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ANN RILEY & ASSOCIATES, LTD.

1612 K St. N.W., Suite 300  
Washington, D.C. 20006  
(202) 293-3950

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NUCLEAR REGULATORY COMMISSION

REGION III BACKFITTING WORKSHOP

Ramada Hotel O'Hare  
6600 North Mannheim Road  
Rosemont, Illinois 60018  
Monday, October 15, 1990  
9:00 a.m.

PARTICIPANTS:

- Carl Paperiello, Deputy Administrator, Region III
- Hub Miller, Director, Division of Reactor Safety, Region III
- Dick Knop, Chief, Projects Branch 3, Region III
- Donny Ross, Deputy Director, AEOD/HQ
- Jack Heltemes, Deputy Director for Generic Issues &  
Rulemaking
- Marty Malsch, OGC/HQ
- Jim Conran, AEOD/HQ, CRGR Staff
- Bob Bishop, NUMARC
- Dan Stenger, NUREG
- Frank Spangenberg, Illinois Power Company
- Carl Berlinger, NRR/HQ



## P R O C E E D I N G S

[9:00 a.m.]

1  
2  
3 MR. CONRAN: Welcome to the NRC Backfitting  
4 Workshop. We will be covering a lot of subjects and will  
5 put them to use today with a transcript for followup  
6 discussions, if anybody wants followup discussions with any  
7 of the speakers or questions today. It's easier with the  
8 attendance list.

9 There are copies, handout copies of all the slides  
10 that will be used today on the back table in the rear.  
11 We're scheduled to break mid-morning and mid-afternoon.  
12 There's a coffee service available in the copper trellis  
13 around the corner and past the registration desk, if you  
14 need refreshment.

15 I think that's got the preliminaries out of the  
16 way. With that, I will introduce Carl Paperiello, the  
17 Deputy Regional Administrator for Region III, to start the  
18 workshop.

19 MR. PAPERIELLO: Good morning. I'm pleased to  
20 welcome you to this Backfit Workshop. The regulatory impact  
21 survey conducted last fall identified, among other things,  
22 extensive concerns with the imposition of new requirements,  
23 both generically and by what was perceived as informal  
24 methods.

25 Among these are a lot of concerns and I notice

1 some people out there have the copy of the draft NUREG. I'm  
2 probably shortening what is a large number. The concerns  
3 include generic requirements imposed through bulletins,  
4 information notices, and generic letters. I'm giving you  
5 what is perceived, not necessarily what we might regard as  
6 the way the system works, but the perception, the perceived  
7 misuse of 10 CFR 50.54(f), disagreements with cost benefit  
8 analyses which are part of the regulatory analyses,  
9 unrealistic response times in bulletins and generic letters,  
10 and a number of information, and I will put parentheses  
11 around these requirements imposed by individuals in the NRC,  
12 both inspectors and project managers.

13 I hope today that this workshop can address many  
14 of these concerns. For this workshop to be effective, there  
15 has to be a dialogue. You have to ask questions. If you  
16 disagree with what people say, challenge us. I think one of  
17 the things that I think is very -- I got out of the  
18 regulatory impact survey was how unwilling utilities are to  
19 say what you're doing is wrong or what you believe is wrong,  
20 and, frankly, for the system to work, there has to be a  
21 dialogue.

22 As Deputy Regional Administrator, I'm vitally  
23 interested in the proper application of the backfit policy.  
24 A couple years, I was a member of the CRGR where we  
25 reviewed, and that will be discussed today, how generic

1 requirements are reviewed, that there's always a regional  
2 rep, and I was on that committee a few years ago for a  
3 while.

4 Furthermore, because we consider it important,  
5 there are a number of Region III staffers who are  
6 participating in the audience today. As we learn more about  
7 nuclear power plants that we license, both from operating  
8 experience and research, requirements are likely to change.  
9 That's the environment we're in. We in the Region are aware  
10 that these requirements are a burden on licensees.

11 Furthermore, we have an interest because the  
12 regional staff is a significant source of input to  
13 Headquarters on operating experience. The NRC goal overall  
14 is only to impose backfits as a deliberate planned and  
15 considered agency action by its management in accordance  
16 with agency regulations and policies.

17 This is inherent in what we do as regulators and  
18 is part of our mission. We're going to have to do it. It  
19 has to be controlled. What we're going to do today is  
20 explore the process; how it should work and your views and  
21 feedback in view of its effectiveness. I'd like to take an  
22 opportunity to thank those of you here who have attended.

23 I would like to thank the industry representatives  
24 who are going to be making presentations today. As I said  
25 before, you have to -- if there's a problem that needs to be

1 fixed, we need your feedback on that. Before I turn it over  
2 to Denny Ross, what I will do is introduce the people at the  
3 head table.

4 Jim Conran at that end of the table has already  
5 spoken. Dick Knop is a Branch Chief from our Region in  
6 Projects. Jack Heltemes is Deputy Director for Generic  
7 Issues and Rulemaking and Research. Denny Ross is Deputy  
8 Director of AEOD. Carl Berlinger is a Branch Chief from  
9 NRR. Hub Miller is my Director for the Division of Reactor  
10 Safety. Marty Malsch is from OGC in Headquarters. Frank  
11 Spangenberg is from Illinois Power Company. I'm not sure I  
12 know who is who down there, but I think it's Dan Stenger  
13 from NUBARG, and without your glasses off, Bob, I didn't  
14 recognize you. Bob Bishop is from NUMARC.

15 Denny?

16 MR. ROSS: First, a couple of comments on your  
17 agenda which is available at the back of the room. If you  
18 will note, at 2:00 there is allowed a 30 minute discussion  
19 on IPE/IPEEE. From experience in the other two meetings, we  
20 found out it will probably be five or ten minutes at most  
21 because many of the issues will be covered earlier in the  
22 day.

23 Likewise, the 3:45 topic showing 15 minutes for  
24 backfit appeal; again, I'm listed as a speaker; probably  
25 won't need to say anything because by then I think we will

1 have covered the matters related to backfit appeal.

2 Now, the panel up on the podium here is a  
3 reasonably diverse group of people and we operate somewhat  
4 informal. So whenever it's time for questions and answers,  
5 not only should you feel free to address your question to  
6 anybody, but to avoid outbreaks of violence on the panel, we  
7 allow each of the panels to correct what another panel  
8 member may say. So we operate pretty informally.

9 But we would like you, when you have a question,  
10 to come to the microphone and state your name so that -- we  
11 are keeping a verbatim transcript -- so that the transcript  
12 will be complete. If you don't, you may be interrupted so  
13 that the Reporter can clarify exactly who you are. Also,  
14 you can either see the Reporter or Mr. Conran at a  
15 convenient time should you want a copy of the transcript.

16 In the back of the room there are copies of slides  
17 on backfitting. The version that we're going to show on the  
18 screen now is an abbreviated version in larger print so that  
19 the less gifted people in the back of the room can read the  
20 print. So I will discuss for about 20 minutes or so the  
21 program and activities on backfitting.

22 I said 20 minutes or so. I had a loss of vital DC  
23 during the night. My watch battery went dead and I didn't  
24 bring a redundant backup. So I hope I don't go any longer  
25 than 20 minutes or so.

1 MR. BERLINGER: We'll tell you when to sit down.

2 MR. ROSS: Mr. Berlinger -- well, wait a minute.

3 Mr. Berlinger said he's going to tell me to sit down, but if  
4 you know Carl Berlinger, he's worked on diesel generators so  
5 long, he only can regulate AC. So I will defer to someone  
6 else regarding DC power.

7 All right. An overview of backfitting. What this  
8 is is a table of contents. I'll have a little bit of  
9 background, discuss the backfit rule a bit. Our legal  
10 representatives will go into much more detail. The NRC  
11 process is divided into two parts: plant specific and  
12 generic. We had a survey which ultimately culminated in a  
13 report, NUREG-1409, entitled Backfitting Guidelines, which  
14 was issued this year.

15 The utility representatives were sent copies and a  
16 lot of material in that report is reflected in this section  
17 Perceptions of Licensees. Then I will discuss recent  
18 initiatives and what we plan to do in the future.  
19 Backfitting is reasonably well defined, and I know that  
20 Marty Malsch will have a better definition. But in general,  
21 it's a process by which we decide whether to impose new  
22 requirements.

23 Backfits are expected to occur and they are  
24 inherent in any regulatory process. The purpose of 50.109  
25 is to assure that if you're going to have a backfit, that

1 you have a formal systematic review, and there's categories.  
2 Backfits can be necessary for public health and safety or to  
3 ensure compliance with rules and commitments. This also  
4 includes such things as defining or redefining safety, which  
5 isn't used too often, or it might be a cost-justified  
6 substantial safety improvement.

7 It's a process unlike most other rules that's  
8 imposed on the NRC. Now, I mentioned that there are two  
9 categories; plant specific and generic. We have a manual  
10 chapter which is an internal document used by the NRC to  
11 govern how plant specific backfits are handled. That's  
12 Manual Chapter 0514, which is printed in the backfitting  
13 guideline report, NUREG-1409.

14 For generic backfits, we also have procedures and,  
15 in addition to other reviews, these backfits are reviewed by  
16 the Committee to Review Generic Requirements. Carl  
17 Paperiello mentioned that he had been the regional  
18 representative. I was a member of the Committee for a  
19 number of years, and other people here in the audience are  
20 familiar with it. Jack Heltemes has a very close  
21 relationship with this Committee for a long period of time.

22 We discuss these separately because the procedures  
23 are separate. Now, with respect to plant specific backfits,  
24 and now I'm speaking parochially in terms of the AEOD  
25 Office, the Director of AEOD has oversight, and this



1 includes such things as assuring adequacy of regional and  
2 office procedures and conducting training, and we inform  
3 licensees of the program, and one way that you were informed  
4 was this NUREG-1409 report, and we conduct annual  
5 assessments of these office and regional programs.

6           However, the plant specific backfits themselves  
7 are not imposed by AEOD and on a specific backfit are not  
8 reviewed and/or approved by us either. So that's the AEOD  
9 responsibility and training role.

10           In your handout is a more complete definition of  
11 the backfit, and it's more or less taken -- is that in  
12 focus? Does that look okay? Okay. The definition of a  
13 backfit is a modification or addition to a structure, system  
14 or component, or to the design approval, or to the  
15 procedures or organization of the plant. It can come from a  
16 new or amended rule or imposition of a new or different  
17 staff position.

18           Now, historically, there's been a backfit rule for  
19 a long period of time, at least 20 years or on the order of  
20 20 years. The latest version of the backfit rule came in  
21 1985 with some guidance. However, it was vacated in 1987  
22 because of differences of opinion on how costs can be  
23 considered. So a revised rule was issued in 1988,  
24 challenged again, and upheld this time.

25           This backfit rule applies both to generic and



1 plant specific actions. Now, the backfit rule does apply to  
2 power reactors and it applies to positions that are imposed  
3 on licensees. A good example of a rule that was issued  
4 pursuant to NRC policies that did not fall under the backfit  
5 rule is the latest version of Appendix K.

6 After many years of research and spending a lot of  
7 money and reconsidering what was issued in the early 1970s,  
8 the NRC issued a revised Appendix K which would permit, not  
9 require, licensees to use best-estimate techniques in  
10 analyzing the loss of coolant accident. But you didn't have  
11 to use it. So the rule was issued as not a backfit because  
12 it wasn't imposed.

13 It applies to mandatory changes. Now, reductions  
14 and requirements are troublesome, and at this point I can  
15 discuss another issue which is troublesome, which is in  
16 front of the CRGR this month. As you may know, a proposed  
17 rule on Appendix J was issued a few years ago. We have  
18 public comments. The package has all been tied together  
19 neatly. Now we're trying to decide whether to issue this  
20 version of Appendix J in final form.

21 It amounts to a considerable streamlining and  
22 updating and incorporates the latest national standards  
23 recommendations, revised guide which picks up most of the  
24 national standards, and it makes good sense. It's  
25 modernization of a 20-year-old regulatory policy. But how

1 do we require it? Can we require it? Is it a substantial  
2 improvement in safety?

3 It's hard to say numerically in terms of risk that  
4 it's a substantial improvement in safety. The question  
5 we're facing this month and the next month or so is actual  
6 streamlining, improving the predictability and uniformity of  
7 regulation, is that, in and of itself, a substantial safety  
8 benefit.

9 I don't know how this is going to turn out. But  
10 it's a troublesome thing and we're not sure how we're going  
11 to deal with it. Now, all backfits require a justification.  
12 As I mentioned, in some cases, you don't have to do cost  
13 benefit in terms of compliance or adequate protection or  
14 defining or redefining safety, what constitutes adequate  
15 protection, and the backfit rule does not apply to  
16 information requests.

17 On information requests, as you know, if you're  
18 from industry, you have received these notorious 50.54(f)  
19 letters, and they always have the ominous and threatening  
20 things about the modifications, suspending or revoking your  
21 license, which is intended, among other things, to get your  
22 attention. Now, the requests for information themselves are  
23 not backfits, but we do know that they impose a burden.

24 I talked, during one of our CRGR visits, to a  
25 plant that said that the cost of doing the response to

1 Generic Letter 8820, that's the IPE, and its supplement  
2 concerning external events, including the contracted work  
3 and the people in the utility staff was about \$6.5 million.  
4 There are many risk studies that would show if you reduced  
5 the risk to zero that the benefit amortized out over the  
6 life of the plant wouldn't be \$6.5 million.

7 So very definitely a request is a financial  
8 burden. The CRGR is interested in the analysis and  
9 justification of the burden and what the potential safety  
10 significance is.

11 On plant specific backfit, all management levels  
12 of NRC have a responsibility and accountability and many  
13 times it's written into the performance contract of the  
14 individual management executive. They occur from events,  
15 revisions or inspections that concern deficiencies in a  
16 specific plant.

17 I mentioned that we do have training, each office  
18 has training. The AEOD, in addition to us training, we have  
19 a procedure, Manual Chapter 0514. We do an annual  
20 assessment and report to Congress on the plant specific  
21 backfits, and we keep a centralized agency-wide records  
22 system.

23 I won't read the next slide. This is the table of  
24 contents for Manual Chapter 0514. I think you get an idea.  
25 If you have an interest and don't have the chapter itself,

1 pick up NUREG-1409 and that includes it.

2 Now, with respect to these plant specific  
3 backfits, people involved from, say, from the field or the  
4 region or the NRR Office, at all levels responsible to  
5 identify an action as a proposed backfit. You're supposed  
6 to complete a regulatory analysis or a documented evaluation  
7 before you communicate this backfit.

8 Licensees, you have a right to claim that a  
9 certain action is a backfit if it wasn't identified. You  
10 have a right to appeal. Of these rights, you could say you  
11 could -- with respect to your claim of a backfit, with  
12 respect to meeting the criteria, you can appeal the proposed  
13 backfit, request a modification or withdrawal, and the  
14 normal levels of appeal are through the region, NRR, and  
15 ultimately, if necessary, the Executive Director.

16 That last item is one of the problems that  
17 licensees have had, is that the appeal in some cases  
18 appeared or, in fact, is through the same channel that  
19 imposed it in the first place. If you want to pursue this  
20 during the meeting in discussion with the panel, maybe that  
21 would be a good thing to do. The final authority is with  
22 the Executive Director.

23 Now, turning to the other topic, generic  
24 backfitting, the CRGR charter, which is included in NUREG-  
25 1409, says that the purpose of the CRGR process is to

1 eliminate unnecessary burdens on licensees, reduce exposures  
2 of workers to radiation, and to conserve NRC resources while  
3 ensuring at the same time the public health and protection.

4 This Committee is a single agency-wide point of  
5 review for all generic correspondence that requires action  
6 from power reactor licensees, and the membership is shown  
7 from the various offices. The Chairman is the Director of  
8 AEOD. At present, the regional representative is from  
9 Region II, Luis Reyes.

10 I should mention that the members are appointed by  
11 the Executive Director and the General Counsel concurs for  
12 the ODC member. These people, once they're on the  
13 Committee, represent themselves with their experience either  
14 in reactor safety or in the legal aspects of reactor safety,  
15 and they do not represent their office.

16 The Committee will have its tenth year anniversary  
17 next year. It was established in November 1981. We work by  
18 charter. It was established under the specific review of  
19 the Commission. We're currently on Revision 4. We're  
20 getting ready to make a Revision 5 to our charter to try to  
21 pick up some motion of the safety goal, but the charter and  
22 all of its revisions have to be reviewed and approved by the  
23 Commission itself.

24 Now, what do we do to accomplish? We prepare  
25 staff papers that propose adoption of rules or policy

1 statements; staff papers discussing new rules, including  
2 advanced notice of rulemaking; propose new or revised  
3 regulatory guides and review plans and technical positions;  
4 propose generic letters, multi-plant orders, show cause  
5 orders, and generic 50.54(f) information requests; propose  
6 bulletins, new or revised standard and specs, or any other  
7 correspondence, including a NUREG report, to licensees which  
8 may reflect or interpret new generic NRC staff positions.

9           This is a very broad charter, all sorts of  
10 incoming information. Now, what we like to have in the  
11 opening statement, 25 words or less for any new position, is  
12 what's the safety problem that you're trying to solve. So  
13 that is our focus, and we ask does it enhance safety. If  
14 it's not required for adequate protection or compliance or,  
15 in rare instances, defining or redefining adequate safety,  
16 is there a substantial safety improvement and is the cost  
17 justified.

18           It's a loophole for emergency action, which is  
19 very rarely used, and for urgent matters we could have a  
20 special meeting in two days. Routine items, we meet twice a  
21 month, so we can usually take care of anything in two to  
22 four weeks. We do issue an agenda and background material.  
23 We have substantial oral justification, as well.

24           Most of the material that we get is regarded as  
25 pre-decisional. It frequently gets modified after our



1 meeting. So as a result of this pre-decisional, meetings  
2 are closed. What we do is recommend and officially we  
3 decide nothing. We recommend. The obvious things you can  
4 approve, disapprove or revise the incoming material.

5 We can also request, and we have done this,  
6 additional information from the staff or industry before we  
7 make up our minds. Once we issue our report through meeting  
8 minutes, then the incoming proposing office would indicate  
9 to the EDO whether there's agreement or disagreement. The  
10 office doesn't have to agree and at times doesn't, and it  
11 would be up to the Executive Director to decide.

12 The AEOD has two staff people -- Jim Conran is one  
13 and Dennis Allison is the other -- who are secretaries for  
14 the CRGR and they prepare minutes. And when the minutes are  
15 complete and the action is complete and it's no longer pre-  
16 decisional, the minutes are put in the public document  
17 record.

18 Now, what sort of information do we get coming in?  
19 We get the proposed requirements. This could be like, for  
20 example, a proposed rule; a supporting document justifying  
21 the need perhaps; the method and schedule of implementation;  
22 the regulatory analysis; which category of reactors does it  
23 apply to; and, a very recent change, what are the safety  
24 goal considerations.

25 We've had little experience with this last item.

1 In fact, we haven't yet modified our charter to take care of  
2 it. But as time goes on, we'll figure out exactly how we're  
3 going to deal with the safety goal considerations relative  
4 to a package. It appears that this would only apply to  
5 those items that are imposed under the category of  
6 substantial safety improvement.

7 Now, we have some examples on Slide 19 of typical  
8 CRGR recommendations, and we can have -- we can recommend  
9 against something, we can reduce the scope, expand the  
10 scope, or other. We do all of these at one time or the  
11 other. In fact, if you turn to Slide 20, you see some  
12 examples where we had favorable recommendations. A proposed  
13 rule change, soon to be final rule change, we'll be  
14 considering that in the next few weeks; 50.61 on pressurized  
15 thermal shock and shutdown margin, testing of motor operated  
16 valve and service water system.

17 We also list the basis for which the proposed  
18 action was justified. There are some more favorable  
19 recommendations on Slide 21, which I won't go through. You  
20 can read them. Now, let's look on Slide 22 at some licensee  
21 concerns that emerged from surveys that were done on  
22 backfitting and also, as Carl mentioned, the regulatory  
23 impact.

24 But the number and overall burden of recent, and  
25 recent in this context is in the last two or three years, is



1 of concern to many licensees. There was a concern or a  
2 perception that the cost and schedule impacts were often  
3 thought to be inadequate. This one is of particular  
4 interest, and I think as we sit here, or stand, as the case  
5 may be, there's a briefing to our Commission by Tom Murley  
6 on behalf of NRR and Bert Davis, who is the responsible or  
7 the Chairman of the regulatory impact survey, mentioning,  
8 among other things, the topic of cumulative requirements.

9 I think this second bullet and cumulative  
10 requirements are really getting in to the same matter. That  
11 is things accumulate, how does one put the proper  
12 perspective and do the right things first and in the right  
13 priority. Sometimes the basis for issuing requirements  
14 involving backfits is not clear to licensees. I think fair  
15 statement, I'd hope that you'd notice improvement lately, in  
16 particular on bulletins.

17 Licensees, fourth bullet, believe that use of the  
18 backfit rule is not encouraged. This perception was a  
19 little vague. I think that when people, in particular NRR,  
20 prepare bulletins, they are quite sensitive of the need to  
21 categorize or classify the action of the bulletin. If it's  
22 a compliance bulletin, which it is usually, then the  
23 analysis of why it's compliance, I think, is being done  
24 better now.

25 Something very hard to deal with is the question

1 of retaliation, which is kind of a poorly defined term, if a  
2 backfit claim is filed. When we first started reading this  
3 and listening to it, it's hard for me to believe that  
4 retaliation, in fact, is real. But the more I discuss this  
5 informally with industry in the subtler forms of retaliation  
6 is -- I guess it's maybe more real than I thought at first.  
7 At any rate, it's a fear that licensees expressed. Whether  
8 it's justified or not is not clear.

9 I mentioned the perception that the appeal process  
10 is not independent because it involved the same individuals  
11 that imposed the requirement. I think to a degree that's  
12 true, but as you work your way up through the chain, the  
13 management people will become less and less involved and  
14 less and less familiar with it in the first place. So  
15 there's at least a degree of independence.

16 The last bullet is many licensees believe that  
17 both the NPC staff and licensees could benefit from more  
18 training. Well, we're here today. I think internally we  
19 have a reasonable amount of training for the staff on  
20 backfitting, and maybe more of these workshops more  
21 frequently would be helpful.

22 On 23, we have been giving presentations to  
23 Regional Headquarters Offices, both last year and this year  
24 in the program. We did a survey in 1989 to get your  
25 perception, whereupon 1409 was issued. We had added to

1 generic correspondence the basis for issuance. I think this  
2 is relatively new. We talked about the impact a little bit.  
3 To a degree, the regulatory impact survey and the  
4 backfitting guidelines to agree and are somewhat in  
5 congruence.

6 The SALP revision in May 1990 to eliminate  
7 responses to NRC initiatives may be helpful, and, as I  
8 mentioned, NUREG-1409. Now, in the future, I think we can  
9 have more workshops like this. Whether we have regional or  
10 have one in Headquarters, I don't know. We certainly would  
11 have more workshops internally with our own staff. The  
12 third bullet, like I said, is being discussed as we sit here  
13 on cumulative impact. I know that Dr. Murley is very  
14 concerned about this question and wants to construct and  
15 formulate a program of how we can better deal with the  
16 cumulative impact. A subset of that is prioritization.

17 We are into Revision 5 of our charter. We would  
18 like to pick up cumulative impact as a review matter. It  
19 will take work to figure out how to do it. We can consider,  
20 it's not a very popular subject right now, on the need for  
21 revision to .109, but if it's something that's appropriate,  
22 we can certainly consider it.

23 Questions? If you have a question, please use the  
24 mike, if you would. Go ahead.

25 MS. GOODMAN: Lynne Goodman, Detroit Edison. I

1 have two questions. One is if the CRGR recommends against  
2 an item, have any of those still be issued?

3 MR. ROSS: We recommended -- we sent a note to the  
4 EDO that said don't do it, and the EDO then listened to the  
5 other office and on balance said sorry, going to issue it  
6 anyway. Jim, I don't think so. Do you remember any?

7 MR. CONRAN: [Inaudible.]

8 MR. ROSS: Usually it's a matter of trying to  
9 avoid confrontation. Usually the sponsoring office tries to  
10 take back our negative thoughts and redo it, rather than  
11 have a confrontation at the higher level.

12 MR. STENGER: Denny?

13 MR. ROSS: Sure.

14 MR. STENGER: My recollection --

15 MR. ROSS: Did you get his name?

16 MR. STENGER: Dan Stenger, NUBARG. It's my  
17 recollection that CRGR may have recommended against  
18 [inaudible.]

19 MR. ROSS: Maybe you didn't hear it. Jim said no,  
20 we didn't.

21 MR. CONRAN: No. We recommended approval  
22 [inaudible.]

23 MR. ROSS: Okay. You had another question.

24 MS. GOODMAN: Thank you. My second question is do  
25 plant proposed tech spec changes, other than standard tech

1 specs, go to CRGR ever? We've been hearing more about that  
2 from our Project Manager; when we propose a tech spec  
3 change, that he says, well, this really would affect  
4 different other plants, too; this will have to go to CRGR if  
5 you want it. Does it really have to?

6 MR. CONRAN: [Inaudible.]

7 MR. PAPERIELLO: [Inaudible.]

8 MR. CONRAN: Generic tech specs [inaudible.]

9 MS. GOODMAN: My question was regarding plant  
10 specific.

11 MR. PAPERIELLO: Plant specific, CRGR does not  
12 [inaudible] plant specific, except [inaudible.]

13 MR. STENGER: Just a point of clarification. The  
14 CRGR reviews only generic correspondence or generic  
15 documents. So they will not get involved in plant specific,  
16 unless it's specifically requested [inaudible.]

17 MR. ROSS: There have been a few cases, and Dan  
18 Stenger, by virtue of triggering them as a representative of  
19 NUMARC, where the EDO has asked us to review some appeals.  
20 Maybe when it's his turn to speak, he can say a little more  
21 about those. Other questions?

22 [No response.]

23 MR. ROSS: Okay. We're running along right  
24 smoothly. I think what we'll do, rather than take a break,  
25 is we'll go ahead and go into the topic Legal Aspects of

1 Backfitting. The first portion of this is the NRC  
2 perspective of issues, and Marty Malsch from the Office of  
3 General Counsel will give his presentation.

4 MR. MALSCH: Today I'll provide a legal  
5 perspective on the purpose of the backfit rule, which is  
6 found at 10 CFR Section 50.109. I'll briefly summarize the  
7 regulatory history of the rule and discuss very briefly what  
8 NRC must do to comply with the requirements of the rule.

9 Finally, I will discuss a little bit some of the  
10 backfit implications of generic letters which request  
11 information, usually pursuant to Section 50.54(f). I won't  
12 discuss today the backfit provisions which apply to design  
13 certifications under new 10 CFR Part 52, but if anyone has  
14 any questions about those, I can attempt to answer them.

15 The backfit rule represents the agency's method of  
16 assuring that backfits are not implemented without due  
17 consideration of their relationship to safety and their  
18 impact on licensees. Early in the history of nuclear power  
19 reactor regulation, there wasn't very much concern about  
20 backfits, but in the late 1960s, as the number of  
21 applications increased, concerns about imposition of safety  
22 requirements and regulatory consistency arose.

23 To address these concerns, in 1970 the then-Atomic  
24 Energy Commission adopted what was the first backfit rule,  
25 also found at Section 50.109. It was published on March 31,



1 1970. The rule is somewhat similar to the current rule. It  
2 indicated the Commission may require the backfitting of a  
3 facility if it finds that such action will provide  
4 substantial additional protection which is required for the  
5 public health and safety or the common defense and security.

6 Backfitting in that rule was simply defined as the  
7 addition, elimination or modification of structure, systems  
8 or components of the facility after the construction permit  
9 has been issued. The Commission also indicated at that time  
10 that it had the right to ask and require licensees to submit  
11 information on additions, eliminations or modifications to  
12 structures, systems and components of a facility.

