . . the pace and nature of regulatory actions have created a potential safety problem of unknown dimensions."

NUREG - 0839 at 1.

- United States Court of Appeals for the District of Columbia Circuit affirmed Rule in July 1989

GENERIC BACKFIT PROCESS

MAJOR GENERIC COMMUNICATIONS
OCTOBER 1988 - SEPTEMBER 15, 1990

	<u>No</u>	<u>RESPONSE BURDEN (PERSON-HOURS PER PLANT)</u>	<u>50.109 ANALYSIS</u>
Generic Letters	18	13,000-17,000	6
Bulletins	7	<u>7,500-17,000</u>	<u>0</u>
Total	25	20,500-34,000	6

WHY REGULATORY/BACKFITTING ANALYSES NOT DONE

- Many generic communications issued as "Information Requests" under 10 C.F.R. § 50.54(F)
 - Examples:
 - Generic Letter 89-07 (Vehicular Bombs)
 - Generic Letter 89-19 (SG and Vessel Overfill)
 - Proposed IPEEE Generic Letter -- Cost of \$1M and 6 person-years
 - In NUBARG's view, Section 50.54(f) "information requests" should not be used if the NRC intends to call for (1) major new programs or (2) extensive analyses against new criteria
 - Issue of Section 50.54(f) versus 50.109 is being addressed by OGC in response to NUBARG comments on proposed IPEEE

CRGR DECISION ON USI A-46 (SEISMIC QUALIFICATION):

"Under the proposed resolution the adequacy of the design of a licensee's facility would be judged against significantly different criteria than were used by the Staff in licensing the facility initially . . . these were clearly the type of circumstances contemplated by the Commission in approving the Backfit Rule. Secondly, the time and expense involved [in performing the analyses] is clearly greater than the 'Information Request' contemplated by the Commission in approving Section 50.54(F)."

CRGR, October 1986

- Many Generic Communications issued under "compliance" exception to the backfitting rule, Section 50.109(a)(4)(i)

- Examples:

- Generic Letter 89-04
(Inservice Testing)
- Generic Letter 89-13
(Service Water Systems)

- Commission explained in 1985 Rule:

"The compliance exception is intended to address situations where the licensee has failed to meet known and established standards of the Commission . . . new or modified interpretations of what constitutes compliance would not fall within the exception."

- Scope of "compliance" exception:

1. Must have explicit requirement
2. Reinterpretations are backfits

PLANT-SPECIFIC BACKFIT PROCESS

PLANT-SPECIFIC BACKFITTING APPEALS
OCTOBER 1985 - PRESENT *

<u>NUMBER OF FORMAL APPEALS</u>	<u>GRANTED/ RESOLVED</u>	<u>DENIED</u>	<u>PENDING</u>
20	10	7	3

* NOTE: includes responses to NOV's filed by two licensees contesting, on backfitting grounds, escalated enforcement actions for commercial grade procurement practices. Both violations were withdrawn by NRC.

ROOM FOR IMPROVEMENT

1. IDENTIFICATION OF BACKFITS

- Sources of potential plant-specific backfits:
 - Inspection Reports, NOVs, SERs, RFIs

- Staff Responsibility

"The NRC Staff shall be responsible for identifying proposed plant-specific backfits . . . the Staff at all levels will evaluate any proposed plant-specific position with respect to whether or not the position qualifies as a proposed backfit. . . ."

Manual Chapter 0514

2. BACKFITTING APPEAL PROCESS

- "Backfit" is not a bad word
 - Use of Section 50.109 is consistent with safety-first philosophy

- Informal use of rule
 - In discussions with the Staff during inspections or technical meetings
 - promotes efficiency

SUGGESTIONS FOR IMPROVEMENT

1. NRC should continue efforts to improve generic communications process

- Make Drafts available for comment
- Take hard look at 50.54(f) and compliance issues

2. Plant-Specific

- Improve process for NRC identification of backfit positions
- Focus on resolving issues informally