13 In the late 1970s, the NRC, which had since  
14 succeeded to the AEC's regulatory functions, embarked on an  
15 effort to reexamine the backfit rule. In 1983, it published  
16 an advance notice of proposed rulemaking and, in 1984, a  
17 proposed rule was published. The final rule was published  
18 in 1985. The 1985 rule and its statement of considerations  
19 are reproduced in the backfitting guidelines, NUREG-1409.

20 There was no finding as a part of the backfit rule  
21 that prior backfitting had caused any sort of safety  
22 problem, but there was a finding, as a basis for the rule,  
23 that there was a need to better manage the backfitting  
24 process, a need to better manage the process whereby safety  
25 requirements were being imposed.

1           The Union of Concerned Scientists appealed the  
2 rule to the U.S. Court of Appeals on the basis that the rule  
3 impermissibly allowed the agency to consider cost in making  
4 safety judgments, and the case became the first occasion in  
5 which, in the history of NRC regulation, there was actually  
6 raised a legal question of the role of costs in making  
7 safety decisions.

8           The U.S. Court of Appeals, District of Columbia  
9 Circuit, rejected the UCS' position that costs could never  
10 be a factor in making safety judgments. Instead, the Court  
11 accepted the NRC's central proposition that it could, when  
12 adequate protection of the public health and safety or  
13 regulatory compliance were not at stake, consider safety in  
14 cost tradeoffs.

15           However, the Court vacated the 1985 rule because  
16 of an ambiguity in the explanation for the rule regarding  
17 consideration of costs in defining and redefining what is  
18 meant by adequate protection of the public health and  
19 safety. The Court pointed to passages in the statement of  
20 considerations which the Court believed allowed the  
21 consideration of costs in the establishment of the adequate  
22 protection standard.

23           Therefore, the rule was vacated and sent back to  
24 the Nuclear Regulatory Commission for correction. In  
25 response to the decision, the Commission modified the rule



1 to make it very clear that costs would not be taken into  
2 account when the backfit was either necessary to protect the  
3 public health and safety or the common defense and security,  
4 or were necessary to assure compliance with NRC  
5 requirements.

6 A modified proposed rule was published in 1987 and  
7 the final rule was adopted on June 8, 1988. Now, that final  
8 rule, along with its preamble or statement of  
9 considerations, is also contained in the NUREG-1409  
10 backfitting guidelines.

11 The Union of Concerned Scientists again appealed  
12 the rule to the U.S. Court of Appeals. On this occasion,  
13 the Court upheld the rule in its entirety. That 1988 rule,  
14 as upheld by the Court of appeals, is still in effect today.  
15 I should add that the rule reflects a two-stage approach to  
16 safety and the consideration of costs.

17 The two-stage approach to safety is as follows.  
18 The NRC is required to assure that there is a level of  
19 protection which is adequate. That is sometimes phrased  
20 different ways. No undue risk, adequate protection,  
21 basically amounts to the same thing. It's a minimum level  
22 of safety.

23 The backfit rule goes on to say that the  
24 Commission may ask for more safety than what is minimally  
25 required for adequate protection. It may ask for

1 incremental safety improvements beyond the minimum  
2 necessary. The two-stage philosophy is such that costs  
3 cannot be considered in defining what is adequate protection  
4 or in assuring that there is a level of protection which is  
5 adequate, but that costs may be considered in adopting  
6 incremental safety improvements beyond that.

7 Now, how does the NRC today apply the backfit rule  
8 in evaluating a proposed agency action? I believe it's  
9 probably the easiest to understand the NRC's compliance with  
10 the backfit rule as a series of steps which the NRC must  
11 traverse in imposing requirements. The first step is to  
12 define the proposed action, the proposed agency action, and  
13 then to determine whether it meets the definition of backfit  
14 in the backfit rule.

15 There are essentially three parts to the  
16 definition. The first is there must be an NRC-required  
17 modification or addition to structure, systems and  
18 components, design, procedure or organization for a nuclear  
19 power plant. The second part of the definition focuses on  
20 whether there has been a change in a Commission requirement  
21 or a staff position. Thirdly and finally, the rule requires  
22 that the change occur after issuance of the construction  
23 permit for plants issued permits before October 21, 1985;  
24 otherwise, in general, after issuance of the operating  
25 license.

1           If the proposed agency action meets the definition  
2 of backfit as defined in the backfit rule, the next step is  
3 to determine whether one of the three exceptions in the rule  
4 might apply. If they do, if the exceptions are applicable,  
5 then a backfit analysis and a backfit finding need not be  
6 made. The three exceptions are, first, those modifications  
7 necessary to bring a facility into compliance with the  
8 license or rules or orders of the Commission or into  
9 conformance with written commitments by the licensee.

10           The second exception is a regulatory action  
11 necessary to assure that the facility provides adequate  
12 protection of the public health and safety and is in accord  
13 with the common defense and security. The third exception  
14 is a regulatory action which involves defining or redefining  
15 what level of protection of the public health and safety or  
16 the common defense and security should be regarded as  
17 adequate; so-called defining or redefining adequate  
18 protection and such.

19           Now, the NRC's determination and conclusion that  
20 one or more of these three exceptions apply must be set  
21 forth in a documented evaluation that serves as a basis for  
22 the finding. So if the proposed NRC action meets the  
23 definition of the backfit rule and does not fall within one  
24 of the three exceptions I just discussed, then the backfit  
25 finding applies and a backfit analysis must be prepared.

1           The purpose or function of this analysis is to  
2 demonstrate that the standard in the backfit rule has been  
3 met; namely, that there is a substantial increase in the  
4 overall protection of the public health and safety or the  
5 common defense and security, and that the direct and  
6 indirect costs of implementation for that facility are  
7 justified in view of this increased protection. This is a  
8 two-step process.

9           NRC must first show that there is a substantial  
10 increase in protection. If the NRC cannot show this or find  
11 this, the backfit cannot be imposed and there is no  
12 consideration of costs and benefits necessary. Thus, for  
13 example, a backfit which would result in a net cost savings  
14 may still not be imposed if it will not result in a  
15 substantial increase in overall safety.

16           If, however, it is shown that the backfit will  
17 likely result in a substantial safety benefit, then the  
18 backfit analysis must proceed to consider costs and  
19 benefits. In doing so, the Commission may consider all  
20 information available to it, including, but not necessarily  
21 limited to the factors specifically listed in the backfit  
22 rule.

23           But the analysis need not address each and every  
24 one of the nine factors in the rule. Only those which are  
25 relevant and appropriate to the proposed backfit need be

1 addressed. Also, an actual mathematical cost benefit  
2 analysis or ratio is not required. So a strict cost benefit  
3 analysis need not be performed. The NRC is free to consider  
4 non-quantifiable impacts and values in determining whether  
5 the costs of imposing the backfit is justified.

6 The standard is really whether the costs of the  
7 backfit are justified in view of the benefits, the concept  
8 being not necessarily that there is a defined cost benefit  
9 ratio, but that there is a reasonable relation between cost  
10 and benefits.

11 Before ending, I want to address a subject which  
12 was raised by several utilities in their responses to the  
13 1989 NRC survey on backfitting, particularly whether the  
14 backfit rule is applicable to a generic letter requesting  
15 information pursuant to 10 CFR 50.54(f). It has always been  
16 our office's position that a properly formulated information  
17 request under 50.54(f); for example, in generic letters;  
18 that these requests are not backfits within the definition  
19 of the backfit rule.

20 As I pointed out, the legal definition of backfit  
21 is essentially an NRC-required change or addition to a  
22 nuclear power plant's system, structure or component,  
23 design, procedure, or licensee organization. By contrast, a  
24 properly formulated generic letter which asks for  
25 information does not involve such NRC mandated changes.



1 Thus, information requests as such are not subject to the  
2 backfit rule, but they are, however, subject to a companion  
3 provision which requires that there be some consideration of  
4 the burden imposed by the information request, and there is  
5 a standard for this set out in 50.54(f).

6 I want to emphasize that Section 50.54(f)  
7 information requests and generic letters must be properly  
8 formulated as a request for information. Generic letters  
9 cannot direct licensees to take any particular action; for  
10 example, modify a facility. They may only ask licensees to  
11 respond to requests for information. But it is acceptable  
12 for a Section 50.54(f) request to require licensees to state  
13 whether or not they intend to undertake a certain course of  
14 action recommended by the NRC in the generic letter.

15 It's also acceptable, in our view, to require  
16 licensees to provide information regarding the basis for not  
17 implementing a course of action recommended by NRC, so long  
18 as the course of action is not actually being imposed in the  
19 letter. Such requests for information are acceptable under  
20 the rule and the statute because the licensee's answers will  
21 be used to determine whether additional action must be taken  
22 by the NRC under the backfit rule.

23 Now, we recognize that 50.54(f) information  
24 requests can be burdensome and impose substantial resource  
25 costs on licensees. However, the Commission was clearly

1 aware of this impact, and, therefore, as I suggested,  
2 require that such requests be accompanied by a statement  
3 setting forth the reasons for the information in order to  
4 assure that the burden to be imposed on respondents is  
5 justified in view of the potential safety significance of  
6 the issue to be addressed in the requested information.

7 This statement of justification must also be  
8 approved by NRC management. The only exception to this  
9 requirement that there be a justification is where the  
10 information is necessary to determine whether the licensee  
11 is in compliance with his current licensing basis.

12 Now, it's been suggested that a distinction should  
13 be made between providing existing information to the NRC as  
14 opposed to generating new information in terms of  
15 determining the burden in responding to 50.54(f) information  
16 requests. Whether the request is justified turns on the  
17 burden; that is, the cost to the licensee of responding to  
18 the request; that is the consideration. If the NRC  
19 statement justifying the 50.54(f) request is properly  
20 conducted, any higher costs necessary to genera as opposed  
21 to collecting the information would be considered in  
22 calculating the costs, but it's still an information request  
23 and still subject to 50.54(f) as opposed to the backfit rule  
24 and the backfit standard itself.

25 I hope that these brief remarks will prove useful

1 in understanding the backfit rule and our practice in  
2 complying with it, and, of course, I'm here and available to  
3 answer any questions which you might have.

4 MR. PAPERIELLO: Questions for Mr. Malsch?

5 MR. SHARKEY: Tom Sharkey from Union Electric.

6 What if, in a generic letter response, the licensee responds  
7 that a modification is not required and provides some  
8 justification to that? Subsequently, the staff does not  
9 like the justification. What's the process then?

10 MR. MALSCH: At that point, if the staff wanted to  
11 proceed, it would have to actually impose the requirement.  
12 At that point, the backfit rule would apply.

13 MR. SHARKEY: And what would be the method of  
14 imposition?

15 MR. MALSCH: Well, it could be any number of  
16 things. The most likely thing would be, if we're talking  
17 about a plant specific backfit, it would be some sort of  
18 order directing the licensee to comply with some requirement  
19 set forth in the order. You could raise a backfit issue at  
20 that point. You can request a hearing. There are any  
21 number of appeals available. But at that point the backfit  
22 rule would apply, at the imposition state.

23 MR. SHARKEY: Okay.

24 MR. PAPERIELLO: Before you leave, and maybe I'll  
25 ask Richard Barrett, the Mark I event; isn't that an example



1 here?

2 MR. BARRETT: I'm Richard Barrett with the NRC.  
3 Yes, I think that would be an example. In that particular  
4 case, there was -- I don't believe there was a generic  
5 letter, though, in that case. What was done there was that  
6 a plant specific analysis was done for a number of Mark I  
7 containment plants in which the licensee had expressed a  
8 reluctance to voluntarily put the Mark I vents in. So I'm  
9 not sure that that applies to the question.

10 MR. CONRAN: There was a generic letter issued for  
11 the Mark I containments. The CRGR reviewed it and  
12 essentially agreed that the staff's evaluation, that it was  
13 justified. The Commission had a little different reaction  
14 to it and they -- what they said was that in order for the  
15 staff to impose the proposed modifications, if the licensees  
16 didn't volunteer to do it, then the staff would have to do  
17 plant specific analysis.

18 MR. ROSS: Which was done, right?

19 MR. BARRETT: Well, a plant specific analysis was  
20 done for a number of Mark I containments. Following that  
21 analysis, many of them volunteered to put in the fix. Now,  
22 there were several examples of utilities who decided that  
23 for technical reasons they did not want to put in the fix  
24 and they appealed to the NRC. I'm not familiar with the  
25 mechanics of how far up the appeal process went, but after

1 some several rounds of technical analysis, a letter was  
2 issued to those licensees telling them that we were about to  
3 issue an order.

4 At that point, all of those licensees decided to  
5 put the fix in and there was no order issued. But that was  
6 the process that was being followed at the time.

7 MR. CONRAN: I think there's another possible  
8 outcome to the question this gentleman posed for generic, a  
9 new generic requirement. A licensee can argue that some  
10 aspect of the backfit evaluation doesn't apply to his plant.  
11 For example, if he argues that the staff's average cost  
12 estimate that justifies a generic requirement is ten times  
13 less than the cost in his plant, and, therefore, it's a  
14 cost-justified backfit, that it would not apply. Then the  
15 staff could make a finding on a plant specific basis. I'm  
16 not sure how often that happens, but that's another  
17 conceivable outcome. If the staff is not convinced by the  
18 specific licensee's arguments that it doesn't apply, then  
19 they can go the route to impose it. But a possible outcome  
20 is that some aspect of a generic analysis does not apply to  
21 plant specific. But that's not the case for adequate  
22 protection, certainly for the cost-justified safety  
23 enhancement. That's a possible outcome.

24 MR. MALSCH: That's actually a good point.  
25 Generic backfitting analysis associated with a generic staff

1 position are not binding on anybody. If anybody feels that  
2 they don't apply, then you can argue that.

3 MR. BISHOP: This is Bob Bishop. If I can go back  
4 to hardened vents for a moment, just to give you the latest.  
5 The New York Power Authority has determined that they do not  
6 believe that it should apply to them and they have rejected  
7 the staff's suggestion that they voluntarily implement it.  
8 So that process is in play now.

9 MR. SHUKULA: I have a question for Mr. Malsch.  
10 Girija Shukula from Detroit Edison Company. It looks like  
11 most bulletins and generic letters are following under the  
12 compliance exception of 50.109. Yet, compliance to existing  
13 regulation is kind of a loosely defined term. We have  
14 experienced that sometimes new requirements looking like  
15 backfits are kind of sneaking into the generic letters and  
16 bulletins. Is there anything being done to prevent this  
17 occurrence or are all these generic correspondence receive  
18 full-fledged CRGR review for backfit or just a notice  
19 sufficient to say that these are for compliance with  
20 existing regulation, and, thus, they do not need any backfit  
21 analysis?

22 MR. MALSCH: I need to answer that in two parts.  
23 First of all, in a strict sense, a bulletin or information  
24 request is not literally subject to the backfit rule. It's  
25 only subject to the 50.54(f) type standard. However, at

1 least recently, people have been implying the backfit rule  
2 in advance in a way to start looking forward to the possible  
3 imposition of requirements.

4 So that when you're asking about a request for  
5 information, at least it's not, at least strictly speaking,  
6 relevant to ask about compliance with the regulation,  
7 although since we're looking forward to possible backfits,  
8 that's a practical consideration.

9 In terms of that practical consideration, I think  
10 that these things do get a review. I don't think it's just  
11 a quick look-see. I think there is an effort to make sure  
12 that if the compliance exception is invoked in connection  
13 with an information request, looking forward to a possible  
14 backfit, that that exception is well founded.

15 MR. SHUKULA: Do they get full review or just a  
16 cursory review?

17 MR. MALSCH: I don't think it's cursory. I think  
18 it's a pretty careful review. There's a lawyer on the CRGR.

19 MR. ROSS: Let me respond to that. I think  
20 bulletins, and especially bulletins listed in the exception,  
21 get a very detailed review. There are some what I would  
22 call -- it's almost housekeeping. It's important, but it  
23 doesn't go to the scope of the action. For housekeeping, a  
24 lot of the shalls, musts, and wills have to be watered down  
25 a little bit and made into should and you are requesting and

1 so on so that like -- inevitably, some of them creep in and  
2 they get through the CRGR, and those have to get modified.  
3 I think that's important from the legal perspective, but it  
4 doesn't change the course of action.

5 If you had a -- it's not unusual to say you are  
6 requested to check the weight at which an active trip  
7 breaker would trip, make measurements on a certain class of  
8 trip breaker, measure closing time on valves. You're  
9 requested to do a number of things. Most often the reason  
10 is listed as compliance.

11 We spend more time discussing the safety problem  
12 as to why this should be done than we do for the basis of  
13 the compliance, but we do look for both. In every piece,  
14 we'll be asking if the licensee comes back -- he does not  
15 have to do these requested actions; they are requested, not  
16 commanded -- you ask the sponsoring office, are you willing  
17 to issue an order, a plant-specific order to require the  
18 action, the licensee says no?

19 That's important to CRGR. Almost invariably, they  
20 say, yeah, if they don't do it, we'll order them to do it.

21 MR. SHUKULA: So is there any talk of providing  
22 the summary of that kind of analysis in the generic letter  
23 itself or bulletin so we would know what was --

24 MR. ROSS: I mentioned that the bulletins or  
25 generic letters had been defective in the past because the



1 basis for the action was not clearly stated. That is  
2 supposed to be getting better. If it's not, if you get a  
3 bulletin or a letter and it's a very vague and fuzzy  
4 justification, certainly the CRGR would like to know that.  
5 It shouldn't have gotten through us in the first place.  
6 We'd like to know about it if it's not working.

7 MR. SHUKULA: Generally, the example that we have  
8 been given in the NUREG is basically the wording we get in  
9 the generic letters, generally, and for not requiring  
10 backfit analysis. So can we get something more than this?

11 MR. ROSS: We can try one of the things that --  
12 and maybe after we hear from Bishop, we can pursue it a  
13 little more. One of the biggest problems, and this is what  
14 Mr. Conran has pointed out on compliance, are you trying to  
15 bring a licensee into compliance or are you trying to ensure  
16 continued compliance. There's a slight difference in  
17 phraseology, but if you bring him into compliance, then it's  
18 a finding that you're not in compliance.

19 But if you want to assure continued compliance,  
20 that's a lot -- that's more imprecise and it's sort of big  
21 enough that you can drive a truck through that. But  
22 bringing into compliance is very clear.

23 MR. MALSCH: Another panelist here had a comment  
24 that he wanted to make.

25 MR. BERLINGER: I'm Carl Berlinger, Chief of



1 Generic Communications Branch in NRR. All bulletins and  
2 generic letters are reviewed by CRGR. In preparation for  
3 the CRGR meeting, we are required to provide answers to the  
4 nine questions as outlined in 50.109. So even though we may  
5 be proposing to issue a 50.54(f) letter, when we issue  
6 bulletins or generic letters, we do look down the road as to  
7 whether or not this may or may not be a backfit.

8 Generally, that is issued under the compliance  
9 exception to the backfit rule. There is a thorough review  
10 at the CRGR. A second part of your question addressed could  
11 that analysis, could that information be made available to  
12 you. It is made publicly available with the issuance of the  
13 CRGR minutes and that takes place at the time of issuance of  
14 the generic letter or bulletin.

15 MR. SHUKULA: But not with the generic letter.

16 MR. BERLINGER: It is not contained within the  
17 generic letter. The only thing that is contained within a  
18 generic letter may be a statement with regard to the form of  
19 backfit. That's a recent change that was added last  
20 December, I believe.

21 MR. SHUKULA: Thank you very much.

22 MR. MALSCH: Can I add a couple comments to that?

23 I think maybe something else should be said to respond to  
24 the concern that these determinations are made too easily.

25 A little over a year ago, the Committee, at one of its

1 meetings, discussed just exactly this issue. The CRGR  
2 normally reviewed bulletins and generic letters and they re-  
3 viewed them. The finding was that something like 17 of 37  
4 bulletins and generic letters that had been issued over the  
5 last 18 months were compliance, weren't done under  
6 compliance exception.

7 So the Committee discussed whether or not they  
8 were over-using or not applying the compliance exception as  
9 it was intended to be applied. The exception sort of  
10 denotes that maybe fewer, a smaller percentage would be in  
11 compliance under the compliance exception. So they had a  
12 serious discussion about this and questioned whether we  
13 should change our internal process or something.

14 One idea that is being considered is to issue the  
15 documented justification with the bulletin or generic  
16 letter. That is one thing that is being considered in  
17 connection with the changes resulting from this. So I think  
18 the answer to your question is it's not done lightly. The  
19 compliance determination is not done lightly. It's thought  
20 and then re-thought and re-discussed, but basically, no;  
21 there is not much more evaluation in the bulletin or generic  
22 letter.

23 But the documented justification does not have to  
24 be as thorough as the backfit evaluation for a cost-  
25 justified safety enhancement.

1 MR. SHUKULA: Thank you very much.

2 MR. ROSS: I think what we will do at this point  
3 is take a break, hear from our other two lawyers, and then  
4 reopen this type of questioning after we've heard from  
5 Bishop and Stenger. Let's take a 15 minute break now.

6 [Brief recess.]

7 MR. ROSS: We're going to continue with our  
8 discussion of backfit perspective. The next speaker on  
9 behalf of NUMARC is Bob Bishop.

10 MR. BISHOP: I'll beg your indulgence to begin.  
11 I've had a cold for a couple days, so I went out to  
12 homecoming this last weekend at my daughter's college and  
13 sat in the rain. The good news is we got to see a winning  
14 football team for a change. I didn't go the Navy game. So  
15 I think I'm successfully turning the cold to pneumonia,  
16 which the doctors tell me they can do something about. So  
17 if I start to sneeze and cough, I beg your apology ahead of  
18 time.

19 What I'd like to do is address myself to three  
20 misconceptions, two of which have to do with the speaker  
21 that you're going to hear this afternoon, Frank Spangenberg,  
22 who was clever enough not to be here because he might have  
23 guessed I was going to talk about him. He warned me that he  
24 was going to come with a catalogue of lawyers jokes. So I  
25 wanted to quickly set the record straight.

1 Frank and I go way back. We were in submarines,  
2 and the first misconception I'd like to dispel is we were in  
3 submarines together just after they figured out what wood  
4 wasn't going to work and they went to steel. The second one  
5 of which is our individual and collected antics at the Naval  
6 Academy did not serve as the storyline to the Breakfast  
7 Club, if any of you saw that. The third one, on a slightly  
8 more significantly serious note, I want to talk about  
9 generic communications.

10 This is the side of the, if you will, backfit  
11 issue, the ongoing regulatory environment, where most of you  
12 folks live day-to-day, that we at NUMARC hear and get  
13 involved most often with. I want to just pick up on a  
14 couple of things that Marty said and go a step further on  
15 what generic communications are and, frankly, what they are  
16 not.

17 What they are is a mechanism by which the NRC  
18 informs licensees of areas in which they have concern.  
19 There are fundamentally three types. A lot of this is old  
20 hat, but the point I want to emphasize is they're no  
21 different in authority. They may be different in degree,  
22 but they're no different in their fundamental legal basis.  
23 The three kinds, of course, are information notices, generic  
24 letters, and bulletins.

25 The difference between them is the subject, if you

1 will, the needs of the agency to communicate its responses,  
2 the timeliness, the immediacy of the issue, and the safety  
3 significance of the issue. They will use one or another of  
4 those mechanisms as they deem appropriate.

5           What they aren't, as Marty mentioned, is  
6 requirements. They are requests, they are guidance, they  
7 are not requirements. Let me just step back a step so you  
8 can understand my logic in getting to that point. For those  
9 of you who were once frightened by the thought of going to  
10 law school, I'll give you a couple of references, but no  
11 tests will be given.

12           I go back to the NRC's basic authority to do what  
13 it does, and that relates to the Atomic Energy Act, two  
14 sections of Section 161, (p) and (b). They basically  
15 establish the words that we frequently refer to about public  
16 health and safety. Under 161, that's the NRC's  
17 responsibility to do those things which are associated with  
18 ensuring the public health and safety is protected, common  
19 defense and security. 161(p) specifically gives them the  
20 authority to carry out that mission by issuing rules,  
21 regulations or requirements.

22           Section 553 of the Administrative Procedures Act  
23 governs all Federal agencies and establishes the process  
24 whereby if an agency is going to issue a rule or  
25 requirement, the process which they must follow, including



1 publication in the Federal Register so that the public can  
2 understand what the agency is proposing to do, an  
3 elicitation of public comment, the evaluation by the agency  
4 of that comment, the reconciliation, and the description of  
5 how they reconciled the basis for the rule, the rule itself,  
6 with a subsequent effective date, unless it need be  
7 immediately effective.

8 Section 181 of the Atomic Energy Act brings all of  
9 that to bear because it says that the agency will promulgate  
10 rules and regulations in accordance with the Administrative  
11 Procedures Act. So you've got a nice statutory basis for  
12 the NRC doing what it does, and that also limits the NRC to  
13 what it has the authority to do. These administrative  
14 mechanisms that we refer to generically as generic  
15 communications are the way that they provide some additional  
16 insight, but, as I mentioned, the authority for all of them  
17 must come, as the authority for the NRC does, from the  
18 Atomic Energy Act.

19 Since they are not promulgated in accordance with  
20 the Administrative Procedures Act, they are not rules or  
21 regulations, they are not requirements. Remember Marty made  
22 many of those same comments. In the land of Section  
23 50.54(f), the request for information, that also cannot  
24 impose requirements for you to do something other than to  
25 respond. Your response, of course, will be evaluated by the



1 staff in determining what, if any, subsequent action the  
2 staff feels is appropriate to take.

3 But the only requirement is that you respond.  
4 They must, as part of that 50.54(f) process, put together a  
5 justification for the burden imposed by asking you to  
6 respond. As a number of the folks earlier have commented,  
7 they do this backfit analysis because they anticipate the  
8 generic communication may be the subject of an order, if, in  
9 fact, your response is not -- if individual plant's  
10 responses are not satisfactory.

11 If so, a backfit analysis has to be done, so we're  
12 kind of getting a step forward on the process by doing that  
13 backfit analysis at least generically as part of the  
14 consideration of the generic communication issuing. But  
15 just because a backfit analysis is done to support the NRC's  
16 analysis and issuance of a generic communication does not  
17 somehow magically transform that into requirement.

18 In terms of a simple analogy, if you call a cow a  
19 bird, it still doesn't mean the cow can fly. If you call a  
20 generic communication a requirement, it still isn't a  
21 requirement just because you did a backfit analysis, just  
22 because that adds a little bit of luster to the process and  
23 to the communication. If it's a 50.54(f) requirement, it's  
24 still not a requirement other than to respond.

25 That really is all I intended to cover. All I

1 want to emphasize is that it's up to you, up to each of you  
2 as the licensees to determine what proper response you  
3 should make. Recognize that in theory, any generic  
4 communication in which your response is no, I'm not going to  
5 do it, it is going to certainly -- I think you can expect --  
6 cause you to be under some greater scrutiny about what that  
7 means about your plant, what that means about the NRC's  
8 concern for that issue.

9           But there have been a number of cases, and Dan  
10 Stenger is going to follow me immediately and is going to  
11 talk about the process, the process to appeal, all of which  
12 has to be -- the first step is your requirement to analyze  
13 what the generic communication requires -- excuse me -- what  
14 the generic communication suggests. I hate to fall into  
15 that trap myself.

16           If you don't do that analysis, if you willingly do  
17 whatever the NRC suggests in a generic communication without  
18 any judgment about whether it's applicable at your own  
19 plant, you can also be subject to an order from the NRC,  
20 because it may not, in fact, be applicable because of your  
21 particular situation.

22           I know a number of licensees think, well, the most  
23 conservative course of conduct is to just do what they  
24 recommend. In one degree, that may be conservative. That  
25 may not be prudent. I guess that's the message I'd like to

1 leave you with. Your responsibility is not to do what a  
2 generic communication suggests, but to determine how and to  
3 what degree it's applicable to you to make the tough  
4 decisions about where this should fit and what priorities of  
5 everything else you have to do, and, frankly, be willing to  
6 stand up to the bar if challenged by the staff and be able  
7 to explain why and how you made those judgments.

8 If you don't do that, they've got no other basis  
9 of determining what's right and appropriate for them to do  
10 either. I think that is your obligation to yourself. I  
11 think that's your obligation to the NRC, as well.