2

NRC GENERIC RESPONSE TO EVENTS AND OTHER SAFETY ISSUES

- INFORMATION NOTICES
- BULLETINS
- GENERIC LETTERS

INFORMATION NOTICES

NOTIFY UTILITIES OF PROBLEMS THAT COULD AFFECT THEIR PLANTS

MAY DELINEATE CORRECTIVE ACTIONS TAKEN BY ONE OR MORE UTILITIES

DO NOT PRESCRIBE ANY SPECIFIC ACTIONS

DO NOT REQUIRE RESPONSE

DO NOT CONVEY ANY CHANGES TO STAFF POSITIONS

BULLETINS

REQUEST ACTIONS IN RESPONSE TO AN EVENT OR PROBLEM OR SEVERAL RELATED EVENTS
AND PROBLEMS

MAY REQUEST UTILITIES TO DETERMINE APPROPRIATE PROPOSED CORRECTIVE ACTIONS
WITHIN GENERAL GUIDELINES AND SUBMIT PROPOSED ACTIONS FOR NRC APPROVAL

MAY CONTAIN SPECIFIC CORRECTIVE ACTIONS AND ASK UTILITIES TO CONFIRM TO THE
NRC THAT THE ACTIONS HAVE BEEN OR WILL BE TAKEN

MAY CONVEY A CHANGE IN STAFF POSITION

REQUIRE WRITTEN RESPONSE

GENERIC LETTERS

REQUEST ACTIONS IN RESPONSE TO PROGRAMMATIC PROBLEMS OR ISSUES

ACTIONS REQUESTED GENERALLY OF A CONTINUING NATURE

MAY CONVEY A CHANGE IN STAFF POSITION

WRITTEN RESPONSE GENERALLY REQUIRED

INFORMATION NOTICE 89-07

INFORMATION NOTICE DESCRIBING FAILURES IN TURING OF INSTRUMENTATION AND CONTROL AID SYSTEMS AS WELL AS IN FUEL OIL AND LUBE OIL SYSTEMS APPARENTLY CAUSED BY VIBRATION WHICH CAN RENDER EMERGENCY DIESEL GENERATORS INOPERABLE

INFORMATION NOTICE ISSUED AS A RESULT OF SEVERAL RELATED EVENTS AND PROBLEMS

INFORMATION NOTICE 89-15

INFORMATION NOTICE DESCRIBING APPARENT DECOUPLING OF A REACTOR COOLANT PUMP SHAFT AND IMPELLER AT THE CRYSTAL RIVER UNIT 3 PLANT IN JANUARY 1989.

INFORMATION NOTICE ISSUED AS A RESULT OF ONE SPECIFIC EVENT. OTHER INFORMATION NOTICES HAD BEEN ISSUED DISCUSSING PREVIOUS REACTOR COOLANT PUMP SHAFT FAILURES.

INFORMATION NOTICE 89-20

INFORMATION NOTICE DESCRIBING WELD FAILURES IN PRIMARY LOOP RECIRCULATION PUMPS OF BYRON-JACKSON DESIGN EXPERIENCED BY OWNERS OF BOILING WATER REACTORS IN A FOREIGN COUNTRY.

INFORMATION NOTICE ISSUED AS A RESULT OF SEVERAL UNDESIRABLE PROBLEMS OCCURRING IN A FOREIGN COUNTRY.

INFORMATION NOTICE 6-21

INFORMATION NOTICE DESCRIBING VENDOR PRACTICES IN WHICH CHANGES TO MOLDED CASE CIRCUIT BREAKER TIME-CURRENT CHARACTERISTIC CURVES PERTAINING TO PARTICULAR BREAKER TYPES WERE MADE WITHOUT CHANGING THE PART NUMBER OF THE BREAKERS AND WITHOUT ANY SPECIFIC NOTIFICATION TO THE CUSTOMERS.

INFORMATION NOTICE ISSUED AS A RESULT OF FINDINGS FROM NRC INSPECTIONS OF EQUIPMENT VENDORS.

INFORMATION NOTICE 89-22

INFORMATION NOTICE DESCRIBING PROBLEMS WITH THE CERTIFICATION OF BOLTS, NUTS, AND STUDS FURNISHED BY HARDWARE SPECIALTY COMPANY, INCORPORATED OF LONG ISLAND CITY, NEW YORK.

INFORMATION NOTICE ISSUED AS A RESULT OF FINDINGS FROM NRC INSPECTIONS AT THE WATERFORD SITE AND HARDWARE SPECIALTY COMPANY.

INFORMATION NOTICE 89-26

INFORMATION NOTICE DESCRIBING PROBLEMS FOUND BY UTILITIES WHEN PERFORMING ACTIONS REQUESTED BY NRC IN A GENERIC LETTER ENTITLED "INSTRUMENT AIR SUPPLY SYSTEM PROBLEMS AFFECTING SAFETY-RELATED EQUIPMENT."

INFORMATION NOTICE ISSUED AS A RESULT OF SEVERAL RELATED PROBLEMS. CONSIDERABLE DETAILS FOR THE INFORMATION NOTICE PROVIDED BY REGIONAL OFFICES.

INFORMATION NOTICE 89-29

INFORMATION NOTICE DESCRIBING DESIGN PROBLEM WITH ASEA BROWN BOWENI (ABB) K-LINE CIRCUIT
BREAKERS DELIVERED TO CUSTOMERS BEFORE JULY 1974 WHICH COULD CAUSE BREAKER FAILURES
DURING A SEISMIC EVENT.

INFORMATION NOTICE ISSUED AS A RESULT OF VENDOR REPORT TO NRC REQUIRED BY
10 CFR PART 21.

INFORMATION NOTICE 87-28

INFORMATION NOTICE ON COMPLETION OF AN AECID LONG TERM STUDY OF ATR SYSTEM PROBLEMS INCLUDING DISCUSSION OF SEVERAL SPECIFIC EVENTS.

INFORMATION NOTICE ISSUED AS A RESULT OF AN IN-DEPTH SYSTEMATIC REVIEW OF PROBLEMS OCCURRING OVER SEVERAL YEARS WITH ATR SYSTEMS.

INFORMATION NOTICE WAS FOLLOWED BY GENERIC LETTER REQUESTING SPECIFIC UTILITY ACTIONS TO ADDRESS ATR SYSTEM PROBLEMS. GENERIC LETTER REQUIRED RESPONSE FROM EACH UTILITY.

BACKFIT CONSIDERATIONS REGARDING BULLETINS AND GENERIC LETTERS

BACKFIT RULES SHOULD BE CONSIDERED IF GENERIC COMMUNICATION INVOLVES CHANGE IN APPLICABLE REGULATORY STAFF POSITION.

EVERY BULLETIN OR GENERIC LETTER IS PRESENTED TO CRGR, GENERALLY ACCOMPANIED BY A PACKAGE THAT INCLUDES RESPONSES TO THE REQUIRED QUESTIONS IN 10 CFR 50.109.

WAIVER OF CRGR REVIEW OF SOME GENERIC LETTERS MAY BE OBTAINED BECAUSE NO CHANGE IN STAFF POSITION OR NEW REQUIREMENT IS INVOLVED.

CRGR MEETING MINUTES AND MATERIAL SUBMITTED FOR CRGR REVIEW ARE MADE PUBLICLY AVAILABLE.

BULLETIN 88-08

BULLETIN ISSUED TO REQUEST THAT UTILITIES (1) REVIEW THEIR REACTOR COOLANT SYSTEMS TO IDENTIFY ANY CONNECTED, UNISOLABLE PIPING THAT COULD BE SUBJECTED TO TEMPERATURE DISTRIBUTIONS WHICH WOULD RESULT IN UNACCEPTABLE THERMAL STRESSES AND (2) TAKE ACTION TO ENSURE THAT SUCH PIPING WILL NOT BE SUBJECTED TO UNACCEPTABLE THERMAL STRESSES.

BULLETIN ISSUED AS A RESULT OF A SPECIFIC EVENT INVOLVING LOSS OF INTEGRITY OF REACTOR COOLANT SYSTEM PRESSURE BOUNDARY.