12 Thank you.

13 MR. ROSS: I think we'll hold off questions for  
14 Mr. Bishop until Dan Stenger has spoken, and then we'll get  
15 all three lawyers together. Dan?

16 MR. STENGER: Thank you, Denny. I'll be focusing  
17 today on implementation of the backfitting rule since it was  
18 adopted in 1985. Let me just first say a word of thanks to  
19 the NRC for making the effort to have a forum like this  
20 where we can have a dialogue over issues of application of  
21 the backfitting rule. The first two workshops have been  
22 very useful, and, in that connection, I would encourage your  
23 participation. Please feel free to interrupt me at any time  
24 with questions. The more participation there is from you  
25 folks in the audience, the better this workshop will be.

1           My name is Dan Stenger. I am with the law firm of  
2 Winston and Strawn in Washington, D.C. Let me just first  
3 say a word about the name change. Many of you have worked  
4 with us. The firm was known as Bishop, Cook, Purcell &  
5 Reynolds. When I sprang the new name on people at the  
6 Region II workshop, I understand there was some confusion.

7           We had a merger with one of the largest and oldest  
8 law firms in the country, which is based in Chicago,  
9 incidentally, and have taken their name, but we are the same  
10 people in Washington as before. We are counsel to NUBARG,  
11 the Nuclear Utility Backfitting and Reform Group, which is a  
12 consortium of 25 utilities, which has closely followed the  
13 NRC's implementation of the new and improved backfitting  
14 rule.

15           When the Commission adopted the backfitting rule  
16 in 1985, as Marty indicated, the Commission acted to restore  
17 stability and predictability to a regulatory process that it  
18 all but hemorrhaged with the proliferation of new  
19 requirements in the early 1980s. In 1981, an important  
20 survey by senior NRC management concluded, notwithstanding  
21 the competence and good intentions of the staff, the pace  
22 and nature of regulatory actions have created a potential  
23 safety problem of unknown dimensions.

24           In the words of the United States Court of Appeals  
25 for the District of Columbia Circuit, which affirmed the

1 rule on all counts in a July 1989 decision, the rule was  
2 needed "to systematize and rationalize the Commission's  
3 backfitting process." Now that five years have passed since  
4 the rule was put into place, it is well to take a look at  
5 the record on the way the rule has been implemented in  
6 practice.

7 Let's first take a look at the generic backfitting  
8 process. We've heard discussion today about the cumulative  
9 impact of generic initiatives on licensees. One can get a  
10 very rough idea of one way of measuring the impact by  
11 looking at the NRC's own estimate of the response burden on  
12 licensees. That is to say the burden of responding to major  
13 generic communications.

14 These numbers are based on the NRC's own estimates  
15 of just responding, not necessarily implementing the actions  
16 requested. Also what this shows is from the period of  
17 October 1988 through mid-September 1990, a period of almost  
18 two years, the total response burden of some 25 major  
19 generic communications, generic letters and bulletins, has  
20 been between 20,000 and 34,000 person hours per plant.

21 This time period does not include the actions  
22 connected with the fraudulent equipment issue, Bulletin  
23 8805, and its supplements, and the numbers would be much  
24 higher if that were included, obviously. But over this  
25 period, as you can see, a substantial burden has been

1 imposed on licensees of responding.

2 This is the response burden only and many  
3 licensees have indicated that they believe the NRC's  
4 estimates are too low. Moreover, since many of the generic  
5 letters and bulletins call for long-term continuing  
6 programs, such as testing of service water systems or  
7 testing of motor operated valves, the continuing burden of  
8 implementation is going to be much higher.

9 The previous slides show that of these 25 major  
10 generic communications, backfitting analyses have been  
11 performed for only six. Now, why were these actions not  
12 handled as backfits? There are basically two reasons.  
13 First of all, we've heard a great deal of discussion this  
14 morning about 50.54(f). Many of these generic  
15 communications were handled as "information requests" under  
16 50.54(f) rather than as backfits under 50.109.

17 Some examples are Generic Letter 89-07 on  
18 vehicular bombs; Generic Letter 89-19 on steam generator and  
19 vessel overfill protection. In addition, the proposed  
20 generic letter on IPEEE is being considered for issuance as  
21 an information request, although the NRC itself has  
22 estimated that the IPEEE will cost some \$1 million per plant  
23 and six person years of effort.

24 I would note that NUMARC's estimates of the burden  
25 of substantially higher. This issue of 50.54(f) versus



1 50.109 is currently being addressed, in part, by the NRC's  
2 Office of General Counsel. Without belaboring the point  
3 here, it is our position that many of the generic  
4 communications that have been handled as information  
5 requests really deserved the more detailed analysis under  
6 50.109.

7 Carl Berlinger can poke me in the ribs if he wants  
8 to at any point here, but it's been our view that many of  
9 the generic communications are not mere requests for  
10 information, that they ask in many cases that licensees  
11 implement major new programs; MOV testing, service water  
12 testing; or that they ask for extensive analyses, new  
13 analyses using new criteria. That is to say criteria not  
14 reflected in the plant's licensing basis.

15 In these situations, it would seem that the  
16 requested actions are not mere requests for information, but  
17 rather really in the nature of backfitting.

18 CRGR itself put it best in October 1986 when it  
19 ruled that the proposed resolution of USI-846 Seismic  
20 Qualification had to be justified under the standards of  
21 50.109 rather than 50.54(f). At that time, CRGR stated  
22 "Under the proposed resolution, the adequacy of the design  
23 of a licensee's facility would be judged against  
24 significantly different criteria than were used by the staff  
25 in licensing the facility initially."

1           These were clearly the type of circumstances  
2 contemplated by the Commission in approving the backfit  
3 rule. Secondly, the time and expense involved in performing  
4 the analyses is clearly greater than the information  
5 requests contemplated by the Commission in approving Section  
6 50.54(f). This is a very important precedent, and we hope  
7 that CRGR and the NRC do not depart from it.

8           The second reason many of the major generic  
9 initiatives have not been treated as backfits is that they  
10 have been issued under the so-called "compliance exception"  
11 of Section 50.109(a)(4)(i). Examples include Generic Letter  
12 89-04 on In-Service Testing of Pumps and Valves, Generic  
13 Letter 89-13 on Service Water Systems.

14           With all due respect, we believe the NRC has  
15 stretched the compliance exception beyond its proper bounds.  
16 The Commission explained the scope of the exception in the  
17 1985 backfitting rule, where it stated "The compliance  
18 exception is intended to address situations where the  
19 licensee has failed to meet known and established standards  
20 of the Commission. New or modified interpretations of what  
21 constitutes compliance would not fall within the exception."

22           In view of this expression of Commission intent,  
23 we believe the NRC should bear in mind two important things.  
24 First, before it may invoke the compliance exception, there  
25 must be a known and established standard. There must be an

1 explicit regulatory requirement. Broad standards such as  
2 the general design criteria should not be reinterpreted as a  
3 basis for making a compliance finding. Any other reading of  
4 the compliance exception would allow the exception to  
5 swallow the rule.

6 Secondly, a reinterpretation of existing  
7 requirements can be a backfit, even if the underlying  
8 requirement stays the same. If the staff now says that more  
9 needs to be done to demonstrate compliance than what we  
10 accepted in the past, that also is a backfit. The  
11 compliance exception has been a matter of a great deal of  
12 discussion at the first two workshops. Let me explain in a  
13 little more detail our position in this area.

14 They were met at the time of initial licensing by  
15 demonstrating that the licensee had done what the staff had  
16 required to meet the GDC. The staff reviewed the licensee's  
17 approach to compliance with the GDC and approval was issued  
18 before initial licensing. Now let's assume that the staff  
19 has reason to believe that its approach to demonstrating  
20 compliance with the general design criteria requires change.

21 The backfitting rule was designed and intended by  
22 the Commission to provide licensees protection from such  
23 changes unless they are developed through discipline  
24 decisionmaking by the NRC. As to plant-specific changes,  
25 the rule prevents the staff from requiring the licensee to

1 comply with the new staff position unless the full analysis  
2 in 50.109 is performed.

3 It is not sufficient for the staff to claim that  
4 the change is justified based upon the compliance exception  
5 because the licensee has already demonstrated compliance  
6 during initial licensing. In other words, the staff may not  
7 move the target of what's necessary to meet the GDC and then  
8 claim that the licensee is not on target.

9 This is what the backfitting rule was intended to  
10 prevent. The compliance exception is properly invoked in  
11 cases where the licensee is not doing what it said it would  
12 do to comply with the NRC requirements, and the staff wants  
13 to compel the licensee to come into compliance with that  
14 licensing basis. To interpret the compliance exception  
15 otherwise would render false the promise of licensing  
16 stability embodied in the rule.

17 Let me just say a few words about the adequate  
18 protection exception. That seems to be somewhat less  
19 controversial. With respect to the adequate protection  
20 exception, if the staff believes that licensee action may be  
21 necessary to assure adequate protection of public health and  
22 safety, the minimum level of safety required, then it should  
23 also pursue the disciplined approach of 50.109. 50.109 does  
24 not require an analysis where the regulatory action is  
25 necessary to restore the minimum level of adequate

1 protection.

2 But as the Commission pointed out in the 1988  
3 backfitting rule, this is a rare exception. And that only  
4 make sense, since to invoke that exception is to say that  
5 the plant is not currently safe. With respect to the plant-  
6 specific backfit process now, as the table shows, there have  
7 been approximately 20 formal backfitting appeals since the  
8 rule was adopted in 1985. By our count, some ten of the 20  
9 were essentially granted with the staff identifying the  
10 matter as a backfit or finding that its position was not  
11 justified, or achieving another mutually acceptable  
12 resolution.

13 Three of the appeals are currently pending. These  
14 numbers include cases; for example, two cases recently in  
15 which two licensees challenged escalated enforcement action  
16 for commercial-grade procurement practices on the basis of -  
17 - on backfitting grounds. As you may be aware, in the face  
18 of arguments by these two licensees that enforcement action  
19 in the commercial-grade procurement area was essentially a  
20 backfit, the NRC withdrew the violations and imposed a  
21 hiatus on enforcement activity industry-wide.

22 In addition to these 20 formal appeals, there have  
23 been a considerable number of backfitting issues that have  
24 been raised and resolved informally; that is without resort  
25 to a written appeal.

1           What does this information tell us? Well, it  
2 suggests perhaps three things. There is a relatively low  
3 number of appeals that have been filed since the 1985 rule.  
4 That suggests perhaps that the rule has brought about  
5 greater stability in the process and that, on the whole, the  
6 staff is doing a better job of identifying backfit positions  
7 before they are transmitted.

8           Secondly, it suggests that many issues are  
9 resolved informally or as technical appeals rather than  
10 backfits, without resort to a formal backfitting appeal  
11 under the manual chapter. Thirdly, it also suggests that  
12 licensees may choose not to exercise their rights under the  
13 backfitting rule because of a management decision that it's  
14 not worthwhile or that they are reluctant to do so out of a  
15 concern that the staff might resent it.

16           Nevertheless, from our experience in working on  
17 dozens of backfitting or potential backfitting issues, there  
18 is clearly still some room for improvement in the plant-  
19 specific backfit process. Let's take a look at those.  
20 First of all, with respect to identification of backfits, it  
21 is essential that both licensees and the NRC staff be able  
22 to recognize a backfit when they see it, and that's one  
23 purpose of this workshop.

24           It's training sensitization to be able to  
25 recognize or identify a backfit when one arises. Sources of



1 plant-specific backfits include inspections and inspection  
2 reports, notices of violation, requests for additional  
3 information by the staff, SERs, and other significant plant  
4 specific correspondence.

5 It has been our experience that many times these  
6 sources of potential backfits do not receive adequate review  
7 for backfitting implications before they are issued. For  
8 example, we've seen a notice of violation that was based on  
9 an alleged failure to meet a draft of the general design  
10 criteria by the licensee, and that draft was in no way,  
11 shape or form part of the licensing basis for the plant.

12 We know of another case in which a licensee  
13 program was reviewed and accepted by the NRC on three  
14 separate occasions, and, yet, the issue was reopened a  
15 fourth time. In addition, as NUREG-1409 even recognizes,  
16 part of the NRC inspection effort is designed to encourage  
17 licensees to go above and beyond the regulatory  
18 requirements. This may also pose some tension between the  
19 responsibility of the staff to identify backfits and the  
20 staff's effort to encourage licensees to go above and beyond  
21 the existing requirements.

22 As a result, the burden falls all too often on  
23 licensees to complain when they believe a backfit is being  
24 imposed. Manual Chapter 0514, however, emphasizes that it  
25 is the staff's responsibility to review plant-specific

1 correspondence for backfits before being transmitted to the  
2 licensee. The Manual Chapter states "The NRC staff shall be  
3 responsible for identifying proposed plant-specific  
4 backfits. The staff at all levels will evaluate any  
5 proposed plant-specific position with respect to whether or  
6 not the position qualifies as a proposed backfit."

7 Let me say a few words now about the backfitting  
8 appeal process. This is another area where we believe some  
9 improvement and better understanding is necessary on the  
10 part of both licensees and the NRC. First of all, it should  
11 be recognized that backfit is not a bad word. Licensees  
12 should not be afraid to point out when they believe the  
13 staff is backfitting the plant without adequate  
14 justification. Neither should the staff resent it when a  
15 licensee does present an argument based on backfitting  
16 grounds.

17 All too often the comment is made that arguing  
18 backfit is a legalistic adversarial approach and that you  
19 really should do what is right for safety. The history of  
20 the backfitting rule teaches that there is nothing  
21 incompatible between having a safety-first philosophy and  
22 insisting that NRC propose changes to the plant be  
23 adequately justified. After all, that was what the  
24 backfitting rule was designed to do, to establish a  
25 disciplined process for reviewing proposed changes to the

1 facility.

2 Secondly, both licensees and the NRC should  
3 appreciate that the most efficient way to implement the  
4 backfitting rule is really to do it informally; that is to  
5 say without resort to a written backfitting appeal. If you  
6 can discuss backfitting issues openly with the staff during  
7 inspections, meetings, or other reviews, that is often the  
8 most efficient way to resolve issues without generating a  
9 lot of paper.

10 Dr. Murley himself emphasized that he felt that  
11 was a very efficient way to utilize the process back in the  
12 1986 workshops that were held shortly after the rule was put  
13 into place.

14 In conclusion, NUBARG suggests the following  
15 actions to help further improve the backfitting control  
16 process. First, the NRC should continue its efforts to  
17 improve the generic process. We have heard some discussion  
18 today and we will hear additional discussion about NRC  
19 efforts to integrate generic initiatives. We encourage  
20 those actions which include, for example, making more drafts  
21 of generic communications and the supporting analyses  
22 available for comment.

23 As part of this improvement effort, however, we  
24 encourage the NRC to take a hard look at its use of 50.54(f)  
25 information requests and the compliance exception to the

1 rule. On the plant-specific side, we'd suggest two things.  
2 First, the NRC should improve the process for review and  
3 identification of backfits and significant plant-specific  
4 correspondence. We believe the NRC needs to do a better job  
5 of reviewing significant plant-specific documents before  
6 they're issued, reviewing them for backfitting implications.

7 We have previously suggested to the NRC that they  
8 use a checklist to ensure backfitting review is done. They  
9 have ensured us it can be handled through training and  
10 auditing. We shall see. Secondly, as I mentioned,  
11 licensees and the staff should focus their efforts on  
12 discussing openly, open communications over backfitting  
13 issues in an effort to resolve the issues informally. This  
14 promotes efficiency and can avoid hard feelings.

15 With that, I would open the floor for any  
16 questions and encourage particularly questions regarding  
17 Marty's discussion of properly formulated information  
18 requests, what that might constitute, and any other  
19 questions you might have.

20 MR. ROSS: You can address your questions to any  
21 of the three legal presentations. Questions from the  
22 audience.

23 MS. GOODMAN: Lynne Goodman, Detroit Edison.  
24 Regarding generic communications, what effect, if we started  
25 saying that we would not do everything the NRC recommended

1 in a generic communication, what effect would that have on  
2 our SALP, especially in the technical and engineering areas?

3 MR. ROSS: Any of these three in particular you  
4 want to address it to?

5 MS. GOODMAN: Anybody.

6 MR. MALSCH: Well, I can speak for somebody in the  
7 region who sits on the SALP Board, and it is a division that  
8 has a prime responsibility for preparing the engineering  
9 effectiveness support section of SALP. My feeling is that  
10 it would not effect your SALP score, particularly as it's  
11 accompanied by a demonstration of a good technical command  
12 of the issues involved.

13 We have never really been faced with a situation  
14 like this, though. So anything I would say here is somewhat  
15 speculative, but I think speaking for myself, we would  
16 clearly have to separate a licensee's petition on a backfit  
17 case like that from our evaluation of their technical-  
18 engineering performance.

19 MR. BISHOP: If I can just add a comment. Don't  
20 misread my comments to suggest that I was advocating a  
21 frivolous response. That will get you nowhere. But by the  
22 same token, the message that I would like to try to impart  
23 once again is if you don't think it's the right thing to do,  
24 it's your responsibility to tell them.

25 MR. PETERMAN: Kirk Peterman from Dresden Station.

1 I'd like to bring up a counter-example of what Mr. Miller  
2 just indicated. We recently went through the SALP process  
3 at Dresden and reflected in the SALP response was the  
4 adequacy of our technical position on station blackout rule.  
5 We had gone in justifying not installing any additional  
6 accumulator. That was reflected back in the SALP report and  
7 we then later sent, when the SALP later reconvened, the  
8 response to that, and the words were in someone's SALP  
9 response, although the final result did not change.

10 MR. ROSS: Unfortunately, we don't have somebody  
11 here from NRR. I don't think they could speak to that.  
12 That is really a licensing issue and that wouldn't have  
13 originated from their Region. But the extent to which you  
14 had good ground for petitioning on an issue like that, I  
15 would say we should not reflect --

16 MR. BARRETT: Richard Barrett from NRR. Without  
17 going into a lot of detail about the Dresden SALP, I think  
18 it's fair to say that if you present a good case for taking  
19 an alternative action, something different from what the NRC  
20 has proposed in a generic letter, I think that what it ought  
21 to do is improve your SALP rather than to -- as you say, in  
22 that particular case, it hurt your SALP. It's obviously  
23 going to be a matter, a question, however, in a particular  
24 case when you come in with an engineering analysis of any  
25 type to NRR, to NRC.



1           If it's an engineering analysis that we don't  
2 think its appropriate, that we don't think is appropriate,  
3 that we don't think takes into account all of the safety  
4 significant aspects of the problem, you are at risk for  
5 having your SALP lowered. This is going to be the case  
6 anytime you interact with the NRC.

7           However, I think our position is, and I'm sure I  
8 think I can speak for Hub, that if you come in with an  
9 engineering analysis in which you're trying to justify doing  
10 something different from what the NRC is proposing, that  
11 should improve your SALP grade, if it's a good analysis.

12           MR. PAPERIELLO: I'd like to address the Dresden  
13 SALP because I conducted the SALP meeting with the licensee.  
14 I was not -- I usually attend SALP Boards on plants that I'm  
15 going to conduct the meeting with the licensee. In this  
16 particular case, I did not for a variety of reasons. I was  
17 out of town, I believe, at the time and the Regional  
18 Administrator wasn't involved in it.

19           When I read the SALP report in getting ready for  
20 the meeting and read the rating of the factor, I didn't have  
21 a problem. At the meeting, NRR made the presentation in the  
22 particular area. It certainly came across in that  
23 particular presentation that there might have been an undue  
24 weight placed upon whether or not there was a disagreement  
25 between the NRR staff and the licensee in that particular

1 rating.

2           Basically, I asked the licensee to give a response  
3 in that area if they disagreed, and I initiated reconvening  
4 the SALP Board. Now, I have to tell you when I read the  
5 appraisal or the SALP report, I felt that the two was  
6 warranted. We viewed it as a high two, but not based just  
7 on that issue. Now, we tried to maintain -- there's another  
8 issue running around that the Regional Administrators give  
9 our ratings regardless of what the SALP Board says.

10           We don't do that in Region III. If, in fact, the  
11 RA does change the SALP rating, it's highlighted in the  
12 report. It's been very rare when that's happened in Region  
13 III. But we reconvened the SALP Board. The words were  
14 changed and the Board voted. In this case, Dresden was a  
15 high two, but it was a two. We don't have a high two, but  
16 that's the way it was.

17           But I will not tolerate within my power any kind  
18 of retaliation. As people keep saying over and over again,  
19 we have to have an open dialogue. But, again, it depends on  
20 what the issue is. Is the response, as somebody said  
21 frivolous? I don't expect something like that. I expect  
22 that a professional well thought out response to any of the  
23 -- that type of initiative by the agency.

24           You're probably not getting an answer you want,  
25 but I try to make, at least in my power, make the system

1 work. Certainly the SALP system will not work if it's used  
2 for retaliatory purposes.

3 MR. MILLER: Carl, if I could just add one  
4 additional observation. I see all the correspondence that  
5 comes, that goes out for licensees in this Region, as well  
6 as all the responses. I have to say that some of the more  
7 tough responses, if I can use that term; that is ones that  
8 have a bit of arguing with us on the imposition or ones that  
9 point out the limits of what the licensee feels applies in  
10 their particular case are from licensees that have better  
11 SALP scores, and this includes the engineering and technical  
12 support and safety assessment and quality verification  
13 areas.

14 I believe that to be true. There is not a  
15 correlation between those folks who were quicker to argue a  
16 bit and poor SALPs.

17 MR. ROSS: Any other questions or comments?

18 MR. PULEC: Rick Pulec, Wisconsin Public Service.  
19 Question for Mr. Stenger. It seems like the staff has been  
20 imposing some notices of violation against Appendix B and  
21 because of the generalities of Appendix B, it's hard to say  
22 that it's licensing basis, it was required.

23 One case in point is molded case circuit breaker  
24 testing. Licensees hadn't been doing it for years and now  
25 they're being told that they're in violation of Appendix B

1 criteria. Could you respond to that, or the staff, I guess,  
2 as far as backfit?

3 MR. STENGER: It's possible that that could well  
4 be a backfit. I don't know the details of that particular  
5 issue, but if you take the example of the commercial grade  
6 procurement violations, there were a number of violations,  
7 escalated enforcement action in that area based on Appendix  
8 B. Two licensees, Florida Power Corporation and Washington  
9 Public Power Supply System took the position in responses to  
10 the MOVs that the staff was reinterpreting Appendix B and  
11 calling for a receipt inspection, additional actions that  
12 had never been explicitly required before.

13 Though the NRC did not, as I recall, specifically  
14 reach the merits, it withdrew both violations. I think  
15 that's an example of where a licensee in a similar type  
16 situation was able to point out that they felt there was  
17 really a new interpretation of Appendix B; that is to say a  
18 backfit.

19 So in your scenario, it could well raise  
20 backfitting implications.

21 MR. MALSCH: Let me add something to that. This  
22 is, I think, why the compliance exception to the backfit  
23 rule ends up being kind of controversial, because there are  
24 various ways you can read the exception. A broader way to  
25 read the exception, a way which I think is perfectly

1 consistent with the : . . . would be to simply ask the  
2 question, given the information I have now, is there any way  
3 in which the licensee could be in compliance with the  
4 regulation.

5 If the answer is no, then the compliance exception  
6 would apply even though it may be that years before a  
7 compliance determination had been made. - So I think you need  
8 to be cautious. It seems to me that you can have the  
9 compliance exception apply possibly even though there is, in  
10 fact, a change in staff position if there's been new  
11 information developed subsequent to the development of that  
12 staff position.

13 It depends on the rule, it depends upon the  
14 circumstances, it depends upon really looking at the  
15 situation now; are you in compliance or are you not in  
16 compliance, and what kinds of arguments can you make either  
17 way.

18 MR. STENGER: Marty, I'm not sure I agree with the  
19 way you put that. You said even though there had been a  
20 prior determination of compliance, you could now say that  
21 the licensee is not in compliance and it would be no  
22 backfit.

23 MR. MALSCH: Absolutely.

24 MR. STENGER: I don't see how that could be. I  
25 think that's exactly what the rule was intended to protect

1       against.  If you can point to SER that -- I don't know if  
2       this is what you intend, but if you can point to an SER  
3       where the staff has said we accept the licensee's program as  
4       complying with the regulations, it seems to me what you  
5       would have in your scenario is a new position that would  
6       fall under 50.109.

7                 MR. MALSCH:  Well, there's no doubt that there's a  
8       new position.  There's no doubt that it's a backfit.  The  
9       question is whether it falls within the compliance exception  
10      from the requirement to do a backfit analysis.  In my  
11      example it's clearly a backfit.  There is clearly a change  
12      in staff position.  The real question is whether it falls  
13      within the compliance exception.

14                That's where I would simply ask the question,  
15      knowing now what we know, is there any way we can read the  
16      regulation so as to conclude that this licensee is in  
17      compliance.  If the answer is just no way, the compliance  
18      exception applies, it's a backfit, but there's no  
19      requirement for a cost benefit analysis.

20                MR. BISHOP:  Marty, is that a public health and  
21      safety judgment fundamentally?

22                MR. MALSCH:  That's just a common sense concept of  
23      what compliance is.

24                MR. ROSS:  You're going to have to use the  
25      microphones so the Reporter can get precisely what you're



1 saying.

2 MR. MALSCH: That's just a straightforward common  
3 sense conception of what's meant by compliance. Either you  
4 comply or you don't knowing what you know now. There's  
5 nothing fancy about it.

6 MR. BISHOP: But in your scenario, the license  
7 hasn't changed. It's only that new information is now  
8 available to the staff.

9 MR. MALSCH: That's correct.

10 MR. ROSS: Carl Berlinger has been dying to say a  
11 word in here.

12 MR. BERLINGER: Thanks, Denny. Dan used an  
13 example during his presentation where a compliance exception  
14 was cited, in his view, inappropriate, and that was in the  
15 area of issuance of generic communication on service water  
16 system problems. In particular, clearly what the staff was  
17 asking utilities to consider doing in issuing that generic  
18 letter was to, in fact, bring their plants back into  
19 compliance because operating experience had clearly  
20 indicated that the systems were not operating the way the  
21 licensees had designed them to operate and there had been  
22 numerous failures in the field, not only from areas which  
23 were generally reviewed as part of the design or design  
24 review and certification of the equipment, but in areas that  
25 were not presumed or assumed by licensees during their

1 review of the designs in order to license their plants.

2           Particularly, this was a good example because in  
3 this particular example the service water systems were  
4 malfunctioning, were failing for a variety of reasons which  
5 were not being adequately considered by licensees in the  
6 field, whether they be tests or inspections or maintenance.

7           MR. MILLER: If I could just add one thing to what  
8 Carl is saying. There's one subtle, but I think very  
9 important point to keep in mind in connection with this  
10 question. That is that as much as licensees may feel like  
11 NRC has an enormous number of resources, I'm sure when  
12 you're being inspected at times you feel like there are too  
13 many of us, but in reality we have a very small amount of  
14 resources that are available for inspection.

15           So the scope of our inspection is always focused  
16 on the small part of what you're responsible for. As a  
17 result, we don't get around to inspecting all of the things  
18 that you are committed to do. It's very definitely our  
19 emphasis and our focus in inspection changes at times and  
20 the fact that a plant has operated for 10 to 15 years, let's  
21 say, and we have not been in making a compliance issue of  
22 something, it does not mean that you weren't responsible all  
23 of that time for meeting that requirement, whatever it is.

24           Service water is an area where, in fact, the  
25 Commission now is focusing more attention. I think the area

1 of procurement of equipment and replacement parts is another  
2 area where we are now focusing attention and haven't in the  
3 past. So the fact that you have operated for a period of  
4 time and we didn't cite you for a certain item doesn't mean  
5 that you aren't required to do that all along. It just  
6 means that we haven't been out and haven't done inspections  
7 on it.

8 MR. ROSS: Let me follow up with a question to at  
9 least any of the three presenters. This is a case where  
10 compliance is not well defined. It may be called the  
11 ambiguous case. About four or five days ago at the Sequoyah  
12 Nuclear Station, for some reason which I can't remember,  
13 they were inspecting check valves on the 30-inch main steam  
14 line. The check valves were put there so that if you had a  
15 steam break at certain locations, these check valves would  
16 prevent back flow and you could only blow down one steam  
17 generator.

18 They opened up and looked at one valve and the 500  
19 pound disc was missing, literally. They couldn't find it.  
20 They looked inside, it's gone, somewhere downstream. So  
21 they look into a second one and the valve disc is -- the pin  
22 is sheared or something, but the disc was still there. But  
23 in the third valve of four, again the disc was somewhere  
24 downstream. For that station clearly there's a problem.

25 These valves are part of the licensing basis.

1 They were installed pursuant to an FSAR commitment and one  
2 could probably make a good case if they're needed for  
3 adequate protection because without them, the consequences  
4 of multiple steam generator blowdown haven't been analyzed.  
5 Okay.

6 Now, what can the NRC do? Suppose we determine  
7 this valve was made by the Shady Tree Valve Company and we  
8 want to tell everybody that's got valves from Shady Tree,  
9 check valves that is, within 30 days inspect to see if  
10 they're still there or have they gone through the high  
11 pressure turbine somehow. We're trying to determine is this  
12 a compliance thing. See, we don't know what your valves --  
13 the only thing we know for sure is that TVA at Sequoyah, we  
14 don't even know anything about Watts Bar. All we know -- or  
15 McGuire, any other ice condenser, or whether it's even an  
16 ice condenser question.

17 We just know one station. But once we know who  
18 made the valve, we may want to make sure that everybody who  
19 has a valve like that inspects. Is this compliance? I  
20 think I can unquestionably -- the NRC would call it  
21 compliance, but is it valid use of compliance?

22 MR. STENGER: Well, it doesn't bother me, but why  
23 don't I pass it on to the other two people.

24 [Laughter.]

25 MR. STENGER: I really don't like getting into

1 discussing specific cases. I don't know anything about the  
2 Sequoyah incidents.

3 MR. ROSS: Well, I'll hypothesize is then. It was  
4 the ABC Nuclear Station.

5 MR. STENGER: I don't have trouble with that  
6 situation. I think it's consistent with my prepared remarks  
7 that if, at a particular plant, something that the licensee  
8 said was going to be there and would be functioning is not  
9 there and not functioning. Then you have a compliance  
10 matter.

11 MR. ROSS: I want everybody in the country that  
12 has valves like that to do the same inspection to see if  
13 they've got the same disease. That's the compliance  
14 question.

15 MR. STENGER: Well, I don't know if it's a -- it  
16 could fall under 50.54(f). If you wanted to ask for  
17 information on do you have these valves --

18 MR. ROSS: And what are you going to do about it.  
19 This would probably be a bulletin.

20 MR. STENGER: It probably would be.

21 MR. ROSS: And the bulletins say, first, do you  
22 have the valves and, second -- in putting it in the  
23 hypothetical -- request and get rid of all the shalls and  
24 what are you going to do about it. The bulletin, in effect,  
25 would say that, and when are you going to do it, and how

1 long is it going to take, and if you don't do anything,  
2 justify your non-action. That's sort of a summary of a  
3 bulletin.

4 MR. STENGER: And you have reason to believe that  
5 there is something in the manufacture of the valves that  
6 causes the failure.

7 MR. ROSS: No, I don't know what's wrong. All I  
8 know is it was bad at ABC Plant. That's all I know for now.

9 MR. STENGER: Under those circumstances, I think  
10 that could well be a properly formulated information  
11 request. I'm not too troubled by that given your facts.

12 MR. ROSS: Other questions for the legal --

13 MR. CONRAN: Could I make a comment?

14 MR. ROSS: Sure. Go ahead.

15 MR. CONRAN: With respect to another example that  
16 was cited, the service water system generic letter, you can  
17 tell from this discussion, the discussion has shown so far  
18 in this area there seems to be seldom a clear cut of either  
19 a compliance issue or a cost justified safety enhancement.  
20 It's usually pretty clear it's an adequate protection issue.  
21 The compliance call I think is the most difficult one that  
22 the staff and the Committee have to make.

23 If there's not a monolith of opinions on the staff  
24 that the service water system generic letter was a  
25 compliance issue. That very question was argued at some



1 length at the Committee's review. The overall staff  
2 determination was that it was a compliance issue, and that's  
3 the way it was issued. But whether or not that was  
4 justified or a correct call was quite a topic of discussion  
5 during review.

6 In fact, in that particular case, the documented  
7 analysis that accompanied the package that was submitted was  
8 one of the better -- was one of the more complete with  
9 extensive documented evaluations. And during the Committee  
10 discussions, a number of the Committee felt that the generic  
11 letter could have been justified as a cost justified safety  
12 enhancement rather than a compliance issue. The  
13 extensiveness of the problems with the service water system  
14 and other factors led finally to the decision to call it a  
15 compliance issue.

16 It's not neatly black and white. To say it again,  
17 the compliance -- the call on whether it's a compliance  
18 issue is not taken lightly. You may not always agree with  
19 the outcome, but it's always discussed and, in fact, as I  
20 indicated, the Committee itself generated a discussion  
21 regarding the experience that Dan Stenger cited, have we  
22 been making the compliance call incorrectly or too often.

23 I think Denny Ross clearly gave the thrust of the  
24 Committee's concern, and that is safety or potential safety  
25 problems is what then drives whether or not the generic

1 communication is issued, and the exact category falls into -  
2 - it is always discussed.

3 MR. BERLINGER: Denny, could I --

4 MR. ROSS: Just a minute, Carl, and then I'll  
5 introduce you. if you read the backfit rule, it says that  
6 the Commission shall always require the backfitting of a  
7 facility and if it determines that such regulatory action is  
8 necessary to ensure that the facility provides adequate  
9 protection, bla, bla, bla. You don't see the same words in  
10 order to ensure that facility is in compliance, which is an  
11 interesting maybe omission or maybe it's deliberate, I'm not  
12 sure. Carl?

13 MR. STENGER: I just want to followup with a  
14 comment because I could tell from looking at the audience  
15 while Marty and I were discussing compliance that there was  
16 a lot of confusion. Let's just go back to that for a  
17 second. If there has been a finding by the NRC that the  
18 licensee complies in a certain area, the SER is issued, and  
19 then some new information comes to light that shows that  
20 what the licensee said it was going to do it is not doing,  
21 for whatever reason; the check valve is not operating  
22 properly or whatever or that part of the program has not  
23 been implemented.

24 Then a compliance finding would be appropriate.  
25 But if the NRC is moving the target, if the licensee is

1 doing everything it said it would do and the staff  
2 previously approved that, and now the NRC is shifting the  
3 target of what's necessary to demonstrate compliance, that  
4 must be a backfit. I don't know if there's disagreement  
5 with that or not, but that's --

6 MR. BISHOP: I don't think there's a disagreement.

7 MR. BERLINGER: Let me ask a related followup  
8 question. What if the NRC has found a plant to be in  
9 compliance with the regulations and then new information  
10 some years down the road becomes available, whether it's  
11 based on research or operating experience, which indicates  
12 that maybe what was required in the past for that and other  
13 licensees was not adequate to protect the public health and  
14 safety.

15 At that point, if the staff takes an action, what  
16 would you envision the appropriate action to be; compliance,  
17 adequate protection, or does it have to be a cost benefit  
18 justified factor?

19 MR. STENGER: Well, it could be any of the three,  
20 really. The way you posed the question, it was that you  
21 found that what was previously done based on new information  
22 is not good enough to provide the minimum level of  
23 protection required, adequate protection. In that case, the  
24 exception for adequate protection would apply.

25 But I would submit that in many cases, new

1 information comes to light that shows that we can improve  
2 safety and there is nothing wrong with that. The  
3 backfittin' rule was intended for those types of situations  
4 to be analyzed under the standards of 50.109. I would just  
5 -- I know I'm rambling a bit, but what I would say is if  
6 it's not a matter of adequate protection, you run it through  
7 the 50.109 hoop and if it's justified, then it can be  
8 imposed as a backfit.

9 That's exactly -- the 50.109 process was set up  
10 precisely to handle the situation you described.

11 MR. ROSS: Let's go out to the audience. Go  
12 ahead.

13 MR. PUTNAM: This is Ken Putnam, Iowa Electric. I  
14 have a question about the common sense and compliance there.  
15 You indicated that if a compliance issue is an exception to  
16 backfit, and we talked about if new information has come to  
17 light that says, hey, you have to do more to be in  
18 compliance, then it's not a backfit. Why shouldn't we  
19 consider new information as a need to relook at whether or  
20 not the original rule should have been implemented?

21 If you implemented a rule in good faith on the  
22 assumption that it was a relatively inexpensive rule to  
23 implement, then subsequently in a few years new information  
24 comes to light that reveals that, no, it's not an  
25 inexpensive rule to implement, but a cost-prohibitive rule

1 to implement, then it seems to me to be entirely appropriate  
2 to go back and look under backfit and not merely exclude it  
3 under exception.

4 MR. ROSS: Let me take a response at that first.  
5 I think we've been drifting a little bit. I'd like to use  
6 the example of the motor operated valve, the isolation valve  
7 in a fluid system outside of containment. I think you could  
8 presume, reasonably presume that when the license was being  
9 evaluated in the beginning, those isolation valves were put  
10 there, although the term wasn't used, for adequate safety.  
11 Without the valve, then you might have a direct leakage  
12 path.

13 Probably during the FSAR period there was some  
14 consideration given to qualification, but maybe not very  
15 much. So the valves should close when they're called on and  
16 you should expect them and maintain them and all that stuff.  
17 Now, ten, 15, 20 years later some people in Idaho, this is a  
18 true statement, under research sponsorship, ran some tests  
19 not heretofore done on typical valves of a certain size and,  
20 guess what, under certain blowdown loads, they didn't close  
21 all the way.

22 Now, that means that there's an inference, and  
23 that's all it is, is an inference that other valves of  
24 bigger diameters and of different manufacturers perhaps  
25 might not close either. We don't know. A lot of people got



1 together and looked into it and the conclusion was we still  
2 don't know. Now you have the MOV question.

3 I think it's fairly classified as compliance, but  
4 it's not in black and white. It's not it will close, it  
5 won't close, and we don't know. We're going to have to look  
6 and see. Maybe it will, maybe it won't.

7 So far so good, but now you say is the current  
8 licensing basis that requires those valves appropriate.  
9 Unfortunately, I think it's a fair question, but in a  
10 temporal sense, it won't get answered, not on a time  
11 suitable -- I think reexamining the rule or whatever it is  
12 that made you have those valves is a reasonable thing, but  
13 it won't get done on the same timescale, and I think the  
14 question of compliance still exists.

15 But my friends, we're divided up. The hawks are  
16 here and the doves over there. Some dove may want to  
17 comment on this, I don't know.

18 MR. MALSCH: Let me answer the question directly.  
19 I said let's suppose you run into a situation in which NRC  
20 says, hey, we've got this new test result. We understand  
21 that your valve was found to be in compliance back in 1980  
22 when the plant was licensed, and we know it's the same valve  
23 now that you have in the plant that you had when the plant  
24 was licensed, and we know we thought it was okay then, but  
25 we have these new test results and they suggest, they



1 indicate to us that what was thought to be compliance with  
2 the regulation is no longer in compliance, change it,  
3 backfit and so forth.

4           It seems to me you do have an option and the  
5 approach I took was to look at the regulation, ask what the  
6 regulation requires, and ask yourself whether in light of  
7 the new information, assuming you accept it as valid, you  
8 can make a reasonable case for compliance. If you can't  
9 make a reasonable case for compliance, then you still have  
10 the option of asking that the staff either exercise some  
11 sort of enforcement discretion or grant you an exemption  
12 from the regulation.

13           One of the grounds for exemption from the  
14 regulation is the costs to the licensees are out of  
15 proportion to the costs generally assumed when the  
16 regulation was promulgated in the first place. So that is  
17 grounds for an exemption from the regulation. So long as  
18 you can make out a case there's something different about  
19 you and you come up with a counter-proposal that still  
20 accomplishes adequate protection of the public health and  
21 safety, or, better yet, achieves the same level of safety as  
22 the regulation was designed to achieve in the first place,  
23 it seems to me you've got a decent case for an exemption.

24           MR. BISHOP: I think one other option that comes  
25 to mind is -- I look at it a little bit differently. It

1 seems to me that by virtue of its genesis, the compliance  
2 exemption was intended to be narrowly imposed. I look at it  
3 almost as if there is a -- I don't want to get into willful,  
4 by any means -- but if, in fact, you're not doing what you  
5 said you were going to do, to me that's fairly easy to state  
6 it that way and understand why the 50.109 would say, well,  
7 that's not a backfit for us to come over and say you said  
8 you were going to have three valves in that line, you need  
9 three valves in that line, because that's what your license  
10 says.

11 I've always thought that when there's a post-  
12 question, and most of these, I think we'd all admit, are  
13 philosophically, conceptually very close questions, that the  
14 backfit analysis ought to be done. I don't see what the  
15 harm is in doing the analysis and perhaps if the staff were  
16 to do it say, you know, we thought that this would have a  
17 substantial safety impact, but, gosh, look at the cost, and  
18 on balance maybe we don't feel so good about it now, even  
19 arguing that it's a compliance exception.

20 My concern is it appears that there would be a  
21 great tendency to say, well, all we got to do is convince  
22 OGC and CRGR that this is a compliance exception, and then  
23 we're free, then we can just do what we want to get done. I  
24 don't think that's in anybody's mind. I don't think that  
25 was certainly in the Commission's minds when they passed

1 50.109.

2 I've always thought that the better more prudent  
3 cause would be to evaluate it in the backfit analysis as  
4 part of the process of any backfit. Then you've got a  
5 better handle. Sometimes it's easy to talk in concept. You  
6 sit down and really try to put the words on paper and it  
7 doesn't come out quite the way you thought it might. So  
8 that's how I'd choose to go after those things that are  
9 close calls on the compliance.

10 I think the adequate protection, I think that's  
11 pretty straightforward what the backfit rule means and how  
12 it should be applied.

13 MR. MALSCH: Let me just add a small comment to  
14 that. In a sense, it's kind of a nitpick because whether it  
15 falls within the compliance exception or not, there still is  
16 an obligation to do a documented evaluation and demonstrate  
17 compliance or non-compliance and what the basis is. The  
18 fundamental thrust of the backfit rule was not necessarily  
19 to have fewer backfits or more backfits, but rather was to  
20 introduce discipline, order, and analysis into the process.

21 So long as the documented evaluation is done  
22 carefully and thoroughly and with thought and is reviewed  
23 carefully, the fundamental objective of the backfit rule is  
24 served. There's been the analysis, there's been the care  
25 and attention, there's been some management oversight.

1           I just wanted to add one other sort of food for  
2           thought here. People have sort of suggested that the  
3           adequate protection exception is not often applicable, and I  
4           think that's usually the case for plant-specific backfits.  
5           But I should tell you that the adequate protection exception  
6           is very much alive and difficult in connection with  
7           rulemaking, because for almost every rule which the  
8           Commission considers promulgating, there rises at least at  
9           the threshold some question as to whether this ought to be  
10          an adequate protection rule or rather an incremental  
11          protection rule.

12                 So while the adequate protection exception is not  
13          very often invoked or used in connection with plant-specific  
14          backfits, it's a serious question which is addressed in  
15          almost every rulemaking.

16                 MR. ROSS: Just a minute. I'd like to go ahead  
17          and get Carl in. We'll have this same sort of spirited  
18          repartee again this afternoon. Carl, tell us about  
19          bulletins and generic letters.

20                 MR. BERLINGER: The subject of my presentation is  
21          shown on the agenda as bulletins and generic letters. I  
22          will also be addressing information notices for several  
23          reasons. First of all, NRC issues approximately 100  
24          information notices each year, and each of these has an  
25          impact on the process.

1           Secondly, by including a number of information  
2 notices, it will be possible to get a good feel for the  
3 kinds of information we consider that we gather from various  
4 sources and the analyses that we use to decide whether we  
5 should issue an information notice, and, to carry that one  
6 step further, a bulletin or generic letter.

7           The same sources of information are generally used  
8 in deciding whether or not to issue a bulletin or a generic  
9 letter. The NRC frequently responds to events and other  
10 safety issues by issuing either an information notice, a  
11 bulletin or a generic letter. What I intend to do is  
12 briefly discuss each of these types of generic  
13 communications. I will discuss several specific examples,  
14 the reasons each were issued, and how they were considered  
15 from the standpoint of the backfit rule.

16           Information notices notify utilities of problems  
17 that could effect their plants. Information notices  
18 generally describe an event or a problem or several related  
19 events or problems. They also may delineate corrective  
20 actions that have been taken by one or more utilities. They  
21 do not prescribe any specific action. They do not require a  
22 response. They do not convey any changes to staff  
23 positions.

24           Information notices are not reviewed by the CRGR  
25 and they are not covered by the backfit rule. However, the



1 NRC does expect each information notice to be reviewed as  
2 part of a licensee's program to review operating experience.  
3 These programs I refer to as a post-TMI requirement for  
4 proper and effective consideration for the feedback of  
5 operating experience information.

6           Bulletins request actions in response to an event  
7 or a problem or several related events or problems.  
8 Bulletins may request utilities to determine appropriate  
9 proposed corrective actions. These proposed corrective  
10 actions will lie within general guidelines and we may  
11 request that licensees submit proposed actions for NRC  
12 approval.

13           Bulletins may also contain specific corrective  
14 actions and ask utilities to confirm to the NRC that the  
15 actions have been or will be taken. They may convey a  
16 change in staff position. Although bulletins request  
17 specific actions, they only require a written response, and  
18 this has been mentioned several times already this morning.  
19 All bulletins are reviewed by the CRGR before they are  
20 issued.

21           Generic letters. Generic letters request actions  
22 in response to programmatic types of problems or  
23 programmatic issues. I consider generic letters to be more  
24 forward-looking, longer-term type actions. The actions  
25 requested are generally of a continuing nature and they may



1 convey a change in staff position.

2 Just like bulletins, they require a written  
3 response. Any generic letter which requests action is  
4 reviewed by CRGR. Some generic letters are also reviewed by  
5 the Advisory Committee on Reactor Safeguards, the ACRS.  
6 Those are generally related to resolution of generic safety  
7 issues which usually come out of the Office of Research.

8 For example of a type of generic letter issued  
9 that CRGR would consider could be a generic letter  
10 delineating voluntarily relaxation in technical  
11 specifications. These are definitely reviewed by CRGR. In  
12 particular, tech spec line item improvements such as those  
13 lengthening surveillance test intervals are reviewed by the  
14 CRGR.

15 I'm going to briefly discuss several information  
16 notices, bulletins and generic letters and indicate the  
17 basic reason each was issued. You will see that the  
18 information on events and problems leading to the issuance  
19 of a generic communication comes from a variety of sources.  
20 The first information notice is Information Notice 89-07.  
21 It describes failures that have been experienced in tubing  
22 of instrument and control air systems, as well as in fuel  
23 oil and lube oil systems, generally associated with these  
24 engines.

25 These failures were apparently caused by vibration

1 and in the case of the fuel oil or lube oil systems in  
2 diesels could render the emergency diesel generators  
3 inoperable. This particular information notice was issued  
4 as a result of several related events and problems that were  
5 found during normal NRC event review process.

6 Tomorrow's session will cover event reporting and  
7 I believe that this is an area which will be covered in a  
8 little more depth.

9 Information Notice 89-15 described an apparent  
10 decoupling of a reactor coolant pump shaft and impeller.  
11 This occurred at the Crystal River Unit 3 plant. The  
12 information notice was issued as a result of one specific  
13 event. However, other information notices had been issued  
14 previously discussing reactor coolant pump shaft failures.  
15 This information was issued to convey information about the  
16 particular event at Crystal River to ensure that everybody  
17 in the industry knew about the problem so that they could  
18 determine whether they needed or wanted to do anything about  
19 the problem at their particular plant. Again, the  
20 information notice did not require any specific action.

21 Information Notice 89-20 described weld failures  
22 in primary loop recirc pumps of the Byron Jackson design.  
23 These had been experienced by owners of BWRs, boiling water  
24 reactors, in a foreign country. This information notice was  
25 issued as a result of several related problems occurring

1 overseas. In NRC's process of reviewing events, we do look  
2 at the more important events that occur in other countries.

3 When we find something we believe should be shared  
4 with U.S. utilities, we would issue an information notice.  
5 Also, if a problem is significant enough and is of a generic  
6 nature to warrant the issuance of a bulletin or a generic  
7 letter, we would issue one.

8 Information Notice 89-21 describes vendor  
9 practices in which changes to molded case circuit breaker  
10 time-current characteristic curves were made without  
11 changing either the part number of the breaker or without  
12 any specific notification to the customer. This information  
13 notice was issued as a result of findings from NRC  
14 inspections of equipment vendors.

15 When we find information during inspections that  
16 we feel is safety significant and potentially applicable to  
17 other licensees, we issue an information notice.

18 Information Notice 89-22 addressed problems with  
19 the certification of bolts, nuts and studs furnished by a  
20 hardware specialty company. It was issued as a result of  
21 findings from NRC inspections at both the Waterford site and  
22 at the vendor site. This is a good example of an  
23 information notice that was issued directly as a result of  
24 inspection findings.

25 Information Notice 89-26 describes problems found

1 when performing actions requested in a previously issued  
2 generic letter, entitled Instrument Air Supply System  
3 Problems Effecting Safety-Related Equipment. The purpose of  
4 this information notice was to make licensees aware of the  
5 kinds of problems that utilities had been finding during  
6 their implementation of the generic letter on air system  
7 - problems.

8 Most of the problems described in this information  
9 notice were identified by regional offices, by our  
10 inspectors, and the work that they were doing at looking at  
11 what licensees had done in response to the generic letter.

12 Information Notice 89-29 was issued as a result of  
13 a vendor report to the Nuclear Regulatory Commission under  
14 its 10 CFR Part 21 requirements. As part of NRC's review of  
15 Part 21 reports, if we find a problem that we feel is  
16 significant that all utilities may not be aware of or at  
17 least those utilities that should be aware of the problem  
18 have not been informed, we will issue an information notice.  
19 If we find a problem as part of our review of Part 21  
20 reports that is of high enough safety significance that we  
21 feel every utility should address the problem, we would  
22 consider issuance of a bulletin.

23 The last information notice is Information Notice  
24 87-28 that was issued as a result of an in-depth systematic  
25 review performed by the Office of Analysis and Evaluation of

1     Operation Data, AEOD. It covered a series of problems or  
2     identified a series of problems occurring over several years  
3     within air systems.

4             This information notice was subsequently followed  
5     by issuance of a generic letter. The generic letter  
6     requested specific utility action to address air system  
7     problems. It required a response from each utility. The  
8     reasons for and sources of information on safety problems  
9     which lead to issuance of bulletins and generic letters, as  
10    well as information notices, are similar to what I have  
11    discussed with regard to these previously issued information  
12    notices.

13            The difference, however, is that bulletins and  
14    generic letters request licensee actions to ensure that the  
15    problems being addressed are corrected. So when we issue a  
16    bulletin or a generic letter rather than an information  
17    notice, we have clearly made a decision that the problem is  
18    significant enough for us to make sure that licensees take  
19    appropriate action to correct the problem.

20            This slide lists some of the backfit  
21    considerations regarding bulletins and generic letters. As  
22    indicated on this slide, the backfit rule must be considered  
23    if a generic communication involves any change in applicable  
24    regulatory staff position. Every bulletin or generic letter  
25    is presented to the CRGR, generally accompanied by an



1 information package that includes responses to the required  
2 questions as specified in 10 CFR 50.109.

3 The CRGR charter, and I believe this may have been  
4 mentioned earlier this morning, requires that the staff  
5 provide an information package that addresses nine  
6 questions. These are the same or very similar questions as  
7 are asked in 50.109 that need to be addressed as part of the  
8 backfit analysis.

9 Let me point out that even if the proposed backfit  
10 involves an adequate protection or a compliance issue, we  
11 try to include within the information package an estimate of  
12 the costs that may be incurred. Also, I'd like to mention  
13 at this juncture that, as mentioned previously, in some  
14 cases we issue supplements to bulletins and generic letters  
15 that are issued primarily to convey information or -- rather  
16 than primarily, that are issued to convey information.

17 Even in those cases, the staff would go before  
18 CRGR and give the CRGR an opportunity to either confirm that  
19 a fullblown CRGR review is not necessary or if they feel  
20 that detailed discussions with CRGR are necessary, to invite  
21 us to come in for a meeting. These are sometimes considered  
22 requests for waiver of CRGR review.

23 A waiver of CRGR review for some generic letters  
24 may be obtained simply because there is no change in the  
25 proposed staff position or the presented staff position, or



1 no new requirement involved in a proposed action. The CRGR  
2 meeting minutes and the materials submitted for CRGR review  
3 are made publicly available, but not at the time of the CRGR  
4 meeting. They're generally made public when either the  
5 bulletin or generic letter or generic correspondence is  
6 issued.

7           At this point, I would like to speak about some of  
8 the specific bulletins and generic letters that we have  
9 issued. Bulletin 88-08; this bulletin was issued to request  
10 that utilities review their reactor coolant systems to  
11 identify any connected, unisolable piping that could be  
12 subjected to temperature distributions that would result in  
13 unacceptable thermal stresses, and to request that licensees  
14 take actions to ensure that the piping would not be  
15 subjected to such stresses.

16           The bulletin was issued as a result of a specific  
17 event involving loss of integrity of the reactor coolant  
18 system pressure boundary. Because of the nature of the  
19 event, there was little question that the problem was  
20 generic and little question that it was safety significant.  
21 This particular bulletin was followed by two supplements  
22 which were issued to provide additional information on other  
23 similar events that had occurred at foreign reactors.

24           In addition, a supplement was issued that  
25 emphasized the need for enhanced ultrasonic testing and the

1 use of experienced personnel to assure that cracks in  
2 stainless steel piping would be detected as part of the  
3 surveillance program. The bulletin was issued under the  
4 compliance exception justification to the backfit rule.

5 The compliance was with Appendix A to 10 CFR Part  
6 50, the general design criteria No. 14, which addresses  
7 reactor coolant pressure boundary and the general design  
8 requirements regarding the pressure boundary.

9 Bulletin 88-07; this bulletin was issued to  
10 request that utilities with BWRs ensure the availability of  
11 adequate procedures, instrumentation, and training as  
12 necessary to prevent occurrence of uncontrolled power  
13 oscillations. The bulletin was issued as a result of a  
14 specific abnormal operating event indicating that past  
15 licensing calculations were not reliable in determining that  
16 a core will be stable under all operating conditions during  
17 a fuel cycle.

18 The amplitude of the power oscillations was found  
19 to be greater than previously experienced during U.S.  
20 special stability tests, and it was greater than for any  
21 known foreign operating reactor events or tests. A bulletin  
22 supplement was subsequently issued to provide additional  
23 information concerning power oscillations in BWRs and to  
24 request actions to ensure that the safety limit for minimum  
25 critical power ratio was not violated.

1 Both the bulletin and the supplements to the  
2 bulletin required actions. So both went to CRGR for their  
3 review and approval, or at least recommended approval. The  
4 bulletin was issued under the compliance justification in  
5 the backfit rule and, in this particular case, the  
6 compliance issue was to general design criteria 12,  
7 suppression of reactor power oscillations.

8 Bulletin 89-03 requested actions by utilities with  
9 PWRs to prevent potential violations of required shutdown  
10 margin and, in extreme cases, inadvertant criticality during  
11 refueling outages. The bulletin was issued as a result of a  
12 10 CFR Part 21 report which was submitted to the NRC  
13 regarding the potential loss of shutdown margin during  
14 refueling operations that were occurring at Calvert Cliffs.