TWO BULLETIN SUPPLEMENTS ISSUED TO PROVIDE INFORMATION ON OTHER SIMILAR EVENTS AT FOREIGN REACTORS. ONE SUPPLEMENT ISSUED TO EMPHASIZE NEED FOR ENHANCED ULTRASONIC TESTING AND EXPERIENCED PERSONNEL TO DETECT CRACKS IN STAINLESS STEEL PIPING.

BULLETIN ISSUED UNDER COMPLIANCE JUSTIFICATION IN THE BACKFIT RULE - GENERAL DESIGN CRITERION 14, 10 CFR PART 50, APPENDIX A, "REACTOR COOLANT PRESSURE BOUNDARY"

BULLETIN 88-07

BULLETIN ISSUED TO REQUEST THAT UTILITIES WITH BOILING WATER REACTORS ENSURE THE AVAILABILITY OF ADEQUATE OPERATING PROCEDURES AND INSTRUMENTATION, AND PROVIDE ADEQUATE OPERATOR TRAINING TO PREVENT OCCURRENCE OF UNCONTROLLED POWER OSCILLATIONS DURING ALL MODES OF NORMAL AND ABNORMAL OPERATION.

BULLETIN ISSUED AS A RESULT OF A SPECIFIC ABNORMAL OPERATING EVENT INDICATING THAT PAST LICENSING CALCULATIONS WERE NOT RELIABLE IN DETERMINING THAT A CORE WILL BE STABLE UNDER ALL OPERATING CONDITIONS DURING A FUEL CYCLE. FURTHERMORE, THE AMPLITUDE OF THE POWER WAS GREATER THAN PREVIOUSLY EXPERIENCED FOR IN-PHASE LIMIT CYCLE OSCILLATIONS DURING U.S. SPECIAL STABILITY TESTS, AND FOR KNOWN FOREIGN OPERATING REACTOR EVENTS AND TESTS.

BULLETIN SUPPLEMENT ISSUED TO PROVIDE ADDITIONAL INFORMATION CONCERNING POWER OSCILLATIONS IN BWRs AND REQUEST ACTIONS TO ENSURE THAT THE SAFETY LIMIT FOR MINIMUM CRITICAL POWER RATIO IS NOT VIOLATED.

BULLETIN ISSUED UNDER COMPLIANCE JUSTIFICATION IN THE RACKETT RULE -- GENERAL DESIGN CRITERION 12, 10 CFR PART 50, APPENDIX A, "SUPPRESSION OF REACTOR POWER OSCILLATIONS."

BULLETIN 89-13

BULLETIN ISSUED TO REQUEST ACTIONS BY UTILITIES WITH PRESSURIZED WATER REACTORS TO PREVENT POTENTIAL VIOLATIONS OF REQUIRED SHUTDOWN MARGIN AND, IN EXTREME CASES, INADVERTENT CRITICALITY DURING REFUELING OPERATIONS.

BULLETIN ISSUED AS A RESULT OF A 10 CFR PART 21 REPORT TO THE NRC REGARDING THE POTENTIAL LOSS OF SHUTDOWN MARGIN DURING REFUELING OPERATIONS AT CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2.

BULLETIN ISSUED ON THE BASIS OF THE NEED TO PROVIDE ADEQUATE PROTECTION TO THE HEALTH AND SAFETY OF THE PUBLIC CONSISTENT WITH THE PROVISIONS OF 10 CFR 50.109a(4)(11).

BULLETIN 90-01

BULLETIN ISSUED TO REQUEST THAT ADDRESSEES PROMPTLY IDENTIFY AND TAKE APPROPRIATE CORRECTIVE ACTIONS FOR MODEL 1153 SERIES B, MODEL 1153 SERIES D, AND MODEL 1154 PRESSURE AND DIFFERENTIAL PRESSURE TRANSMITTERS MANUFACTURED BY ROSEMOUNT THAT MAY BE LEAKING FILL-OIL.