15 The bulletin was issued on the basis of the need  
16 to provide adequate protection to the health and safety of  
17 the public, consistent with the provisions of the backfit  
18 rule; in particular, 50.109(a)(4)(2). This is Bulletin 90-  
19 01. This bulletin was issued to request that addressees  
20 promptly identify and take corrective actions for selected  
21 pressure and differential pressure transmitters manufactured  
22 by the Rosemont Company.

23 This particular bulletin was preceded with the  
24 issuance of an information notice approximately one year  
25 earlier. The bulletin was issued as a result of a series of

1 reported failures of transmitters and after extensive  
2 discussions were held with both Rosemont and nuclear  
3 utilities concerning such topics as the cause of the  
4 failures, the detectability and detection of the failures  
5 and corrective actions that could be taken.

6 Transmitter failures caused by leaking fill oil  
7 are not readily detected, and, more importantly, they  
8 increase the potential for a common mode failures which may  
9 result in the affected safety systems not being able to  
10 perform its intended safety function. This was an instance  
11 where we issued an information notice early on to inform the  
12 industry of the problem. Then we had extensive discussions  
13 with the industry, with specific utilities, and with the  
14 vendor.

15 It was at that point that we concluded that it was  
16 a big enough safety problem, it was hard enough to identify  
17 and to find, and that there were sufficient questions in our  
18 mind about what utilities were doing about solving their  
19 problem. Therefore, we issued a bulletin to ensure that the  
20 licensees were taking the appropriate actions.

21 Before I go on to discuss these few examples of  
22 generic letters, I want to clarify just a few  
23 First, NRC tries very hard to avoid issuing b that  
24 are directed simply at compliance. We're aimi he  
25 issuance of bulletins at addressing safety concerns and use



1 of the compliance exception is not used by the staff as a  
2 means to circumvent the backfit procedure and controls.

3 Unless we feel that a safety issue is significant,  
4 we will not issue a bulletin or a generic letter. But if we  
5 do feel it is significant and generally a pervasive type of  
6 problem, then clearly we will proceed to prepare and issue a  
7 bulletin or a generic letter. If a particular issue is a  
8 pure compliance issue and the safety problem is not  
9 significant, we may issue an information notice, but this  
10 would be just to inform licensees.

11 Or we may issue nothing and if there is a  
12 compliance issue, address the compliance issue on a plant-  
13 specific basis when it is found. Also, the staff, to some  
14 degree, tries to rely on activities at INPO with regard to  
15 INPO reports that they send out to inform utilities of  
16 problems. If an INPO report appears to be adequate from the  
17 perspective, the regulatory perspective of the Nuclear  
18 Regulatory Commission, and if the safety issue is not so  
19 significant, we sometimes rely on issuance of an INPO report  
20 for the proper dissemination of information.

21 In some cases, we have opted not to issue  
22 information notices clearly because INPO has issued either  
23 an SER or an SOER or an ONMR. Now, going on to generic  
24 letters, this particular slide is 88-14. Generic Letter 88-  
25 14 addressed actions to ensure the performance of air

1 systems. The generic letter was issued as a result of an  
2 AEOD study that indicated that there existed persistent air  
3 system problems that were occurring frequently and that had  
4 a high safety significance.

5 The generic letter implemented existing  
6 requirements based on FSAR commitments on the design basis  
7 for air systems. The generic letter -- I'm not sure of  
8 this. I think the generic letter was issued using the  
9 compliance exception.

10 Generic Letter 89-10; this requested that  
11 licensees develop and implement programs to assure that  
12 motor operated valves will perform their intended safety  
13 function. The letter was issued to complement the  
14 requirements of ASME Section 11 testing, to resolve Generic  
15 Issues 87 and 2(e)(6)(1), the post-TMI requirement, and to  
16 maintain failure rates of MOVs within acceptable limits.  
17 This generic letter was issued as a sequel to Bulletin 85-  
18 03.

19 It extended the Bulletin 85-03 actions to all  
20 safety related motor operated valves. It was issued after  
21 it became apparent that there were numerous problems being  
22 found in the field with motor operated valves and that there  
23 would likely be a significant number of MOVs in operating  
24 plants that might not perform their intended or required  
25 safety functions under design basis event conditions.



1           The generic letter was justified on the basis of  
2 compliance. The compliance issue was with respect to the  
3 general design criteria 1, 4, 18, 21, and Appendix B to 10  
4 CFR Part 50.

5           The final slide is Generic Letter 89-13. This  
6 generic letter requested that licensees establish programs  
7 that would include features to assure the adequacy of  
8 service water systems. The generic letter was issued in  
9 response to a large number of operational events. The  
10 generic letter resolved Generic Issue 51 and it resolved or  
11 addressed recommendations that were included in an AEOD  
12 report which was a case study on service water system  
13 problems, and also responded to recommendations from NRC's  
14 regional offices, primarily Region II, requesting generic  
15 action.

16           This particular generic letter was justified on  
17 the basis of compliance, citing general design criteria 44,  
18 45, and 46 as related to heat removal capabilities, as well  
19 as Appendix B to 10 CFR Part 50.

20           In summary, I'd like to say that I've tried to  
21 give you an overview of how we consider the backfit rule  
22 when considering issuance of bulletins and generic letters,  
23 as well as information notices. I have given you a number  
24 of very specific examples showing why we issue the generic  
25 communications, where the information came from, and other

1 aspects that were considered by the staff in developing  
2 these particular generic communications.

3 When we consider issuing a bulletin or generic  
4 letter, we look very carefully at how pervasive and how  
5 significant we believe the safety problem to be. We the  
6 staff go to CRGR and we must justify that there is a  
7 significant safety problem which will likely exist on a  
8 broader generic basis.

9 We would issue a generic letter or a bulletin  
10 based on the compliance exception to the backfit rule  
11 whenever it was clear that the identified safety problem was  
12 pervasive and the required safety equipment was likely not  
13 to perform its intended function when called upon.

14 This completes my presentation with regard to  
15 generic communications. If you have any questions, I'd be  
16 glad to try and answer them.

17 MR. ROSS: Questions for Carl?Carl?

18 MS. GOODMAN: Anne Goodman, Detroit Edison.  
19 Regarding information notices, they're considered issued for  
20 information only, but many of them become almost as if they  
21 are requirements. If you get into a situation in which you  
22 do have a similar problem happen at your facility, the first  
23 thing that's looked at is did you do what the information  
24 notice recommended, and, if not, that's typically a  
25 violation.

1           So from that standpoint, I'm surprised there isn't  
2 more review of information notices. Has any thought been  
3 given to that?

4           MR. BERLINGER: Yes. I believe that adequate  
5 thought has been given as to the requirement or the need for  
6 the review of information notices by CRGR. I'm assuming you  
7 meant review by the CRGR. In view of the fact that  
8 information notices are sent out primarily to transmit  
9 information, there doesn't appear to be a need for them to  
10 be reviewed because of the charter of the CRGR, but that in  
11 no way includes this type of generic communication.

12           On the other hand, I think you should ask yourself  
13 the question that wouldn't you prefer to receive an  
14 information notice letting you know about a problem, that  
15 when you did review it and did look at your plant design and  
16 found that you had the problem which could maybe shut your  
17 plant down for a month if the event occurred, wouldn't you  
18 prefer to have that information sent out promptly as opposed  
19 to having it either reviewed or have to be considered as  
20 part of a backfit?

21           I mean, the whole idea of issuing an information  
22 notice is to transmit the information, to get it out to the  
23 industry quickly, to make you aware of what's happening  
24 elsewhere so that you can consider it and take whatever  
25 appropriate action may be necessary for your plant. It's

1 not a requirement that you do anything, but it's a heads-up.

2 MR. MILLER: Did we address your question? I'm  
3 wondering if you were -- I'm not certain I got your  
4 question. Is your question, Lynne, in situations where an  
5 inspector later comes out and finds a situation where you  
6 did not consider an information notice and in that instance  
7 it happened that you had the problem that was identified in  
8 the information notice and then that becomes a matter of  
9 compliance in an inspection report?

10 MS. GOODMAN: Right. I'm not saying I don't like  
11 information notices. I do like to find out what's going on  
12 in the industry. But what I'm saying is that there are  
13 compliance issues that come up if a plant does not do what  
14 was recommended in the information notice. Even if they  
15 have reviewed it, there are times that compliance issues  
16 come up and enforcement action arises because a specific  
17 recommendation wasn't taken and then the plant has the  
18 problem.

19 So from that standpoint, it's almost used as a  
20 requirement later on.

21 MR. MILLER: To help me out in responding to this  
22 question, I'm aware of what you're asking, but can you give  
23 me an example of a criterion in Appendix B or some other  
24 basis that we'd use to cite a licensing --

25 MS. GOODMAN: I believe it's -- I think one of the

1 places has been as far as the requirement, TMI, that we have  
2 an adequate operating experience review program. I think  
3 that's one of them. I can't think of what criteria out of  
4 Appendix B has been used.

5 MR. MILLER: I'd be interested in the lawyers'  
6 view of this, where a violation is issued for lack of the  
7 licensee's following their own program for considering  
8 operating experience.

9 MR. ROSS: Let me interrupt. What I wanted to do  
10 before lunch is to -- if there are specific questions to  
11 Carl, we'll take them. We still have the closing panel  
12 discussion where we can explore this in more detail. Did  
13 you have a question specifically to Carl?

14 MR. KIRK: Yes, I do. Mike Kirk, NUMARC. I'll  
15 attempt to be brief. Carl, you mentioned that sometimes the  
16 NRC won't issue generic communication if INPO has issued an  
17 SER, SOER or ONMR on the same subject. A couple of years  
18 ago there were a couple of generic letters issued at  
19 different times regarding mid-loop operations and subsequent  
20 loss of decay heat removal.

21 INPO also came out with some -- I believe it was  
22 an SOER.

23 MR. BERLINGER: Yes.

24 MR. KIRK: On the flipside of what you were just  
25 talking about there, is there any coordination between INPO



1 and the NRC to prevent this type of duplication of effort?  
2 This has a significant impact on the resources.

3 MR. BERLINGER: Yes, there is. Prior to issuance  
4 of information notices, bulletins and generic letters, there  
5 are discussions that take place with INPO. Specifically, we  
6 have a weekly Friday afternoon telephone conference call  
7 with the staff at INPO that's responsible for issuing INPO  
8 reports, such as SERs, SOERs, etcetera.

9 In addition, every two weeks we issue a -- I send  
10 out a letter to INPO, to, I believe, Wade Green. That  
11 letter transmits a listing of all the generic communications  
12 that are under consideration on the part of the staff. On a  
13 weekly basis, INPO sends us, by fax, a copy of their list of  
14 ongoing reports in development.

15 In the particular case that you cited a couple  
16 years ago with regard to the generic letter on -- 88-17,  
17 that's the one -- there was almost an identical report put  
18 out by INPO, I think within one day either before or after  
19 we put out the generic letter. At that point in time, we  
20 did not have any knowledge of what was to be contained in  
21 their report. Needless to say, we felt strongly enough  
22 about the issue that we weren't going to wait to see their  
23 report before issuing ours.

24 As it turned out, they were very similar. Not  
25 identical, but very similar. But we do have cooperation.



1 In addition, we have in the past sent information notices,  
2 as well as generic letters and bulletins in draft form out  
3 for comment. Sometimes we've sent them, say a vendor, to  
4 verify the accuracy of the statements that we've made with  
5 regard to their product in an information notice.

6 Sometimes we've sent them to either NUMARC or EPRI  
7 or an owners' group to get some feedback with regard to  
8 proposed actions. Information sometimes takes place not in  
9 writing, or exchange of information takes place sometimes  
10 not in writing, but orally by phone in contacting  
11 representatives of the industry, whether it be owners' group  
12 chairmen or subcommittee chairmen, in order to either  
13 discuss a particular issue or to arrange to have a meeting  
14 to discuss a particular issue.

15 In that way, we do try to exchange views prior to  
16 issuance of a generic communication when we feel it is  
17 necessary and appropriate. I believe that future efforts to  
18 increase the exchange of discussion prior to issuance would  
19 be to the advantage of both NRC and the industry.

20 MR. ROSS: With that, I think we will stand  
21 adjourned until 1:30.

22 [Whereupon, at 12:25 p.m., the workshop was  
23 recessed for lunch, to reconvene this same day at 1:30 p.m.]

24

25

## AFTERNOON SESSION

[1:35 p.m.]

1  
2  
3 MR. ROSS: We're not doing too badly on the  
4 agenda. We're at the 1:00 utility perspectives and  
5 processes, and Mr. Spangenberg. Frank Spangenberg will be  
6 the introductory speaker.

7 MR. SPANGENBERG: Thank you. I feel a little bit  
8 outnumbered here. Originally there were supposed to be  
9 several other utility panelists and I naively felt that I  
10 would be supported by my peers. So I'll get you guys in a  
11 few minutes. The other thing is most of us have had some  
12 kind of a lunch and I'm not noted for keeping people awake,  
13 so I'll try to start out with a short light joke, but I've  
14 got to be careful because I'm being recorded over here. My  
15 legal associates are not here to hear this, so I'll make it  
16 more generic.

17 What's black and brown and looks good -- I use the  
18 word "hittites" as opposed to any other term, because I  
19 don't think if I use the word "hittites" anybody will get  
20 upset, including my legal brethren over here. But one thing  
21 that I just heard at a recent conference that kicked it off  
22 was what's black and brown and looks good on hittites? A  
23 doberman. I've got another one that's a little better than  
24 that once I get going.

25 The title of this topic is supposed to be utility

1 perspectives and processes, and in the handout that you've  
2 got back there in the back, I'm going to talk about two  
3 specific things that are related to the Clinton Nuclear  
4 Power Station. But I want to preface those discussions with  
5 a few comments based on some of the things that were said  
6 earlier in the panel discussions and that I got cut off  
7 before I couldn't say, so I'll say it now.

8 I think that the utility folks that are here, as  
9 opposed to some of the other comments, would tell the NRC or  
10 would try to convince the Commission that for many, many  
11 different reasons, whatever the issue is, the utility, the  
12 nuclear utility industry wants to do what's right and what's  
13 correct independent of all the paperwork and backfit  
14 analysis and mumbo-jumbo that we talked about earlier.

15 The point is, and primarily for safety and  
16 economic considerations, if our service water system isn't  
17 working right, we want it to work right. If our check  
18 valves are falling apart and entering the turbine and  
19 destroying the turbine blades, we want it to work right. So  
20 I think we've got to keep that in mind, and I think, believe  
21 me, the utilities feel that way. In Carl's earlier  
22 discussion about some of the key bulletins and generic  
23 letters, I think you will find in almost every case there is  
24 either a NUMARC or an industry or an owners' group  
25 initiative that parallels those topics.

1           So they're not things that the utility industry  
2 takes lightly. I hope that's obvious. I guess the final  
3 introductory remarks that I would make, and, again, I'm sure  
4 this is obvious, but no one else has brought it up, so I  
5 will, is that one of the reasons this issue has come to the  
6 front so much; i.e., the issue of backfitting at least on  
7 our side; is that it's directly pertinent to our State  
8 Regulatory Commission, meaning the Utility Commission  
9 process, in the way that rates are adjudicated in different  
10 forums for the utility's recovery of their various  
11 expenditures and operations and maintenance costs, and  
12 initial construction costs.

13           With the title or the introduction of the concept  
14 of backfit, at least that gives the utility some evidence  
15 and some obviously carefully thought out technical review in  
16 most cases when we're talking about hardware, which most of  
17 it is, that they have a direct reason for their expenditures  
18 and they can track their expenditures, and, therefore, when  
19 they come under scrutiny in the PUC forums, then they have  
20 evidence of their expenditures, and it's prudent  
21 expenditures because of the backfit process.

22           I think what I'd like to focus on, and I was  
23 really pleased at some of the earlier talks that both the  
24 utility side and the NRC side are trying to work together in  
25 training people in this area. I think the comments that

1 were given in the survey that was addressed by Dr.  
2 Paperiello are oriented as well towards the big ticket  
3 items, but also in the area of inspector guidance.

4 I think many of us have had experiences where we  
5 get backfitted by inspection as opposed to backfitted by  
6 generic letter or whatever have you. I really do believe  
7 that the combination of the generic letter, bulletin, and  
8 now the relatively new INPO network system, SOER/SER, that  
9 both the utility and the regulators want to know when there  
10 is something that isn't working right out there, and when  
11 some new issues comes up, it's important that it get out  
12 right away. To me, that's the focal issue here, the key  
13 issue, not the fact that we've got to do some more paperwork  
14 or whatever have you.

15 I'd come back to my earlier remarks that the  
16 industry wants to do what's right for the power plant. They  
17 really do. They want to operate safely and they also want  
18 to operate economically. So if something comes up that's  
19 going to make the plant work better, as well as be safer,  
20 and also save money for the utility in the long run, that's  
21 good for everybody.

22 So without fear of being claimed a heretic, I'll  
23 stop there. I guess I want to talk about these two issues  
24 that are on the slide there, environmental qualification and  
25 operator licensing. I'm going to call this a good news/bad



1 news story. I'm going to go back to my generic joke for a  
2 minute.

3           As some of you may recall, about ten or 12 years  
4 ago, a Mr. X was found one evening quite late, had a little  
5 bit too much to drink with Ms. Y who was an exotic dancer in  
6 Washington, D.C. by a reflection pool, and some of the  
7 staffers for the individual became aware of this and knew  
8 that it was going to be made a newsworthy item the next  
9 morning.

10           So in order to prepare all hands, this staffer  
11 went to visit Mr. X's wife before the papers came out and  
12 said I've got some good news and some bad news. The good  
13 news is that your husband, Mr. X, was found last evening by  
14 a reflection pool with an exotic dancer, Ms. Y, and it's  
15 going to be all over the morning newspapers. She said,  
16 well, if that's the good news, what's the bad news? Well,  
17 one of the questions that the press asked is why you weren't  
18 with your husband, and we told him that you were at a picnic  
19 yesterday and you broke your leg, and I'm here to break your  
20 leg.

21           [Laughter.]

22           MR. SPANGENBERG: So on that note, we can go to  
23 the first slide. This is the bad news first. Again, I feel  
24 a little bit at a disadvantage being the only guy up here  
25 from the utility side, but in this particular case, I'm



1 going to talk about where we felt that we were ratcheted, if  
2 you will, by inspection which subsequently ended up being a  
3 Severity Level 3 violation, accompanied by a fine.

4           So this information is in the public domain. It's  
5 been well ventilated with the NRC, so I'm not opening any  
6 new data here or giving any new stories. Specifically, in  
7 the 1987 timeframe, we were found to have certain junction  
8 boxes that used nylon caps to terminate internal wires  
9 inside the junction boxes -- I think everybody can  
10 understand what that is -- and/or had wire butt splices.

11           The issue was that had these components been  
12 properly tested -- and I'm talking items that need to be in  
13 a humidity, high humidity, high temperature, high radiation  
14 environment. It turned out that there were some 270-odd  
15 cases where we had used nylon caps in the motor operators  
16 and 196-odd wire butt splices. In the limit torque valve  
17 motor area, we did some immediate testing through some  
18 laboratories, some engineering analysis, and the other  
19 things that you see there.

20           The issue here where we get into the area of  
21 backfit is that we were asked if these components had been  
22 tested with the butt splice or the wire nuts touching the  
23 metal junction box. The regulations are somewhat loose.  
24 They say that in the configuration that they're expected to  
25 be in in the plant, and it was interpreted in this

1 particular inspection issue that the wire nuts or the butt  
2 splices could be in contact with the metal junction box,  
3 and, therefore, if they weren't tested in that  
4 configuration, then they aren't qualified for all the  
5 requirements.

6 As a matter of fact, in the area of the wire caps,  
7 we did walkdowns of the plant and determined that there was  
8 no case where they were found to be touching the metal  
9 junction box. Similarly, in the -- I think that's correct,  
10 or hardly anyplace -- and similarly with the butt splices.  
11 So the issue here from a backfit perspective is we felt that  
12 we were being inspected to a new interpretation of the  
13 requirements, not that they might not be proper  
14 requirements, but that it was a new interpretation, and,  
15 therefore, we should not be inspected and enforced to a new  
16 interpretation.

17 I won't go into all the legal ramifications back  
18 and forth, but we did go to an enforcement conference and we  
19 did respond in some detail to the proposed civil penalty.  
20 We ended up paying the penalty in spite of our rebuttal. So  
21 the purpose of my bringing this up is not so much to get  
22 into an adversarial contest, but to point out an issue that  
23 may or may not be appropriate to others.

24 In addition, one of the things that we brought up,  
25 and to refer to Carl's earlier remarks, is that had this

1        been better known to the industry; i.e., a revised  
2        interpretation of environmental qualification testing and  
3        procedures; then we might have known and been able to look  
4        at this on our own in light of the information that could  
5        have been provided; for example, by an INE notice or a  
6        notice.

7                So it kind of was sprung up on us fresh and  
8        although it had been looked at in earlier sites, but hadn't  
9        been brought to the forefront. So that's the reason that we  
10       picked this issue and I just wanted to share that with you.

11               In summary then, we felt that although we had  
12       qualified the nuts and the splices in all the IPEEE  
13       standards and requirements, we had never specifically asked  
14       the laboratories to tie over or hold over the splice or the  
15       wire nut to the side of the box. As it turned out, after  
16       doing this with aging and radiation temperature and  
17       humidity, that they would have failed on the order of  
18       between eight and ten years.

19               So there was some technical rationale having us do  
20       that, but I go back to an earlier comment that when we  
21       inspected them in the field, I believe in no case did we  
22       ever find them that way. It doesn't mean that they might  
23       not have been able to have been there, and you could never  
24       know that, obviously, but that was the approach we took.

25               So that's what I wanted to talk to you about in

1 this area. Again, this is the bad news. This is a little  
2 bit more perhaps esoteric, a little bit of what I call  
3 software as opposed to hardware. Most of the backfits, I  
4 think, historically the big ones have been hardware related.  
5 This is a somewhat unique issue to our power plant perhaps,  
6 although I have discussed it in some degree with the NUMARC  
7 folks who have done a bit of a survey.

8 It has to do with the requirements for operators  
9 or prospective licensed operators, be they reactor operator  
10 or senior reactor operator candidates, to meet certain  
11 prerequisites. The slide is somewhat self-explanatory. We  
12 were, at our power plant, committed to a certain revision of  
13 a NUREG, reg guide, and an ANSI standard. As many of you  
14 know that work in this arena with the operator licensing  
15 program, there have been several revisions to the NUREG  
16 associated with guidelines for operating license exams.

17 Again, at our particular power plant, we've been  
18 able to work with our counterparts in our region to pre-  
19 screen and review on a case-by-case basis different  
20 candidates' qualifications. The real gut issue here is that  
21 we had an experience where we had sent a candidate, a senior  
22 reactor operator candidate all the way through our inhouse  
23 training program, presented his credentials at the end of  
24 the course, and he was turned down to be able to take the  
25 exam. At that time, as Dr. Paperiello said earlier, we

1 maybe should have spoken up a little bit more, but we chose  
2 not to for several different reasons.

3 But the point is that by opening a dialogue, and  
4 this is sort of the good news, and in working with our  
5 inspectors and our staff people in our region and NRR, we've  
6 been able to customize and review the requirements such  
7 that, A, we're going to be given an opportunity to have an  
8 indication before we submit a candidate to start a course,  
9 that upon successful completion of the course, that the  
10 candidate would be permitted to sit for the exam.

11 So while the statements here appear a bit hard,  
12 and if you wanted to be a fine tuned reviewer of the issue,  
13 I think that we could -- we being the utility could come up  
14 with an argument as to which revision of this NUREG we were  
15 mandatorily required to comply with. We've been able to  
16 work with the regional folks and the people at Headquarters  
17 to work through this issue on a professional basis and still  
18 meet the spirit and the intent.

19 The real issue at our plant, and I can't believe  
20 it's too much different from others, is that many of us  
21 start our pipeline for operators literally years in advance.  
22 We start out at our plant with what we call non-licensed  
23 operators who serve a certain period of time and then they  
24 move on up to reactor operators and then senior reactor  
25 operators. If halfway through that, in our case, six to

1 seven year pipeline the rules change, then it can be a real  
2 impact on the utility.

3 So in summary, I think, like I said, I think this  
4 is the good news because we were able to bring the issue  
5 forward rather than just sit there and let it happen, that  
6 we've been able to work through it. I guess I would have to  
7 call this sort of a success story in the interplay between  
8 the utility and the regulator, and I would encourage all of  
9 you to consider that as you come up against other problems.

10 That concludes my remarks.

11 MR. ROSS: Questions for Mr. Spangenberg?

12 MR. ARHAR: John Arhar, Pacific Gas & Electric.

13 Just a question. You mentioned on this EQ issue, what if  
14 you would have found this problem as a result of a generic  
15 letter or bulletin? Do you think there would have been  
16 enforcement action after that? You mentioned that if there  
17 would have been a bulletin or generic letter, it could have  
18 helped you find it sooner. Let's say it was issued and you  
19 weren't -- because of some other plant and then you found  
20 yours because of that.

21 MR. SPANGENBERG: Well, I guess I'd have to echo  
22 some of the earlier remarks. If something comes to light  
23 that was not heretofore known and the utility was taking  
24 "prudent" action or responsive action, I don't think that  
25 there would have been a violation that severe. Many times,



1 as I'm sure you know in the enforcement policy, there's  
2 options given when things are self-identified. Of course,  
3 it also has to do with the severity of the issue.

4 As you may know, environmental qualification and  
5 the timeframe of that issue is a pretty big ticket item in  
6 the industry, and many of us had experiences in that arena.  
7 But to deal with it on a more generic basis, my view is that  
8 if something comes up that's new and it's new to everybody  
9 and you take responsible action, and of course there's a lot  
10 of different definitions of what that means, but our  
11 experience has been that we've been given reasonable  
12 treatment in that kind of a situation.

13 I don't know if I answered your question or not.  
14 I don't think we would have been fined had it come out in a  
15 generic letter, unless we just didn't do anything about it.

16 MR. MILLER: Denny, I'm wondering if I could offer  
17 a few comments because both of these cases involve  
18 inspections and licensing activities in my division. I like  
19 the two examples that Frank has brought up here today,  
20 because I think they illustrate or serve to illustrate a  
21 number of points that, at least speaking from a Region III  
22 perspective, I think are important in the context of  
23 backfit.

24 First, with respect to EQ, and we did engage in  
25 some spirited meetings with the company and the company was

1 very upfront and very pointed about their views in this  
2 case, and we heard those views. It was made clear by  
3 Illinois Power that they felt that this constituted  
4 requirements.

5 From our side, we went through an extensive  
6 process, beyond the inspector making the initial finding, of  
7 management review, coordination with the technical experts  
8 on the licensing staff in Washington. And before we took  
9 our final enforcement action, we took great care to assure  
10 ourselves that this was not, in our minds, a backfit.

11 Essentially, our position was that while there  
12 were no reg guide nor information notices that specifically  
13 said if you have wire nuts, if you have connections inside a  
14 terminal box, in a situation like this, that you shall test  
15 or you should test in this configuration. Rather, and I  
16 think this is a good example because this isn't unique and  
17 there are other situations that are just like this.

18 Rather, saw the requirements of the regulation  
19 which called for testing to be done in a way that envelopes  
20 or that is consistent with the configuration in the plant as  
21 a broad performance requirement, and that our regulations  
22 are such that we simply can't, and speaking from our side  
23 and NRC, anticipate every conceivable configuration.

24 The judgment made on the part of the inspectors in  
25 this case was that while Illinois Power did, in fact, come

1 forward and show that none of the valves that they had in  
2 place now had wire nuts that were touching the enclosure,  
3 it's been our experience that over time with maintenance and  
4 the removal of those -- doing maintenance on those valves,  
5 those wires can be pushed back into the box and without  
6 restraints can contact the enclosure and, in fact, as Frank  
7 said, there was actual failure when they tested in that  
8 configuration.

9           So the issue boiled down to do we have to have  
10 prescriptive requirements or prescriptive information  
11 notices and bulletins to cover every situation in a case  
12 like this, or is it sufficient to have broad performance  
13 requirements with the burden of proof on the licensee. In  
14 this case, our position ultimately was that there was a  
15 requirement to test for all configurations that could exist.

16           But my point here is really that we did not take  
17 that action, except as we went through an extensive process.  
18 In this case, Illinois Power I guess ultimately made a  
19 decision to pay the fine and move on.

20           I guess the other point that I -- the second issue  
21 that Frank raises, I think, also brings out a good point.  
22 That is that where there are situations where you feel as if  
23 you are facing a backfit or you face problems as a result of  
24 something that we issue, please come forward to us. We  
25 truly are interested in hearing those cases and we attempt

1 whenever possible to, as a minimum, informally work out a  
2 resolution of it.

3 In the case of the requirements to take an instant  
4 SRO exam, which was a case you talked about, I think we  
5 worked out with the licensee an approach. I'll have to say  
6 that beyond that we've gone back to Washington and we told  
7 the folks who were responsible for the exam standards that  
8 we feel as though -- maybe, perhaps unintended, but  
9 there may be a backfitting the imposition of the underlying  
10 standard which a certain version of ANSI 3.1. I believe it  
11 is, and that they need to look at that.

12 We understand that you are, in fact, looking at  
13 revising the exam standards to make it clear that they don't  
14 intend to backfit through those standards a new requirement.  
15 So we are truly interested in hearing those cases and we are  
16 eager to -- even when we don't go through the full process  
17 of having the exam standards changed, we're working with the  
18 folks, with the utility and with the people in NRR, to work  
19 out satisfactory resolutions informally and making some kind  
20 of final fix.

21 MR. SPANGENBERG: Anybody have any questions?

22 MR. CONRAN: I have a comment that I think maybe  
23 should be added in this context. For the sake of  
24 consistency, the training sessions with inspectors, regional  
25 inspectors, inspection instructions, TIs, inspection and

1 guidance is not reviewed by CRGR. So except as those kinds  
2 of documents contain or refer to staff positions that are  
3 actually approved, generically approved guidance, like reg  
4 guides, SRPs, some sort of an explicit reference to an  
5 improved generic document, inspection guidance, licensees  
6 should not be held to the content of inspection  
7 instructions.

8           Inspection instructions are not reviewed by CRGR  
9 on the understanding, clear understanding and agreement that  
10 they will not contain a new or unapproved position that goes  
11 beyond those that are approved by the full process,  
12 including CRGR review. So inspection instructions may refer  
13 to a reg guide or SRP that a licensee is committed to and,  
14 in that case, why, you, of course, could be held to content  
15 of inspection.

16           But otherwise not. They're not approved by CRGR  
17 and should not be cited as deviations from inspection  
18 guidance.

19           MR. BERLINGER: I have one comment to add to what  
20 Jim has said. The staff, in fact, when we develop a  
21 bulletin or a generic letter which we feel we would like to  
22 have a broad generic inspection after implementation, we  
23 would develop a temporary instruction at the time which the  
24 bulletin or generic letter is being developed. In fact, the  
25 package that's forwarded by NRR to CRGR would contain a copy

1 of the draft temporary instruction.

2 That's not to say that CRGR would formally review  
3 and approve the TI, but at least they have an opportunity to  
4 see it, and the staff also has an obligation to make the TI  
5 consistent with what is approved by CRGR, and that being the  
6 bulletin or generic letter.

7 MR. CONRAN: I would grant that there are  
8 exceptions to what I said, but the general rule is that TIs,  
9 inspection instructions and inspection guidance is not  
10 reviewed or approved by CRGR. There are special cases where  
11 the Committee has reviewed TIs, but be aware, as a general  
12 statement, the guidance in TIs, unless it explicitly  
13 excerpts or refers to approved generic positions, are not  
14 included in the generic position.

15 MR. ROSS: Thank you, Frank. On your agenda, the  
16 IPE/IPEEE process, I just want to say a few words because  
17 we've talked a bit about the process already today. It's  
18 quite likely that as each of the utilities executes the IPE  
19 or IPEEE process that backfitting would arise. The  
20 Commission policy statement in 1985 on severe accidents  
21 noted that the objective was to identify cost-effective  
22 options for reducing the severe accident vulnerabilities,  
23 sometimes called outliers.

24 And a decision to require plant modifications  
25 would be consistent with cost-effective criteria of the



1 backfit rule as to which option or options, if any, would be  
2 required. Following this severe accident policy statement  
3 came Generic Letter 88-20 in 1988.

4 It requested that each utility perform an  
5 individual plant examination which is sort of another name  
6 for a PRA, although not necessarily a Level 3 or off-site  
7 consequences PRA. The letter noted that, if necessary,  
8 hardware procedures to prevent or mitigate severe accidents  
9 would be imposed. Again, if necessary.

10 The examination identifies the vulnerabilities and  
11 in doing so, the NRC subsumed some issues. For example,  
12 Generic Issue A45 or unresolved safety issue A45 was  
13 subsumed into the IPE. There was another general invitation  
14 to utilities to suggest generic issues that could be  
15 efficiently resolved as part of the Generic Letter 88-20  
16 process.

17 Anything that comes out of this severe accident  
18 evaluation, either IPE or IPEEE, certainly falls within the  
19 domain of 50.109. If it appears that there are no cost-  
20 effective fixes that can and should be implemented; that is  
21 if it appears to the utility, the utility may so state. If  
22 the NRC staff in looking at, reviewing or examining your  
23 examination thinks that you should have proposed fixes, then  
24 it would be the NRC action.

25 So there's no special exemption of severe accident

1 issues with respect to the backfit rule. However, in  
2 Attachment 1 to Generic Letter 88-20, we included something  
3 that came to us from the Commission. The Commission said if  
4 certain improvements did not otherwise meet the backfit  
5 rule, but would, if implemented, significantly alter the  
6 risk profile or improve the balance between prevention and  
7 mitigation or substantially reduce uncertainties, then the  
8 staff should bring this to the attention of the Commission.

9 Exactly what this means, I know not. It hasn't  
10 happened yet and it seems like a very wide opening that you  
11 can drive several 18-wheelers through. It would be  
12 interesting to see if, in two or three years, every alert  
13 and vigilant NRC staff tries to bring some things to the  
14 attention of the Commission and what, indeed, would the  
15 Commission tell us to do.

16 Now, when the CRGR was reviewing this process;  
17 that is the IPE or IPEEE process; we regarded it as  
18 ultimately leading to substantial modification to plants.  
19 Some of this has already taken place. Some of the more  
20 forward utilities have already done their examination and  
21 have modified their plant, modified their procedures,  
22 modified their training process. In their judgment and I  
23 think, in most cases, in our judgment, they have reduced  
24 their core damage probability and they have reduced  
25 vulnerabilities.

1           Whether ultimately we come to 100 percent harmony  
2           in this, I don't know, but certainly we've seen many changes  
3           in plants already that I think have improved safety. When  
4           the CRGR was reviewing Generic Letter 88-20 in the summer  
5           and fall of 1988, that was our longest meetings to date. It  
6           took place over several weeks. I don't remember the number  
7           of hours, but it was a very "frank and open" meeting. It  
8           took a lot of time.

9           Among other things, the CRGR was concerned that  
10          adequate guidance would be developed so it wouldn't be just  
11          another bring-me-a-boulder exercise. The workshops and the  
12          circulation for comment of the Generic Letter 88-20 we think  
13          helped in this and we were also interested in the assurance  
14          that, where appropriate, the utilities could propose  
15          concurrent resolution of various generic issues. I'm not  
16          sure how far along that's gotten so far, but I think it's  
17          certainly an opportunity.

18          Now, the IPEEE letter is in the same position as  
19          the IPE letter, except two or three years later. Certainly  
20          some of the seismic generic issues, unresolved safety issues  
21          can be subsumed into the IPEEE, and certainly the context of  
22          backfit and cost-effective or substantial safety  
23          improvements apply to the external events as they do to the  
24          internal.

25          In summary, I think that after due examination of

1 reactor vulnerabilities, either internal or external events,  
2 that certain plant changes will be made, and, indeed, this  
3 is borne out by the practices from the NRC risk studies and  
4 the industry risk studies. This is already taking place.

5 I think whatever changes might have to be required  
6 by the NRC, that is those that did not get proposed by the  
7 utility but are deemed necessary by the staff, will have to  
8 pass the cost benefit test. I think they will fall into the  
9 substantial safety improvement category. So it would be up  
10 to the NRC staff to make a showing that what additional  
11 changes they might want would be justified by the added  
12 cost.

13 In other words, I believe that these are what the  
14 Court of Appeals referred to as the extra adequate safety  
15 enhancement portion of backfit. That's all I wanted to say  
16 on this issue. I didn't want to get into any details on the  
17 IPE or IPEEE letters, but I guess I could, if necessary.  
18 Questions?

19 [No response.]

20 MR. ROSS: Good. Jack? Jack Heltemes, next on  
21 the agenda, regulatory and backfit analyses.

22 MR. HELTEMES: Thanks a lot. A few minutes ago,  
23 someone on the panel turned to me and said, you know, you're  
24 the speaker they've all been waiting for. I thought, holy  
25 cow, gee, isn't that great, I was thinking to myself. And

1 the person said, yeah, you're the last speaker.

2 [Laughter.]

3 MR. HELTEMES: I'd like to discuss backfitting  
4 from the perspective of the Office of Research within the  
5 NRC. In many respects, what I'm going to say today and some  
6 of the things I'll cover have already been covered, perhaps  
7 better and in certainly greater depth by other speakers. So  
8 my remarks will serve as a summary of much of what's been  
9 discussed before.

10 One of the first acts as President, President  
11 Reagan signed an Executive Order, Executive Order 12-291,  
12 and that order required that all Executive agencies prepare  
13 or develop a regulatory impact statement for all new rules  
14 or regulations that they published. Now, the NRC is an  
15 independent agency and, thus, we didn't come directly under  
16 that Executive Order. We did adopt it as a matter of  
17 policy.

18 Consequently, one of the activities or  
19 responsibilities of the Office of Research is to develop  
20 generic guidance for regulatory analyses. In that sense,  
21 we've developed three. We've developed a regulatory  
22 analysis guideline, and that's known as PR-0058. We have  
23 done generic analysis for how to conduct a value impact  
24 handbook, that's a CR document, 3568, and we have some  
25 compilations and some documents on how to do cost



1 estimating.

2 I will talk a little bit more about these  
3 documents in a few minutes. Also, the Office of Research  
4 does most of the rulemaking, develops the rules and the  
5 revisions to rules within our agency, and we, as a matter of  
6 course, therefore, prepare analyses in support of those  
7 regulatory positions.

8 We also are responsible for the resolution of  
9 generic issues and for the regulatory analysis that goes  
10 with those resolutions with the development of regulatory  
11 guides and information requests. So we have a lot of  
12 experience in how to prepare or how regulatory analyses are  
13 to be prepared. Also, we assist other offices in the  
14 preparation of these documents, particularly in the area of  
15 cost estimating.

16 The next chart is a graphical representation of  
17 how the process works with regard to regulatory analysis.  
18 First of all, in daily activities, a concern will be  
19 identified. Then we look at that concern in light of all  
20 other priorities, all other activities going on within the  
21 agency. For example, in generic issues, we prioritize those  
22 generic issues with the many cost benefit analyses. We also  
23 prioritize rulemakings in order to make sure we focus our  
24 resources on those that should be matter of first priority.

25 And the technical discussions continue day in and



1 day out. And all type of activities generally result  
2 in a determination whether regulatory action, formal  
3 regulatory action should be taken or not. If it is to be  
4 taken, if the staff will have a new staff position, then we  
5 have to develop a regulatory analysis. So if the answer is  
6 yes, regulatory action is called for, then you have to start  
7 thinking about the regulatory analysis.

8 The regulatory analysis will consist of different  
9 alternatives. Usually you have to consider all reasonable  
10 alternatives. One of the alternatives you will consider is  
11 no action. That's generally the base case. And almost  
12 always you will do some sort of value impact assessment.  
13 But the regulatory analysis will differ in terms of its  
14 scope and its depth, in relationship to the importance and  
15 the complexity of the issue being discussed.

16 From our analysis then will come a determination  
17 whether regulatory action should be taken, whether it's  
18 justified or not, or whether the recommendation is no  
19 action. If it is to be taken, oftentimes you have to do yet  
20 another analysis called a backfit analysis. It's separate  
21 in terms of its scope and is slightly different. The  
22 backfit analysis will be focused on the specific action to  
23 be taken. Normally you would not consider any alternatives.

24 But it can result in a different answer. It can  
25 result in a no answer, as well as a yes answer. This is a

1       schematical diagram on the backfit analysis. First of all,  
2       you ask yourself the question is the proposed action  
3       applicable to commercial power reactors. If the answer is  
4       no, then the backfit analysis, the backfit rule does not  
5       apply. If the answer is yes, then you have to ask yourself  
6       the question whether the proposed action is within the scope  
7       of 50.109.

8                 That is to say does it require a change or a  
9       modification to a structure, system or component, to the  
10      organization or to the procedures of that commercial  
11      reactor. If the answer is yes, then it comes within the  
12      scope of 50.109. If the answer is no, that is to say it's  
13      forward fit only or it's a request for information or asks  
14      for an analysis or whether it's administrative in nature or  
15      whether it's a voluntary deregulation, then the answer would  
16      be no, it does not come within the scope of 50.109.

17                But still you have to have a regulatory analysis  
18      and the action still has to be justified, and that's been  
19      discussed at great extent today by others. But going on, if  
20      it does come within the scope of 50.109, then you have to  
21      ask yourself the question does it fall within the exemption  
22      or exception requirements of adequate protection or  
23      compliance, or is it a safety enhancement type of  
24      requirement, and that's been also discussed by others.

25                If it's a safety enhancement backfit, then you

1 have to make two findings; is there going to be a  
2 substantial safety enhancement and is the cost justified.  
3 So you consider cost, the cost of the implementation if it's  
4 a safety enhancement, but you do not consider cost if it's  
5 for adequate protection or if it's for compliance.

6 But still, even under those exemptions, you have  
7 to have a documented evaluation to demonstrate the  
8 objective, its purpose for action, and the basis for the  
9 exemption. Then out of that analysis will come the question  
10 or come the determination, I should say, whether or not you  
11 implement.

12 Again, the regulatory analysis is to document the  
13 need for and the consequences of a proposed regulatory  
14 action. You have to state the problem, define the  
15 objectives; why is action necessary, what are the  
16 requirements already in existence by our agency, to whom  
17 does the requirement pertain to, who has to act, you have to  
18 define the alternatives, all reasonable alternatives,  
19 including no action.

20 You have to define what attributes need to be  
21 assessed and there the BR document, the BR-0058 tells or  
22 gives instructions on how to define those attributes. Then  
23 you actually conduct your consequence determinations, your  
24 value impact assessments, and there the CR document, CR-3568  
25 comes into play. You develop your decision rationale and

1 you describe the implementation.

2           The implementation can take different forms. It  
3 can be a rule, generic letter, a policy statement, or it  
4 could be strength and enforcement. You have to define  
5 whether it's a final action or an interim action. But in  
6 all cases, the rationale has to be well described and  
7 documented. It has to be systematic and disciplined.

8           This is a recap on a safety enhancement backfit  
9 analysis. Again, focus on one proposed action and it has  
10 the two findings that we talked about before, the two tests,  
11 as Marty mentioned. Then it goes through the elements. The  
12 elements here are the elements from 50.109. To the extent  
13 they're relevant and applicable, they have to be addressed.

14           You can see, too, that you can consider non-  
15 quantifiable elements, qualitative factors, as well as  
16 quantitative. As talked about before, generic letters do  
17 not impose a requirement for action. The only requirement  
18 there is to respond. Rules and orders impose requirements.  
19 This is just a summary again about the difference in scope,  
20 the regulatory analysis focus of viable alternatives, the  
21 backfit analysis on one specific action.

22           They're very similar. Generally, they involve a  
23 value impact assessment. The backfit rule applies only to  
24 power reactors. Regulatory assessments, regulatory analyses  
25 are applicable to all new staff positions. This chart

1 attempts to give you a definition of the documents that are  
2 available; the BR document I mentioned earlier, the CR  
3 document, and some of the cost estimating documents.

4 In addition to these documents, there are office  
5 letters which give specific instructions to the staff in  
6 each office on how they are to be implemented. These are  
7 the guidance documents pertaining to backfit analyses. The  
8 backfit rule guidelines, the NUREG-1409 contains the other  
9 three documents that are mentioned; the backfit rule of  
10 1988, the management of plant-specific backfitting, the  
11 manual chapter, and also the CRGR charter.

12 Now, this guidance that I talk about is five to  
13 six years old. It's evolved over time. The staff practice  
14 has evolved over time. We now understand the issues better.  
15 We also understand where the staff needs better guidance.  
16 So it's our attempt to modify this guidance over the next  
17 couple years.

18 This chart talks about the BR document, the  
19 regulatory analysis guidelines. This is the overall  
20 document that will give the policy to the staff in terms of  
21 the format and content of regulatory analysis. We want to  
22 modify this guidance to give a better definition of what  
23 regulatory actions need a regulatory analysis, and the  
24 appropriate scope and depth of that analysis for each of  
25 these actions.



1           We want to expand the guidance of how to analyze  
2 the various alternatives and we want to better integrate the  
3 CRGR requirements, the backfit requirements, and the  
4 regulatory analysis requirements. These three sources of  
5 requirements, if you will, have evolved over time from three  
6 separate sources and we feel that it's time to pull them  
7 together, to have an integrated type of approach; to do the  
8 job once, if you will, in order to assure that the  
9 justification matches the requirements.

10           We also want to incorporate the safety goal  
11 determinations. The Commission has told the staff to  
12 consider safety goal in all future regulatory decisions and  
13 actions. Yet, our guidance in that regard is non-existent  
14 at this time. So part of this modification of our guidance  
15 will be to incorporate staff guidance on how to take into  
16 account the safety goal.

17           This is an outline of some of the factors that  
18 we'll take into account in updating the handbook for the  
19 value impact assessment. We are aware of a number of  
20 factors. We're aware that the off-site property damage  
21 guidance is out of date. For example, we've had Chernobyl  
22 and that gives us a pretty good insight into the extent to  
23 which off-site property damage can occur, the magnitude of  
24 such damage.

25           Also, we have conflicting guidance within our



1 agency right now on whether or not the \$1,000 per person rem  
2 takes into account off-site damage or not. We have some  
3 documents that say that the \$1,000 per person rem does take  
4 into account off-site damage, and another document says it  
5 does not. It's only on health effects. We want to  
6 reconcile that.

7 We also are aware that it's been a number of  
8 years, I think it was 1974 or so, 16 years ago, when we  
9 adopted \$1,000 per person rem. Inflation, if nothing else,  
10 takes into account or tells us that it's time to reassess if  
11 that's the proper number. We have later information, such  
12 as BR-5, that says that perhaps the health effects have been  
13 underestimated for a given dose, which may also effect the  
14 \$1,000 per person rem.

15 If the \$1,000 per person rem does take into  
16 account health effects and also off-site property damage,  
17 then we have to figure out how to take into account when you  
18 have occupational dose where there's no off-site damage, or  
19 where you have a research reactor that really cannot have  
20 any off-site damage. So all of this really has to be sorted  
21 out and reassessed, if you will, and we have to come out  
22 with better guidance or with current guidance on how to  
23 assess off-site property damage and how to separate that  
24 from health effects.

25 The discount rate, staff practice in the past has

1 used five percent. Our experts say that's the right number.  
2 Some of the consequence models, such as crack, use four to  
3 five percent. So our current thinking is to use five  
4 percent, but to use ten percent as a screening or  
5 sensitivity analysis to see if the action is sensitive to  
6 discount rates.

7 Impact on license renewal. Up to this point, what  
8 we do is to assess the remaining life of a reactor when  
9 doing value impact assessments. Now, with license renewal,  
10 there will be another 20 years of operation or could be  
11 another 20 years of operation. So we'll have to give  
12 guidance on how to do value impact assessments considering  
13 license renewal.

14 Treatment of supplemental considerations is an  
15 interesting one. There are some what will say that if you  
16 do not take the proper action, you could lead to an  
17 accident. If you lead to an accident, you could lead to  
18 off-site consequences. If you have off-site consequences,  
19 it could lead to a nuclear moratorium. If you have a  
20 nuclear moratorium, it could lead to World War III. It goes  
21 on and on.

22 At what point is it fair game to take into account  
23 some of these supplemental considerations? We have actually  
24 had one value impact assessment that did consider a nuclear  
25 moratorium. Non-reactor regulatory issues; things like

1 waste management, transportation, safeguards, medical. Our  
2 guidance in the past has been directed more or less at  
3 hardware items, using PRA for risk. Now what we want to do  
4 is develop good guidance for considering non-hardware  
5 issues, non-reactor issues, and also human factor issues.

6 I should mention, too, that out of these workshops  
7 will come a summary document and summary of some of the  
8 issues raised, and this will be fed back into this internal  
9 guidance. The guidance, the updating of our guidance is  
10 currently in process. We're using a contractor, Pacific  
11 Northwest Lab. We hope to have some of the draft material  
12 available for internal reviews early next year.

13 Then what we anticipate doing using the same  
14 process that we used for rulemaking, undergo an internal  
15 review and take it to CRGR, to the ACRS, and to the  
16 Commission. Following Commission approval, we will issue it  
17 for public comment, receive your comments, and then go  
18 through the process again. We advise it as appropriate and  
19 go to CRGR, ACRS and back to the Commission for approval.

20 This guidance, I say again, is for the staff.  
21 It's staff guidance on how to prepare regulatory analyses,  
22 how to do backfit analyses to assure that our actions are  
23 well-justified, and we can share that justification with  
24 you.

25 We anticipate the completion of this activity late

1 in 1992. That is to say approval by the Commission and  
2 implementation by the staff of the revised guidance.

3 Thanks. I'll be glad to respond to any questions.

4 MR. ROSS: Any questions for Jack Heltemes?

5 MR. PULEC: Rick Pulec, Wisconsin Public Service.

6 I had a question with regard to compliance determinations  
7 and the analysis and how you deal with the pre-GDC plants.  
8 Maybe there's 25 percent of them. Where does that fit into  
9 the analysis and in the regulatory framework, how do you  
10 justify applying today's Appendix A to those pre-GDC plants  
11 when the Commission didn't see fit to do so when Appendix A  
12 was issued?

13 MR. HELTEMES: I understand. I was going to make  
14 that same point this morning in talking about compliance  
15 issues. Appendix A, the GDC, of course, is a regulation.  
16 When we talk about compliance, you're talking about  
17 compliance with our regulations. So we have a number of  
18 plants which predate Appendix A, is part of the question.  
19 When we have a proposed action, you go through it and you  
20 can say to yourself this action is justified or what type of  
21 action is it; is it a compliance action or a safety  
22 enhancement, is it for adequate protection.

23 There you have to go down to the next level. Some  
24 plants, it may be compliance. That is to say they are  
25 committed to implement the GDC. That's the regulation



1 that's at issue here and you can say it's compliance for  
2 those plants. But what about the other plants? Normally  
3 what happens is that you go through and you make a  
4 determination it's either adequate protection or it's a  
5 safety cost beneficial enhancement.

6 But it's a separate analysis for the different  
7 classes of plants. The staff in the past, it's been my  
8 observation, my personal observation, has not been rigorous,  
9 has not been precise or disciplined in these types of  
10 analyses. The focus has been on is the action appropriate,  
11 rather than, as Denny mentioned earlier, great discussion or  
12 what type of action it's been.

13 So compliance has been used as a general category  
14 when it may not be appropriate for all plants. So to that  
15 extent, I think that we have to be more systematic in our  
16 approach and make those differentiations. I might also  
17 mention that we generally try to use either one of those two  
18 bases, either compliance or safety enhancement, depending  
19 upon the action, the type of action, the basis for the  
20 action, rather than adequate protection, because if you go  
21 adequate protection, the question becomes, well, if you need  
22 this action for adequate protection of the public health and  
23 safety, that is to say that plants or implies that the  
24 plants are not adequate without that modification or that  
25 action being taken.

1           Therefore, you have to ask the question what is  
2           the basis for continued operation. So we look at that.  
3           Indeed, it may be for adequate protection and you have to  
4           justify continued operation, or it may be you have other  
5           grounds. But all of these different factors, if you will,  
6           have to be considered and what we want to do is try to  
7           update our guidance in that regard to give better  
8           instructions on how to prepare these types of analyses.

9           Did that answer your question?

10           MR. PULEC: I guess I'm wondering why it isn't  
11           being done now. If you recognize the problem, why isn't it  
12           being done.

13           MR. HELTEMES: Just as a follow-on, if you  
14           recognize it, why isn't it being done, I see a number of  
15           citations to compliance referencing existing GDC. If it's a  
16           requirement, why isn't it being followed through on today.

17           MR. PULEC: I was suspecting that your question,  
18           again, goes to the inspection arena. To me, we should not -  
19           - are you talking about citations?

20           MR. HELTEMES: No, I'm not. If you take a look  
21           through the package that was handed out, it deals with  
22           compliance to GDC 4, 12, 17. That's existing requirements  
23           for existing Appendix A plants and not --

24           MR. PULEC: I think the question is one of staff  
25           practice in preparing the analysis. What he's saying is the



1 basis for the action taken is one of compliance, yet there's  
2 a number of plants which are not committed, predate, if you  
3 will, the GDCs.

4 MR. ROSS: Let me make a comment. I think that's  
5 a fair comment. I'm not exactly sure how we can deal with  
6 it in the CRGR, but we'll go into it. When I first came to  
7 the Commission in 1967, there were 27 general design  
8 criteria. I forget the exact status of those, whether they  
9 were in final stage, then there was 69 and then there was  
10 70. But for most plants, I thought there was some version  
11 of some general design criteria. I know at one time there  
12 was a general design criterion 44 that would have required  
13 all BWRs have both redundant and diversion emergency core  
14 coolant, which meant, in effect, top spray for a BWR. I  
15 think that's what it would have meant.

16 It didn't get adopted, but the history in the late  
17 1960s -- well, we don't have too many historians. What I  
18 think it would mean is it would need some archival  
19 information in the older plants, and I suppose this is  
20 picking up, for example, Dresden, what do exist.

21 I suppose we can go back and archive that. I'm  
22 not sure how productive it would be, but I guess we could  
23 look into it. I know that, for example, in the next 30  
24 days, the CRGR is going to consider the final rule on Part  
25 61, is the proposal adequate protection. There would be an

1 extremely low probability of -- if there's any requirement  
2 like that in the GDC for, let's say -- probably not. You  
3 had a 'P before the general design criteria. I guess you  
4 did. Somebody in here ought to know that.

5 But if it were not the GDC, then I suspect it's  
6 somewhere else, either in one of the 27 GDCs that we're  
7 committed to or it's in the application or it's in the  
8 pressure vessel -- so I'm not sure this is terribly  
9 important, because I think most times when you cite the GDC,  
10 if we didn't site them, you're committed to another one.  
11 It's a matter of archiving stuff.

12 MR. MALSCH: I can add something to that. GDC  
13 questions are like integral equations. They get very  
14 complicated very fast because they are the very basic  
15 embodiments of safety philosophy. So the tendency is to  
16 give them the broadest possible application. Moreover, when  
17 they are promulgated, it was stated that they were the  
18 embodiment of what was then-current staff practice.

19 So even though the GDC may not -- may have been  
20 promulgated, let's say, after the date of issuance of the  
21 operating license, there's a tendency on the part of the  
22 Commission to assume that since they were an embodiment of  
23 then-pending-current staff practice, to assume that  
24 someplace in the application you can find a commitment to  
25 the GDC or their equivalent.

1           Moreover, if you were to conclude that a GDC did  
2 not apply to your plant, you then immediately run into some  
3 very difficult questions as to what did the Commission have  
4 in mind by way of adequate protection when it licensed that  
5 plant. There's a natural tendency to say that the  
6 regulations are a presumptive definition of what is  
7 necessary for adequate protection. If you were to conclude  
8 that the GDC did not apply to a plant, then it's not clear  
9 exactly what you would look for by way of a definition of  
10 adequate protection.