BULLETIN ISSUED AS RESULT OF SERIES OF REPORTED FAILURES OF MODELS 1153 AND 1154 TRANSMITTERS AND AFTER EXTENSIVE DISCUSSIONS WITH ROSEMOUNT AND NUCLEAR UTILITIES CONCERNING THE CAUSE OF THE FAILURES, DETECTION OF THE FAILURES, AND CORRECTIVE ACTIONS. TRANSMITTER FAILURES CAUSED BY LEAKING FILL-OIL ARE NOT READILY DETECTED AND INCREASE THE POTENTIAL FOR COMMON MODE FAILURES WHICH MAY RESULT IN THE AFFECTED SAFETY SYSTEM NOT PERFORMING ITS INTENDED SAFETY FUNCTION.

BULLETIN ISSUED UNDER COMPLIANCE JUSTIFICATION IN THE BACKFIT RULE -- GENERAL DESIGN CRITERION 21, 10 CFR PART 50, APPENDIX A, "PROTECTION SYSTEM RELIABILITY AND TESTABILITY," AND 10 CFR 50.55a(h) (REQUIRING THAT PROTECTION SYSTEMS MEET IEEE-279).

GENERIC LETTER 88-14

GENERIC LETTER ISSUED TO REQUEST THAT LICENSEES ENSURE THEIR OPERATIONAL PROGRAM INCLUDES TESTING TO VERIFY INSTRUMENT AIR QUALITY, AIR ACCUMULATOR CAPACITY, VALVE FAILURE POSITIONS ON LOSS OF INSTRUMENT AIR, AND ADEQUACY OF MAINTENANCE PRACTICES, EMERGENCY PROCEDURES AND TRAINING.

GENERIC LETTER ISSUED AS RESULT OF AEDD STUDY INDICATING PERSISTENT AIR SYSTEM PROBLEMS.

GENERIC LETTER IMPLEMENTED EXISTING REQUIREMENTS BASED ON FSAR COMMITMENTS ON THE DESIGN BASIS (COMPLIANCE EXCEPTION).

GENERIC LETTER 89-19

GENERIC LETTER REQUESTED THAT LICENSEES DEVELOP AND IMPLEMENT PROGRAM TO ASSURE THAT MOTOR OPERATED VALVES WILL PERFORM THEIR INTENDED SAFETY FUNCTIONS UNDER CONDITIONS ASSOCIATED WITH DESIGN BASIS ACCIDENTS. GENERIC LETTER WAS SEQUEL TO BULLETIN 85-07 IN EXTENDING THE REQUESTED ACTIONS TO ALL SAFETY RELATED MOVs.

GENERIC LETTER ISSUED TO COMPLEMENT THE REQUIREMENTS OF ASME SECTION XI TESTING, RESOLVE GENERIC ISSUES 87 AND 11.E.6.1, AND MAINTAIN FAILURE RATES OF MOVs WITHIN ACCEPTABLE LIMITS.

GENERIC LETTER JUSTIFIED ON BASIS OF COMPLIANCE WITH 10 CFR PART 50, APPENDIX A (GDCS 1, 4, 18 & 21) AND APPENDIX B.

GENERIC LETTER 89-13

GENERIC LETTER REQUESTED THAT LICENSEES ESTABLISH PROGRAM THAT WOULD INCLUDE CERTAIN FEATURES TO ASSURE ADEQUACY OF THE SERVICE WATER SYSTEM. SUCH FEATURES INCLUDED MEASURES TO PRECLUDE FLOW BLOCKAGE; TESTING TO VERIFY HEAT TRANSFER CAPABILITY; PROTECTION AGAINST CORROSION, EROSION AND BICFOULING; CONFIRMATION OF FUNCTIONALITY WITH RESPECT TO DESIGN BASIS.

GENERIC LETTER ISSUED IN RESPONSE TO A LARGE NUMBER OF OPERATIONAL EVENTS. GENERIC LETTER RESOLVED GENERIC ISSUE 51, RESPONDED TO AEDD CASE STUDY, RESPONDED TO REGIONAL RECOMMENDATION FOR GENERIC ACTION.

GENERIC LETTER JUSTIFIED ON BASIS OF COMPLIANCE WITH 10 CFR PART 50, APPENDIX A (GDCs 44, 45 & 46 RELATED TO HEAT REMOVAL) AND APPENDIX B.