11           So the GDC questions get very complicated very  
12 fast and there's often not a very clear answer in terms of  
13 use of the compliance exception in the backfit rule.

14           MR. STENGER: That's why we have complained so  
15 often about the citation to the GDC as a basis for a  
16 compliance finding in a generic communication, rather  
17 generic initiative. It gets very confusing and it's  
18 confusing for the pre-GDC plants to see a generic letter  
19 that says that for compliance with this GDC, you must do  
20 such and such. What is the pre-GDC plant expected to do?  
21 It is very confusing.

22           MR. HELTEMES: I was going to mention just one  
23 more thing, if I could switch subjects. It has to do with  
24 the survey done in 1989. I think Jim mentioned it and  
25 others mentioned it. Part of that survey was to go out to

1 licensees and ask for the cost implementation for five  
2 previous actions. Those actions were considered to be  
3 already completed. They were bulletins and generic letters.

4           So we got the cost for implementation from the  
5 licensees and we compared it to the staff estimated cost at  
6 the time of approval to see, if you will, put a QA on it to  
7 see whether the cost estimates by the staff were pretty good  
8 or not. But the way it turned out was that the cost  
9 estimates by the staff were quite good. They were quite  
10 representative of the average cost to the industry.

11           All five examples came in remarkably, I think,  
12 within the estimates of the average of the licensee's cost  
13 to implement. But the point I want to get to is it wasn't  
14 the average cost, it was the range of costs of the licensees  
15 that was tremendous. There was I want to say factors of 100  
16 in some cases between the cost of implementation at one  
17 plant versus other plants.

18           So the cost estimate that we do, and we do a cost  
19 estimate, is pretty good on the average, but it certainly  
20 can have wide swings, plus and minus. The point that Jim  
21 Conran made earlier about the cost may not be pertinent to  
22 your plant certainly was validated by our cost estimate  
23 survey that we did.

24           It just reemphasizes that what we have to do,  
25 since we don't know all the designs, we also don't know all

1 the practices and the costs of implementation for every  
2 plant, and it would be impossible for us to determine that  
3 with any degree of accuracy, that you really have to look at  
4 it from your perspective and if it doesn't make sense, as we  
5 all said before, if it's imprudent from your standpoint to  
6 pick it up on a plant-specific basis and come back to the  
7 staff.

8 MR. BISHOP: Jack, can I add just a quick P.S.  
9 just for the benefit of the audience? I've already made  
10 this point to these folks separately. That's exactly the  
11 reason why I advocate that the justifications done for the  
12 50.54(f) information requests, the justification done under  
13 50.109, as may be done to support a generic communication,  
14 it would it be very helpful if the licensees had those at  
15 the same time they had the generic communication to which  
16 they pertain so that you're in a position to be able to  
17 analyze whether you're in the middle of that range or out  
18 one side or the other when you try to figure out what it is  
19 you ought to do and where in the priorities that ought to  
20 fit in.

21 These folks have been nice enough to say that's  
22 one of these other things they're going to be taking into  
23 consideration.

24 MR. ROSS: On your agenda, I think we're in sort  
25 of a free form now. We'll keep on moving. We don't need to



1 keep a rigorous separation. The first item is rulemaking  
2 versus the letters. We certainly can open it up, at least  
3 in the beginning, if anyone from the audience has a comment  
4 on, given that you're going to get something, would you  
5 rather have a rule, which means you've got two years to find  
6 another job, or would you rather have a bulletin that you  
7 can use right away? Assuming you're going to get it anyway.

8 [No response.]

9 MR. ROSS: What about the panelists? Anybody want  
10 to comment rule versus "guidance?"

11 MR. STENGER: Denny, I'll kick things off, if I  
12 may.

13 MR. ROSS: Sure.

14 MR. STENGER: Given that Hobson's choice, I don't  
15 know whether anybody would really answer that question. But  
16 it's been our view that some of the things the NRC has done  
17 via generic communication probably should have been handled  
18 as rulemaking in the sense that they really were re-  
19 interpretations of requirements. When you are re-  
20 interpreting a requirement, the rulemaking process is really  
21 called for.

22 Though the NRC has been very forthcoming and we  
23 applaud this is making drafts and generic communications  
24 publicly available for comment, etcetera, that's really not  
25 a substitute for the protections of the rulemaking process

1 that Bob Bishop outlined in his presentation.

2 I don't like getting into specific examples, but  
3 some that could be mentioned, the generic letter on SPDS,  
4 the generic letter on in-service testing, 89-04, where they  
5 really re-interpreted existing requirements. I think in  
6 those particular instances, a rulemaking type process, a  
7 rulemaking process is called for. Not that I'm advocating  
8 more rulemaking. I think generic letters, generic  
9 communications, notices certainly have their place and can  
10 be useful.

11 MR. ROSS: Anyone have some other views on this  
12 general subject, rules versus guidance?

13 MR. MILLER: For me, I just have a small comment.  
14 I've seen a lot of -- well, I wouldn't say a lot of, but a  
15 number of generic communications that looked an awful lot  
16 like rules to me in their actual language. But there is a  
17 question about whether in any area which is sort of fast-  
18 moving, in which you expect new information or in which  
19 you're not entirely certain that you're going down the right  
20 path, rulemaking tends to add a little element of  
21 inflexibility in the process, whereas bulletins, generic  
22 communications and the like, from a purely bureaucratic  
23 standpoint, are easily modified or relaxed or extended and  
24 changed in rulemaking.

25 So there is an advantage in that respect dealing

1 informally as opposed to formally through rulemaking.  
2 Probably the answer lies somewhere in between, that you  
3 retain the concept of flexibility inherent in generic  
4 communications which are not imposed as requirements, but  
5 attempt to get some sort of a public-industry input, much  
6 like you would in the case of rulemaking, before the generic  
7 communications are promulgated in the first place.

8 So the answer may lie somewhere in between.

9 MR. SHARKEY: Tom Sharkey, Union Electric. Just a  
10 comment. I think to the licensee, it doesn't really matter.  
11 We see them both as commitments and we generally try to do a  
12 good job. If there's a concern with the NRC staff on an  
13 issue and it's logical, then we implement it via generic  
14 letter. That's a commitment to us and we live by it. If  
15 it's a rule, it's a commitment. It may be a higher tier,  
16 but we still live with it, whether it's a recommended action  
17 or a required action.

18 So I don't really see a difference.

19 MR. ROSS: I should note that after these four  
20 regional workshops, the NRC has an obligation to study all  
21 these transcripts and decide what further action might be  
22 needed. So the question and answer is going to be raw  
23 material for us when we start reading the transcripts.

24 Now, just generally, do people have questions or  
25 comments they've saved up throughout the day that you would

1 like to put to us or put to yourselves or put to someone  
2 else, or whatever? I've got a couple. It's open house.

3 MR. BAUER: Kind of following up on that last  
4 thing. I'm Scott Bauer from Portland General Electric  
5 Company, Trojan Nuclear Plant. I think one of the comments  
6 I've heard today is that we would like to see -- we don't  
7 mind the generic communications, but we'd like to see more  
8 backfitting analysis done on those.

9 The question I have on the compliance exception is  
10 would a thumb rule that could be used for applicability of  
11 the compliance exception be -- can I cite the licensee for  
12 not being in compliance on that current issue?

13 MR. ROSS: I think the answer is yes.

14 MR. BAUER: Then doesn't it seem rather odd that  
15 you have 100 percent of your licensees in non-compliance  
16 with the rule, that the rule is not understandable?

17 MR. ROSS: Well, there's 101 percent not  
18 understandable, but I don't think I understood the comment  
19 or question.

20 MR. BAUER: For example, let's pick an MOV generic  
21 letter. How many licensees already had MOV testing  
22 programs?

23 MR. ROSS: All of them.

24 MR. BAUER: Well, to the degree of detail as you  
25 asked for, the \$5 million program you asked us to put into

1 place as part of the generic letter.

2 MR. ROSS: None.

3 MR. BAUER: None. Right. And that's what I'm  
4 saying. If none of them are in compliance to that level of  
5 detail, is it really a compliance issue or is it a not  
6 understanding the rule, that the GDC is not clear on what  
7 you're supposed to have.

8 MR. ROSS: There's no question -- I mean, what  
9 does it mean to have extremely low probability. I don't  
10 know, ten-to-the-minus-four, ten-to-the-minus-twelve.

11 MR. BAUER: So I would propose that issuing a  
12 generic letter like the MOV one on a compliance exception is  
13 not appropriate. It should be subject to a backfitting  
14 because nobody is doing it.

15 MR. ROSS: Maybe the panel wants to pick up on it,  
16 but the way I understood it, and I think I was on the CRGR  
17 at the time. I remember the logic. You have a previous  
18 qualification -- then through work at the Research Office,  
19 which I am somewhat responsible for, new information comes  
20 up not heretofore considered. It was exploratory research  
21 and it turned up something new. It raised a black cloud  
22 over the previously perceived program for qualification.

23 We thought you were in compliance, but now we're  
24 not sure and maybe there's a good case if you're not. I  
25 think it makes sense that it's a compliance exception



1 because we no longer have -- and the testing program we used  
2 to. I don't know any better way to say it.

3 MR. MILLER: Denny, I'd like to offer something  
4 here, an observation. I think what we're really talking  
5 about is something that goes, I guess, to the fundamental  
6 approach that the Commission took in developing its  
7 technical criteria and regulations. I think it's very clear  
8 that with the very large number of different designs that  
9 are out there and with the tremendous complexity of these  
10 plants, that the Commission really had to take a more  
11 performance-oriented and broadly worded set of regulations.

12 Now, that's not true completely across the board.  
13 There are certain areas where the Commission chose to  
14 elaborate and go into great detail, but, by and large, the  
15 Commission was forced really to take an approach which  
16 states certain fundamental but broadly stated technical  
17 criteria, and then put the burden on the licensee to  
18 demonstrate that those criteria are met.

19 I think it was anticipated at the beginning that  
20 we wouldn't be able to anticipate at the outset what all of  
21 the kinds of situations that might arise over time that  
22 might impact on that. But, again, the burden was put on the  
23 licensees to -- and so when we get information through  
24 research that says under certain conditions the licensees  
25 hadn't anticipated -- when I say we didn't anticipate,

1 question the ability to meet some functional criteria, it  
2 becomes a matter of compliance with that broadly stated  
3 functional criteria.

4 We simply couldn't write regulations that were  
5 prescriptive in all cases.

6 MR. ROSS: Wait a minute now. What if we'd had a  
7 very general one sentence regulation that says isolation  
8 valves shall be qualified for the service conditions that  
9 they might expect for the design basis events for which are  
10 needed. I would have thought something like that was either  
11 explicit or at least implicit in putting in the valve in the  
12 first place.

13 What happens if the -- what really happens in the  
14 design basis event is now viewed differently than what it  
15 was years ago. If we go into rulemaking, I guess we would  
16 have done a general rule like what I just said, and a whole  
17 bunch of details in some regulatory guide and then backfit  
18 them all, which would take about two-and-a-half years.

19 MR. STENGER: It seems to me that's precisely what  
20 the backfitting rule was designed to encompass, and I think  
21 the point Scott is making is really what I made in my  
22 presentation, which is that the compliance exception is only  
23 properly invoked when there is an explicit requirement in  
24 the regulations today. What Scott was pointing out is that  
25 the testing program that was called for was not required.

1 Nobody understood it to be required and to the extent the  
2 generic letter would call for.

3 MR. ROSS: Wait a minute. Isolation valves have  
4 to isolate. That's what they do best.

5 MR. STENGER: Well, that's a functional criteria,  
6 and I'll just repeat what the Commission said in the 1985  
7 rule. The compliance exception is intended to address  
8 situations where the licensee has failed to meet known and  
9 established standards of the Commission. To take a very  
10 broad performance criteria and use that as the basis for a  
11 compliance finding repeatedly, as has been done, really guts  
12 the backfitting rule.

13 MR. MALSCH: I disagree with that. The underlying  
14 assumption behind that is the backfit rule was designed to  
15 prevent requirements from being imposed.

16 MR. STENGER: No, that's not --

17 MR. MALSCH: There is no indication anywhere in  
18 the backfit rule that the backfit rule was designed to  
19 decrease the number of backfits. All you find is that the  
20 purpose of the rule was to have a disciplined approach to  
21 backfitting. From that standpoint, if you're directed -- if  
22 you're trying to achieve a disciplined careful analysis, it  
23 doesn't make any difference whether or not you apply the  
24 compliance exception, because in either case you'd need a  
25 documented evaluation.

1           I still go back to the question. I think the way  
2 you apply the compliance exception is simply you ask  
3 yourself whether, knowing what you know now, are you or are  
4 you not in compliance. That's the simple question. In our  
5 example, because of recent information, it turns out there's  
6 no way you can argue you're in compliance with the existing  
7 requirements. That is you are now in violation of a known  
8 and established requirement, whether it's a specific  
9 requirement or a broad functional-based requirement.

10           The basic question that you're asking yourself is  
11 the same. Knowing what I know, am I in compliance. It's  
12 simple.

13           MR. STENGER: Scott, do you think your plant was  
14 out of compliance by not having the --

15           MR. BAUER: No, but I think what you're saying,  
16 sir, makes the regulations a moving target that's going to  
17 be -- everybody's trying to move with it and trying to hit  
18 it wherever it's moving to. I mean, as new technology comes  
19 about that allows us to test MOVs differently, I've got to  
20 be up to speed on all that new technology and move with it,  
21 and we're all going to be aiming at different targets.

22           MR. MALSCH: I agree in a sense. It isn't the  
23 regulation which is the moving target. It's the technology  
24 which presents a moving target. That's a problem. That's  
25 why you need a careful disciplined approach to imposing



1 requirements.

2 MR. STENGER: Marty, also, you can't say that the  
3 documented evaluation for invoking one of the exceptions is  
4 equivalent to doing the analysis that's called for by  
5 50.109. To invoke one of the exceptions, all you have to do  
6 is say -- point to a regulation and say it's necessary to  
7 comply with that regulation. That's all that's called for  
8 by that evaluation. It's not a regulatory backfitting  
9 analysis against the standards of 50.109.

10 MR. MALSCH: All it's missing is a cost benefit  
11 tradeoff.

12 MR. STENGER: But I would submit that's the ~~only~~  
13 of the backfitting rule.

14 MR. MALSCH: I don't think so. The guts of the  
15 backfitting rule is a disciplined analytical approach and  
16 management of the system of imposing requirements. It's not  
17 of the essence of the backfit rule that there be cost  
18 benefit tradeoffs.

19 MR. STENGER: I think there is. I think it's the  
20 objective standards that the rule sets forth that provide  
21 the protections of the rule, not just generating paper.

22 MR. ROSS: The other end of the table wanted to  
23 say something.

24 MR. CONRAN: A number of criticisms and directed  
25 at the regulatory impact survey, about the way that



1 backfitting --

2 MR. ROSS: This one?

3 MR. CONRAN: About the way that we evaluate  
4 backfits and categorize them. I understand many of those  
5 comments and I personally think that many of them were  
6 justified. But in trying to get a better handle on this  
7 issue that we're talking about right now, every utility was  
8 sent a set of supplemental questions along with the copy of  
9 the proposed agenda.

10 In us trying to understand better why you're  
11 criticizing us and what you're criticizing us about and what  
12 we can do about it on questions such as this one, we posed  
13 some questions to the utilities. In the event of the MOV,  
14 an environment in which NRC identified an MOV issue and  
15 finally did something about it, why did NRC have to identify  
16 that issue?

17 Do the utilities have a disciplined process, like  
18 we try to have at NRC, for identifying and evaluating safety  
19 issues? A corollary question is is there anybody out there  
20 who says that the MOV generic letter was unnecessary, that  
21 there's not a safety issue involved in the MOV problems?  
22 Nobody has stood up and said that.

23 So far the questions have been why did you issue  
24 it under the compliance exception. A more fundamental  
25 question is was there a safety problem involved there and

1 did something have to be done about it. The question I'm  
2 asking now is why did NRC have to do something about it.

3 Do you disagree with the determinations that  
4 underlie the MOV generic letter enough to stand up and say  
5 that there simply isn't a problem, a safety problem with  
6 MOVs that has to be addressed? We pose this question or put  
7 it out on the table for airing in this workshop and so far  
8 we haven't heard very much about the specific question that  
9 we ask about.

10 Do the utilities have a disciplined process within  
11 their own organizations for identifying and categorizing and  
12 prioritizing and getting something done about issues like  
13 the MOV issue which NRC, at least, thinks is a serious  
14 safety issue? It's not answer to your question, but I think  
15 it's just as fair a question. Maybe if we can talk a little  
16 bit about that question we'll come away from the workshop  
17 with a better understanding about what exactly your gripes  
18 are with regard to the way that we do backfit control and  
19 backfit regulation.

20 MR. ROSS: Anybody want to comment on Jim Conran's  
21 --

22 MR. BISHOP: Can I start?

23 MR. ROSS: Sure.

24 MR. BISHOP: Let me remove it so it doesn't sound  
25 like I'm just trying to preserve my own job at NUMARC. It's

1 not probably a bad idea. Let me go back. I worked for a  
2 utility for 11 years, almost 11 years. I have to tell you  
3 when you think of the cold numbers, 100 information notices  
4 a year says round numbers one every three days. I remember  
5 when I was working in licensing at an unnamed utility, we  
6 were having a hard time figuring out what we wanted to do  
7 because we were so busy trying to figure out what the NRC  
8 seemed to want us to do.

9 That tends to take a lot of the initiative away,  
10 but, frankly, that's one of the reasons -- let me go back to  
11 defending my job. That's one of the reasons why NUMARC was  
12 put together, to try to take some initiative in some of  
13 these generic issues. I don't know the details in the MOV  
14 issue. I know that we, the industry, were looking at the  
15 problem contemporaneous with the NRC looking at it.

16 It wasn't that, oh, my God, the NRC came out with  
17 a generic letter and that's the first time anybody knew,  
18 thought or believed that there was a serious problem. I  
19 don't think the answer, like most of these issues were  
20 involved in, is a very simple one. I think part of the  
21 problem is we've got to find ways to work better together.

22 There have been a number of generic letters and  
23 bulletins that have been issued that I think we all, in  
24 retrospect, would have wished we would have worked together  
25 on before they were issued, so we had a better idea of what

1 was really in mind and what were the alternative ways in  
2 which they could be addressed, to preserve the resources of  
3 everybody.

4 One of our biggest problems is we've got an issue  
5 priority list that goes on for ages, and those are just  
6 generic issues. I'd hate to think of what it is at each  
7 individual plant, but it's not a shorter list and it's a  
8 question of how we can try to better focus our mutual  
9 resources because we all want to get the job done together.

10 I'd go back to the old school, and then I'll get  
11 done speaking. I've always thought that the licensee was  
12 responsible for that plant and for making sure that plant  
13 operated safely. The Atomic Energy Act put together a  
14 regulatory system where the NRC was in an oversight role and  
15 would pass such regulations appropriate for it to carry out  
16 its responsibility for oversight to assure the public health  
17 and safety were protected.

18 But just as I advised the utility I worked with,  
19 if there's ever an accident, you better make sure that you  
20 understand that you're the people responsible, not the NRC.  
21 There will be a lot of people that come around afterwards  
22 and help you understand what you should have done  
23 differently, but that in no way relieves you of the  
24 responsibility of doing what you think is right every time,  
25 because you're the folks holding the keys to the door.

1           MR. ROSS: Does the Atomic Energy Act still have  
2 in it the operative words NRC or regulate to the minimum  
3 degree necessary? Is the word minimum still in there?

4           MR. MALSCH: It's still in there, but it applies  
5 to research reactors.

6           MR. ROSS: That's all. Anyone else want to  
7 comment following Mr. Bishop's comments?

8           MR. SHUKULA: Girija Shukula from Detroit Edison  
9 Company. I think the best way to tackle this problem would  
10 be to work with the industry representatives, like NUMARC,  
11 NUBARG and INPO, on these generic communications before they  
12 come out, so as to get our review or comments before they  
13 become a requirement, for us, at least, as we understand  
14 them. Also, go through the backfit analysis just for the  
15 sake of it and see if it is a cost-justified thing to do or  
16 it's a compliance thing or whatever it is. Just go through  
17 the analysis and also include a summary of that analysis  
18 into the generic communication. So we've dealt with  
19 everything at once.

20           MR. ROSS: Let me give you a partial answer. What  
21 I'm going to say will be coming out in writing, I think, in  
22 the reasonably near future. It has to do with working with  
23 NUMARC, which we still do, you understand. In fact, we  
24 worked with them to get this meeting set up. But the staff  
25 and the Office of Research was working with them in the



1 resolution of diesel generator reliability and we thought  
2 what we had was an accommodation that NUMARC would develop  
3 specific guidelines and the NRC would simply endorse them.

4 It took two or three years to get there. At the  
5 last minute when the Research staff was getting ready to  
6 send the package to the CRGR, NUMARC pulled the rug out from  
7 under and, in a sense, threw away all the guidelines that we  
8 had intended to endorse. That leaves one with kind of a  
9 sour taste about working. I don't know how we're going to  
10 proceed in the future, but it does temper one's enthusiasm  
11 just a bit.

12 MR. SHUKULA: Yes, but they have done an excellent  
13 job on issues like molded case circuit breakers and things  
14 like that.

15 MR. ROSS: I understand, but I'm saying this does  
16 influence people, which means now we've got to go back and  
17 put in all the prescriptivity that we were trying -- I guess  
18 that's what you're going to do, isn't it, Jack? Do you  
19 know?

20 MR. HELTEMES: A lot of the guidance is -- some of  
21 the guidance has gone back into regulatory guide and some of  
22 it's in appendices as illustrative examples of the level of  
23 detail and the scope and nature of the activities that are  
24 intended to be conducted. But just to follow up on that,  
25 that particular one, B-56, was always intended to give the

1 licensee flexibility so that if they have an established  
2 practice of getting the job done; that is to say resulting  
3 in high diesel generator reliability; it was not our intent,  
4 the regulatory intent to disturb those good practices.

5 So in that sense, we were working with the  
6 industry to make sure that we did not disrupt good ongoing  
7 programs.

8 BY MR. BISHOP: By way of quick rebuttal, I think  
9 that's exactly where, as I understand the situation, it came  
10 unraveled. That there is a significant difference of  
11 opinion that came out unfortunately at the last minute as  
12 the issues became more clear, that there was just a dramatic  
13 difference of opinion between NUMARC, and I boldly suggest  
14 that that's the industry's position, and the NRC staff on  
15 what was required to achieve the goals that we all share.  
16 That's where we stand now. I agree. I think it's an  
17 unfortunate circumstance.

18 MR. ROSS: But the other half of your question --

19 MR. SHUKULA: So basically these generic  
20 communications pose some kind of time constraint on us, and  
21 I think if we can work out some way on an industry-wide  
22 basis, including EPRI or INPO or NUMARC, we would have done  
23 the same kind of quality job on MOVs or service water  
24 systems without having a generic letter. I believe that.  
25 Thank you.

1           MR. ROSS: I would like to point out that earlier  
2 today we talked about the cumulative requirements, and the  
3 NRC is still trying to decide what it wants to do. But I  
4 assure you that one of the things we're trying to do is  
5 prioritize things so that lesser important things fall to  
6 the bottom of the list. That hadn't been done well yet.

7           Other comments or questions?

8           MR. MILLER: It seems to me there's a question  
9 that came up this morning, and I don't know if we answered  
10 it. It's somewhat related to this we're talking about here.  
11 There have been a number of cases in Region III where  
12 although the cases didn't result in backfit claims by the  
13 licensee, there has been a concern on the part of the  
14 licensee that there was, in fact -- and there are situations  
15 where -- and EQ is a good example, again, or a good area to  
16 illustrate, where NRR and licensing reviewed a program plan  
17 and did a certain level of review of licensee's EQ program.

18           Inspectors went out after that and found problems  
19 with some aspect of EQ, and the licensee has taken the  
20 position, look, NRR approved our program; now, how can you  
21 come out later on and cite me for a non-compliance. I think  
22 one of the things that is important to keep in mind is that  
23 in licensing reviews, frequently the scope of what NRR looks  
24 at, depth may be a better term to use, of what is looked at  
25 only goes so far.

1 I think the SERs make an attempt to define the  
2 bounds and the limits, circumscribe really what it is they  
3 are approving. And yet we all know that in programs like  
4 this there are many levels of detail that go into that  
5 program. Our inspectors may, in fact, go out in an area  
6 where there was broad mention of approval from NRR, when you  
7 get down into the details you find the situation where some  
8 of the higher levels i.. this hierarchy of requirements and  
9 so on have not been met.

10 It's down in the details that we can find problems  
11 and I know that this, on the face of it at least, has the  
12 appearance of NRC and the regions citing a case where NRR  
13 has already given approval. I raise this because this has,  
14 in fact, come up a number of times in cases involving even  
15 escalated enforcement. I don't know if you want to react to  
16 that or not, but it's a situation where I've seen confusion.

17 MR. ROSS: Anyone wish to comment or rebut or  
18 reply?

19 MR. STENGER: I would just make a comment. I'll  
20 probably never be asked back to Region III again, but I  
21 think that approach is inconsistent with Manual Chapter 0514  
22 which does state, I can't find the reference right now, but  
23 it's in the appendix to the manual chapter, that when an SER  
24 is issued approving a licensee's program, the licensee --  
25 well, here it is -- the licensee should be able to conclude

1 that his commitments in the SER, it's talking about mostly  
2 initial licensing here, satisfy the NRC requirements for a  
3 particular area.

4 If the staff was to subsequently require that the  
5 licensee commit to additional action under other than that  
6 specified in the SER for the particular area, such action  
7 would constitute a backfit. I think that type of -- and  
8 this is in the context of inspection and enforcement, the  
9 discussion in the appendix to the manual chapter.

10 So I think that type of evolving positions through  
11 inspections can well raise backfitting concerns.

12 MR. MILLER: Dan, the problem I have with that,  
13 though, is that there is a simple fact that the staff is  
14 extremely limited both in terms of numbers and, again, if  
15 you go back to regulations and just consider for a moment  
16 the tremendous complexity of these plants, we're flat  
17 limited in how much we can -- in the case of regulation --  
18 prescribe in the rule. We simply can't anticipate all of  
19 the different situations that may arise at different plants.

20 And in the case of licensing and inspection, it's  
21 clear that NRR has limits as to how much detail they can go  
22 into in reviewing the program from the licensee. What your  
23 position, I think, suggests is that the burden of proof  
24 rapidly shifts from the licensee to the staff regardless of  
25 what level of detail that the staff is able to go into in



1 reviewing a program.

2 The burden shifts to the NRC after that licensing  
3 qual is made. We know that NRR simply didn't and couldn't  
4 go into all of the levels of detail that ultimately have to  
5 be worked out by the licensee in demonstrating to itself  
6 that it meets the broad criteria that are, in fact, the  
7 subject of licensing review.

8 So I would see it not as new requirements that are  
9 the subject of inspection, but rather the NRC looking at a  
10 greater level of detail on just how the licensee did satisfy  
11 itself that it met the broad criteria.

12 MR. ROSS: Let me pick up on that a bit, because  
13 that was one of the two closing comments I wanted to make  
14 sure I got in. It might help the audience if you understood  
15 what I call the mindset of the typical NRR reviewer. I  
16 worked in NRR for 14 years and I have a reasonable  
17 understanding of the mindset. That's what I call the one-  
18 step ahead of the sheriff mindset.

19 Over the last decade, the technical people in NRR  
20 have seen such things as steam generator replacement, and  
21 everybody thought they would last 40 years, and major piping  
22 replacement in EWRs, and everybody thought they would last  
23 40 years, and motor operated valves, forget the  
24 qualification problem, that should have had an unreliability  
25 of around ten-to-the-minus-four and maybe you're lucky if

1 you get ten-to-the-minus-two for demand, trip breakers that  
2 don't trip, and scram discharge valves that fill up with  
3 water when they shouldn't, and service water heat exchangers  
4 clogging up, and a long list of problems.

5 When people read about these and find out about  
6 them, they say I've got to do something, I'm just one step  
7 ahead of the sheriff. The tendency in the interest of  
8 safety is to get something out rather quickly and if you say  
9 rule, then you see eyes glaze over and say rule, that will  
10 take me five years, I want to get something done tomorrow.

11 Now, the discipline from Part 109 says you can't  
12 get it done tomorrow, you've got to get it done maybe next  
13 week or next month, but you can get something done quicker  
14 than the three-year period of the rule. I don't know if  
15 that helps you or not. But certainly as an NRR reviewer,  
16 which I was, I never thought about seafood in the heat  
17 exchanger. I mean, the clams belong on the table, not in  
18 the heat exchanger.

19 We didn't anticipate that. How could we? You  
20 didn't anticipate it. But when it happened and you lost the  
21 safety-important degradation in the service water, we can't  
22 point to any specific rule that says keep them out. So what  
23 do we do? If it doesn't look like it's perfect, so what?  
24 You didn't think about, we didn't think about it.

25 We call it compliance. I think it's a reasonable

1 thing to do as any. That was one of the closing comments  
2 that I had. I'll stand insults or recrimination if anybody  
3 wants to offer any.

4 [No response.]

5 MR. ROSS: Hearing none. The other question I  
6 had, I never got an answer. This is how to do something --  
7 how can the NRC do something that's in your interest. I  
8 mentioned Appendix J. Our cost estimate is that if we have  
9 passed this final Appendix J in the consideration, it would  
10 save you guys a bunch -- save the utilities some money. It  
11 would be in the vicinity of safety-neutral.

12 But Part 109 will not let us do that.

13 MR. HELTEMES: You can do it as a voluntary  
14 option. We can't make it mandatory.

15 MR. ROSS: We cannot require it. I don't know  
16 what we're going to do. We're still thinking about it. If  
17 anybody wants to comment, we'll be glad to take comments.  
18 Since you're never coming back to Region III, we're going to  
19 go down this way and see if you have any closing comments.

20 MR. BISHOP: I think I've been on my soap box  
21 enough. I thank you.

22 MR. ROSS: Is that Dan next to you?

23 MR. STENGER: Yes, it is. I've got a few things.  
24 One, there were a couple of questions that arose throughout  
25 the day that we never answered, and I might try to touch

1       upon those a little bit. As a closing comment, I would just  
2       say Marty reminded me of something when we had a few seconds  
3       there that many of these issues of compliance are very  
4       complex, particularly when it gets into compliance with the  
5       GDC and Appendix B, etcetera.

6               There are a lot of complexities and we certainly  
7       had no meeting of the mind up here today, but people should  
8       not feel that that reflects some fault in the rule. I think  
9       it reflects the fact that there are a lot of complexities in  
10      these issues. Reasonable people can differ. I can't say  
11      anything more than what I've already said, which is that we  
12      do believe the NRC has misapplied the compliance exception  
13      in a number of cases.

14              Nevertheless, I recognize that there are a lot of  
15      complexities in this area. I think Frank's first example of  
16      the EQ issue is a real prime example of how complex some of  
17      the compliance issues can be. I'll let that stand as  
18      closing remarks.

19              MR. ROSS: Okay. I just want to say something  
20      that I started to allude to, and that is that I feel that  
21      this forum is a good one and that some of the discussion and  
22      ideas that have been shared here are helpful to utility  
23      licensing personnel, but I also think that, as you  
24      indicated, in your training programs, that inspectors could  
25      benefit from some of this kind of thoughtful discussion,

1       because as we all heard, some of these things are not real  
2       crisp black and white issues.

3               While Mr. Conran indicated that you can't be held  
4       enforceable to inspection guidelines, there certainly is  
5       something that both the utility and the NRC can co-use to  
6       help identify issues and areas where they need to focus on.  
7       In regards to the presentation I had, which I felt were more  
8       oriented towards enforced backfit as opposed -- or inspected  
9       backfit as opposed to backfit from on high, I think it's a  
10      good thing that regional inspectors have this kind of  
11      involvement in their programs to see what a big impact these  
12      things have on the utility.

13              MR. ROSS: Marty?

14              MR. MALSCH: Let me just elaborate a little bit on  
15      something that Dan said. The backfit rule is rather easy to  
16      state. When you get into some concrete examples, the  
17      analysis gets rather complicated. In many areas, there are  
18      no clear answers. In some other regulatory fields; for  
19      example, communications; much of the regulatory law is  
20      developed in the context of battles among competitors, all  
21      of which have money to hire lawyers and there's a lot of  
22      things at stake.

23              So a lot of detailed questions get readily hashed  
24      out and resolved pretty quickly. In our field, we don't  
25      have competitors slugging it out. So the only way we get



1 law developed and answers developed is by processes such as  
2 the backfit rule and the backfit appeal process. So unless  
3 you all take advantage of the rule and take advantage of the  
4 appeal process when you think it applies to you, we're never  
5 going to develop any definitive answers to these questions  
6 because they're always going to be academic and not the  
7 kinds of things that are going to be hashed out in a forum  
8 like this.

9 So those never actually get resolved in the real  
10 world. So if you think there's a problem with something the  
11 staff is doing and you don't think the backfit rule is being  
12 applied properly, well, then, by all means, raise the issue  
13 because that's the way the issues get resolved. If you  
14 discuss them academically, then they never get resolved.

15 MR. ROSS: Good comment, Marty. Hub?

16 MR. MILLER: There's a quote that I have always  
17 liked from Samuel Johnson who was a great English literary  
18 figure, and it is that we need less to be told than  
19 reminded. I think that applies very much in this case. I'd  
20 take Frank's point. I think it is important that we  
21 constantly re-sensitize ourselves to the need to be careful  
22 in this area. I know I, sitting here today, got a lot out  
23 of this session and there are some of my inspectors here  
24 today.

25 We do make this a point of continued training,

1 retraining. Also, a second point is that I -- hopefully,  
2 Frank's second example indicates to those of you here from  
3 Region III that approaching us informally is something that  
4 we encourage where you see a problem. I know this whole  
5 process may seem quite intimidating and then daunting when  
6 you look at what would be involved to formally pursue a  
7 backfit case, but don't hesitate to contact any of us in  
8 Region III management if you have a problem.

9 MR. ROSS: Carl?

10 MR. BERLINGER: I was going to make a snide remark  
11 about lawyers, but I was afraid they'd get another  
12 opportunity to speak after I did.

13 [Laughter.]

14 MR. BERLINGER: Guarantee that you're not going to  
15 have an opportunity to rebut what I say?

16 MR. ROSS: They're policy, if it ain't broke, fix  
17 it anyway.

18 [Laughter.]

19 MR. BERLINGER: The generic communications that  
20 the NRC issues are not issued willy-nilly. There's a great  
21 deal of thought that goes into the development and into  
22 their review, both as part of the backfit rules and  
23 regulations, and also as far as internal management review  
24 at the NRC. The difficulty that we've had in the past  
25 that's been identified, in part, through the regulatory

1 impact survey and some of the comments received, bears on  
2 the need through increased communication between the NRC  
3 staff and the industry.

4 That's an area where we intend to increase our  
5 interaction in the future; not saying that we have worked in  
6 a vacuum. We have in many, many cases, especially the very  
7 difficult technical issues and complex technical issues,  
8 have worked very closely with representatives of the  
9 industry. But that's an area where we intend to make some  
10 positive improvements.

11 Also, in the area with regard to cumulative  
12 impact, we've been working very hard in order to develop an  
13 NRC position as to how to consider cumulative impact. Ideas  
14 have come in from several different areas within our agency,  
15 and these are presently being put together into what we  
16 would call a response to the regulatory impact survey  
17 recommendations.

18 On that note, let me say that it's difficult to  
19 put engineers and lawyers together on the same table,  
20 primarily because lawyers find it very difficult to tackle  
21 the direct immediate problem, and that is safety, while  
22 engineers sometimes get mired within the safety problem and  
23 forget about the rules and the regulations and the laws.

24 So if we haven't appeared to see eye-to-eye, I  
25 don't know where you would expect to see engineers and the

1 lawyers see eye-to-eye. I do appreciate the opportunity to  
2 express the difference in a different perspective. On that  
3 note, I'll pass the mike.

4 MR. ROSS: Jack Heltemes reminded me there might  
5 be one thing left over we didn't discuss as much as we  
6 should have that came up: information and notices and what  
7 you are, in effect, required to do. I assume that this is a  
8 question. You've got to read them, because you get in  
9 trouble if you don't, and you may get in trouble if there's  
10 some implied action that you should have taken but you  
11 didn't. How did we leave that this morning?

12 MR. HELTEMES: I was going to address that in my  
13 comments.

14 MR. ROSS: That's all I had to say, so I'll pass  
15 to Jack.

16 MR. HELTEMES: As a final comment, I was just  
17 going to say that we in the Commission take our  
18 responsibilities to assure the public health and safety very  
19 seriously, but we take equally as seriously our  
20 responsibilities to assure that the regulatory positions are  
21 well justified, that we have a certain amount of discipline  
22 to the process and our analyses are systematic.

23 I don't think any of us here would defend that  
24 we've passed or met that test in every case in the past.  
25 But we've been trying to understand your point of view.

1 That's why we did the regulatory impact survey, that's why  
2 we did the backfit analysis survey that we talked about  
3 which was a different exercise, that's why we prepared  
4 NUREG-1409, so that you could understand the process,  
5 understand the way it's supposed to work, and then you can  
6 draw our attention to those cases where it doesn't work.

7 That's why we're having these workshops today, so  
8 that we can communicate with you because if it's positive,  
9 professional, healthy dialogue, the process will get better  
10 over time, and that's what we're committed to do.

11 MR. PAPERIELLO: I have two things I want to  
12 address. One is on Goodman's question on the information  
13 notice. Let's start with the first principle I think  
14 somebody mentioned earlier. You as a licensee are  
15 ultimately responsible for the safe operation of your plant.  
16 That obligation means that you have to act on information  
17 that you receive that shows that you might have a safety  
18 problem with your plant.

19 That could be an information notice, but it could  
20 also be your own internal self-audits. It could be also  
21 your own internal events, things that may not be reportable.  
22 You have to act on what you know. Even, for example, events  
23 don't rise up to be an LER; in the enforcement policy which  
24 the Commission has given the staff, there is a factor. It  
25 isn't a factor that results in a violation.



1           It's a factor to consider when we determine what  
2           action to take when we have a violation of significant  
3           severity that escalated enforcement is warranted. That's  
4           prior notice. If things happen in your plant that should  
5           have put you on notice that you had a problem and that  
6           problem results in a violation, that failure to act on prior  
7           notice could be an escalating factor in the size of the  
8           civil penalty we levy.

9           That's more than just information notices. I've  
10          had cases where licensees' self-audit program identifies the  
11          problem and for 18 months or more they didn't do anything  
12          about it. That is an escalating factor. But not doing  
13          anything on the information notice in itself is not a factor  
14          that is going to result in enforcement by itself.

15          The second issue is one that has not apparently  
16          been discussed much here today, I'm surprised, and that is  
17          this thing that I constantly hear about in the background of  
18          inspector backfits; an individual inspector twisting  
19          peoples' arms making them do things, and if I don't do it,  
20          I'm going to get into hot water.

21          Fundamentally, it is inappropriate for an  
22          inspector to require you to perform any action.  
23          Essentially, I'll qualify that on the inspector's own  
24          volition. Obviously if the inspector communicates to you a  
25          formal agency document, that's not on the inspector's own

1 volition. However, an inspector is expected to exercise  
2 professional technical and regulatory judgment.

3 Furthermore, I expect my inspectors, besides using  
4 NRC rules and regulations, to be aware of the laws of  
5 nature, physics, chemistry, engineering, as well as logic.  
6 If you do not appear to be in compliance, the inspector has  
7 an obligation to tell you; essentially communicate to you  
8 that you don't appear to be in compliance, not a final  
9 agency action.

10 But if the inspector is here today and observes  
11 it, the inspector has to bring that to your attention.  
12 Furthermore, if you can't get from Point A to Point B, the  
13 inspector has an obligation to tell you that, also. An  
14 inspector has an obligation to question the technical basis  
15 for your decisions. If you disagree with the inspector, you  
16 should tell the inspector. If that can't be resolved, then  
17 you need to escalate it.

18 You should be aware of our hierarchy. Go to the  
19 Section Chief, go to the Branch Chief. We have mechanisms  
20 for resolving issues if you disagree with an inspector's  
21 finding. If you believe you're being required by an  
22 inspector to do something inappropriate, you have to tell  
23 regional management. I can't deal with elusive allegations  
24 of inappropriate backfits if you don't tell me. That means  
25 I have to know who did it and when they did it and what the

1 issues are.

2 I will tell you that I routinely audit inspection  
3 reports. Among other things, I look for the inappropriate  
4 use by the inspectors of open items and unresolved items as  
5 an attempt to impose an un-analyzed backfit. Frankly, I  
6 rarely find something like that. I'm going to have to tell  
7 you, from my own viewpoint, I'm more concerned with  
8 inspectors who identify problems and never dig into them. I  
9 have no idea why things occurred. But I try to do that.

10 We don't want our inspectors in the region  
11 engaging in backfits that aren't analyzed. Obviously, this  
12 has been said here before, if there is something where  
13 somebody believes that a plant-specific backfit is  
14 appropriate, that's fine, but let's follow the policy.

15 So my message to you and to your management is if  
16 somebody, an inspector is coercing somebody to do something  
17 inappropriately, it needs to be brought to our attention.

18 MR. KNOP: I would just make one point on this  
19 issue of inspection requirements that are in TIs or other  
20 modules. Those requirements are only incumbent on the  
21 inspectors and not necessarily on the licensee until he  
22 verifies that the licensee is committed to the reg guide or  
23 whatever the inspection requirement is in some of the  
24 documents. That's it.

25 MR. ROSS: Jim?

1           MR. CONRAN: I appreciated the opportunity to have  
2 this exchange today, and I think it was useful. But I have  
3 to admit that I'm a little bit uneasy about the disconnect  
4 that I see between the regulatory impact survey results that  
5 we're supposed to be addressing in this workshop and the  
6 discussion today.

7           If we read the regulatory impact survey right, one  
8 part of it said, pretty forcefully, I think, there's too  
9 much backfitting, there's too damned many new requirements.  
10 That seemed to be a theme in the regulatory impact survey.  
11 That hasn't come across in the discussions today. To try to  
12 get at what was intended by your input to the regulatory  
13 impact survey, we sent out questions that said -- I alluded  
14 to them a little bit earlier. Specifically, are there  
15 generic letters or bulletins that you think weren't worth  
16 spit from a safety viewpoint; they're just make-work items  
17 for you; they're burning up resources; they're distracting  
18 you from important problems like the MOV issue.

19           We didn't get any input on that today. So that  
20 failure to follow through and to try to get at that aspect  
21 of the regulatory impact survey sort of bothers me. If you  
22 still think -- I mean, if I read you properly and you still  
23 think that that's a problem, there's too much backfitting,  
24 that implies that some of the backfitting that happens is  
25 not necessary.

1           I think it's not much use to say the one thing;  
2           that is that there's too much backfitting; unless you are  
3           also somehow able to say the 37 generic actions that we got  
4           in the last year-and-a-half, 12 of them, in our opinion,  
5           were not worth it from a safety viewpoint or from a cost  
6           benefit viewpoint.

7           Maybe I misread your comments in the regulatory  
8           impact survey. Maybe what you're saying was that none of  
9           the generic actions that have come at you were really  
10          unnecessary, but what is the most trouble to you is the  
11          arbitrary manner in which we schedule them for  
12          implementation. In that case, then a reasonable compromise  
13          would be to say we want more input on the proposed generic  
14          requirements with regard to the schedule for implementation  
15          or prioritization from a safety viewpoint.

16          But when you said with a sort of unanimous voice  
17          in the regulatory impact survey some awful things about the  
18          way that we do it or some critical things about the way we  
19          do it, the agency paid attention and we're trying to do  
20          something about it. So if you think it's important, for  
21          example, to have more input while these generic  
22          communications are being drafted, I would suggest that you  
23          say that clearly and strongly and in sort of a unanimous  
24          voice through NUMARC or however.

25          I think it's troubling to me that we didn't seem



1 to get at and deal with at least that part of the regulatory  
2 impact survey comments. It's not too late. This workshop  
3 is just one element in the process of trying to figure out  
4 how we should adjust our process internally.

5 So if these really are important points to you and  
6 we didn't get at them today, why, there's still a chance for  
7 sort of a concerted input to the process and trying to  
8 figure out to adjust our backfit control process. But the  
9 discussions that did happen were interesting and useful, and  
10 I learned from them.

11 It makes me think that the whole effort was  
12 worthwhile. It's a lot of effort setting up workshops like  
13 this and we like to acknowledge the cooperation of NUMARC  
14 and the regional office in doing everything that had to be  
15 done to bring about this discussion today.

16 MR. ROSS: I was going back to the audience again.  
17 Go ahead.

18 MR. PETERMAN: Kirk Peterman from Dresden Station.  
19 I did not come here to drill off the list of issues that  
20 NUMARC, other utility organizations that -- we've had  
21 discussions with the NRC on such things as containment  
22 venting, Reg Guide 197 issues, monitoring, a whole list of  
23 items, combustible gas control for Mark I inerted  
24 containments, things that we don't believe particularly have  
25 a safety payback or at least a significant one.

1           If you wanted to turn this session into a fix  
2 section of each individual item, we could do that. But just  
3 because we have not been bringing these issues up  
4 individually one-by-one, do now walk away with the  
5 impression that we don't believe that there are a lot of  
6 these unnecessary items that aren't worth spit, to use your  
7 expression.

8           MR. ROSS: I think you're right. That isn't  
9 exactly what we wanted to do, but when Carl Berlinger  
10 mentioned cumulative requirements, sooner or later that's  
11 what will have to happen. It'll be like zero based  
12 budgeting. You get all these lists in some appropriate  
13 hierarchy and then you draw a line and say that's all I can  
14 do this year or this outage and everything below the line  
15 either gets thrown away or put in the next outage plan.

16           Maybe things like are what are going to come out  
17 of cumulative requirements, I don't know. I thought I had a  
18 hand over here. Yes.

19           MR. ARHAR: John Arhar, Pacific Gas & Electric,  
20 Diablo Canyon Power Plant. I'll bring up one generic  
21 letter, you twisted my arm. It's a recent one, Generic  
22 Letter 90-05 on temporary non-code repair of Class I, II,  
23 III piping. It also brings up questions on -- this is a  
24 generic letter that doesn't require a response.

25           So I understand that generic letters don't give

1 requirements, they give guidance, and a lot of times, at  
2 ~~least, how we work~~ under our management, when we submit a  
3 letter back in response to something, that is our  
4 requirement now. We are truly committed.

5 So this one gives me a little problem because it's  
6 a generic letter without a response required. So it's  
7 giving guidance, but is it really a requirement? Are these  
8 requirements? We don't think it's worth spit, I guess. How  
9 do you handle a situation that if you find something in your  
10 plant that doesn't meet the guidance, it's still guidance, I  
11 guess, of a generic letter, and there's no reporting back to  
12 you. How are we supposed to feed back to you on something  
13 like this?

14 MR. ROSS: I'm trying to remember. I thought I  
15 remembered that we sent that letter out because industry  
16 wanted it.

17 MR. ARHAR: Okay. I think it's probably good  
18 guidance, but --

19 MR. MILLER: It's what it was meant to be.

20 MR. STENGER: Let me just take a crack at it from  
21 the same perspective. In my view, it's like I said earlier,  
22 I think both you and I want to do what's right for your  
23 plant. If you get something, like you say, doesn't feel  
24 that it deserves as much focus as others might, you must  
25 deal with it. You must codify it somehow. In our

1 particular situation, we have a system called the condition  
2 report system where we -- in the old days, we would give  
3 every generic letter a condition report.

4           Therefore, in our system, it was required to be  
5 addressed. So whatever mechanism you have at your utility,  
6 if you get a communication and information, then you must  
7 deal with it one way or another. You say we've looked at  
8 this, the engineering assessment is because we've got  
9 titanium pipes or whatever, that it doesn't pertain to our  
10 plant, and then just write a memo to file and close it out.  
11 That way if you get a guy coming in to look you over, if you  
12 will, in your information program and he can see that you  
13 just didn't throw it in the trash can, that you gave it some  
14 conscious and focused and professional view, but it wasn't  
15 pertinent or applicable to your plant, and then you're done  
16 with it.

17           MR. ARHAR: What's the purpose for giving generic  
18 letters that don't require responses? Are you looking -- to  
19 us, they almost become information notices, and I know from  
20 listening to your discussion that information notices -- now  
21 I understand the difference between them. But they tend to  
22 get filed in the same drawer as an info notice because  
23 there's no proactive response. We want to be reactive, but  
24 a lot of times we don't have the support of the company and  
25 the plant possibly to be as proactive.

1           MR. ROSS: In this case, I don't think there would  
2 be much difference between a no response GL and an IN. They  
3 maybe achieve the same goal, letting you know what we think  
4 about it. There were some questions and people wanted to  
5 know the answers.

6           MR. ARHAR: Specifically, then -- right.  
7 Specifically, though, if you've got non-code repairs at your  
8 plant that you feel are working, how do you get back to you  
9 guys on that?

10           MR. ROSS: There was one case where we didn't want  
11 people putting bubble gum on it, and I can't remember the  
12 details, but it was --

13           MR. ARHAR: Yeah, I --

14           MR. ROSS: It wasn't quite that bad either, but I  
15 don't know if we have -- does anyone here remember the case  
16 -- we can't help you. We'll take the comment though that  
17 maybe a no-response GL makes the thing look bigger than it  
18 should.

19           MR. ARHAR: Or smaller. I don't know. It's a  
20 glorified info notice and I think we're struggling to know  
21 how to handle it.

22           MR. ROSS: It's an unusual GL that says no  
23 response.

24           MR. ARHAR: Well, I'll tell you, 33 percent of  
25 them are no responses and we have a hard time dealing with



1 that, at least I do because, like I said, we've been filing  
2 them as an info notice.

3 MR. ROSS: Well, I appreciate the --

4 MR. ARHAR: But I see where you call them -- they  
5 have safety significance and we're trying to discover --  
6 determine what the safety significance is and can we get  
7 enforcement actions on that or something like that.

8 MR. ROSS: I appreciate your comment. I don't  
9 know that it was ever brought up in Region II. It didn't  
10 come up in Region I, so it's something new for us to think  
11 about, which we will. Carl, you had something?

12 MR. BERLINGER: No.

13 MR. ROSS: Okay. Other comments or questions from  
14 the audience?

15 MR. SHARKEY: Tom Sharkey from Union Electric. If  
16 we've got a concern with maybe a backfit analysis has not  
17 been looked at with the inspector, we can go to the region  
18 and say, hey, wait a minute, who is the expert here at the  
19 region on backfit and we need to discuss this. If I get a  
20 discussion going with NRR Project Management Office and his  
21 boss, etcetera, who is the expert at NRR, AEOD or whoever  
22 that can get involved and say, yeah, wait a minute, maybe we  
23 haven't looked at backfit analysis.

24 Is there someone that I can go to to say so-and-so  
25 is the expert, we've got to talk to him?

1 MR. MILLER: The point of contact is always  
2 initially with the PM, I would say. But I think there,  
3 frankly, is reluctance on the part of licensees to go higher  
4 if they feel that's needed. I know that that's true with  
5 respect to inspectors, but we would encourage you and I  
6 would assume that NRR would do the same, that if you start  
7 with the inspector or start with the PM and you find that  
8 you don't feel like you're being heard, then take it a level  
9 higher, and it's our job as managers to assure that there  
10 aren't repercussions from your doing that.

11 MR. ROSS: I understood the question to be who are  
12 the resident gurus on the general subject of regulatory  
13 analyses. Was that your question?

14 MR. SHARKEY: Okay. The question on guidance is  
15 not from the region, it's from NRR.

16 MR. ROSS: Right.

17 MR. SHARKEY: So I say, time out, NRR, and they  
18 say, oh, no, this is what we want you to do. Then I go in  
19 my region and say, yeah, licensee, we agree with you, but  
20 there's nothing we can do. NRR's the expert.

21 MR. ROSS: Okay. Keep going. What's the  
22 question.

23 MR. SHARKEY: So I go back to the NRR, to the same  
24 guy that's giving me the guidance, and say this is a backfit  
25 analysis possibly, where's my appeal. I'm going to same guy

1 that's trying to tell me what to do.

2 MR. BARRETT: Keep going up the chain.

3 MR. ROSS: One at a time.

4 MR. BARRETT: I just want to say one word. Rich  
5 Barrett from NRR. Quite often if you're getting guidance  
6 from NRR that appears to be a backfit, you will be getting  
7 it from the technical side of NRR. In that case, your best  
8 bet is to talk to the project side of NRR, your plant's  
9 project manager or his superior who is the project director  
10 for your plant.

11 As Carl said, if that's not working, then you can  
12 go up the management chain. Now, perhaps you have an  
13 example where the project manager for your plant --

14 MR. SHARKEY: Actually, it was his boss.

15 MR. BARRETT: Okay. His boss. In that case,  
16 you're going to have to go up through the management chain  
17 in the project organization in NRR.

18 MR. SHARKEY: And there's where we have reluctance  
19 trying to blow something -- I mean, it's all well and good  
20 and then there's an official process for appeal and  
21 whatever, but we're trying to handle this informally so that  
22 we can resolve it with informal discussion.

23 MR. BARRETT: I regard a telephone call as still  
24 informal. I don't know what else to tell you.

25 MR. PAPERIELLO: I'll tell you from the Regional

1 Administrator's office, I can't fix a problem in a region  
2 that I don't know about, and I guess I'm very much  
3 frustrated when I hear about after-the-fact there's been a  
4 disagreement and everybody's unhappy, and I never know about  
5 it until the issue is all over.

6 So I think the NRR management probably feels the  
7 same way regional management feels about it. I think they'd  
8 welcome things being flushed up the chain rather than things  
9 being rambled about for months on end.

10 MR. ROSS: And for the most part, the NRR  
11 management of whom you speak, and the regional, too, are not  
12 going to engage in anything, the smacks of retaliation.  
13 There's no crime or burden. In fact, it might liven up an  
14 otherwise dull day. Give us a call. Other comments from  
15 the audience?

16 MS. GOODMAN: Lynne Goodman, Detroit Edison.  
17 Regarding trying to coordinate items, one thing you might  
18 want to look at is some of the plants that have five-year  
19 plans and have priority schemes. A lot of us have developed  
20 detailed priority schemes in which we assign point ratings  
21 and have man-loaded over a period of five years, while the  
22 NRC requirements, guidance, whatever, plus our own items,  
23 owners' group items and so forth, over a period, and maybe  
24 that would help the NRC if you tried to do a five-year  
25 loading and what a typical utility would need to do, and

1 then adjust that as you come up with new items.

2 MR. MALSCH: Let me just say something. In this  
3 region, at least, we have extended, through a variety of  
4 forums, including an information session that we have with  
5 licensees in this region. In fact, about six months ago, we  
6 invited licensees to come in and talk to us about  
7 priorities. We have limits to what we can do, and then it  
8 does become a matter of licensing.

9 But I think at least in three of four cases over  
10 the past year or so, we have sat down with licensees, along  
11 with NRR and have looked at just what you're talking about,  
12 Lynne, and have offered opinion. And I think out of that  
13 have come some situations where licensees felt bound to do  
14 certain things that grew out of what they perceived to be a  
15 regional preference, and we were able to say, well, wait a  
16 moment, you know, that's maybe something that inspector was  
17 looking for, but viewed from a wider perspective, we  
18 wouldn't give it that same emphasis.

19 So I would encourage you to use this opportunity -  
20 - answer questions to encourage you all to, where you feel  
21 it could be of use to you, to come pester us on your  
22 priorities and we'll work out with NRR a way to do that.

23 MR. ROSS: Carl?

24 MR. BERLINGER: Within NRR over the past several  
25 months, as part of the cumulative impact review or program



1 review that we've been attempting to put together, we have  
2 gone to individual licensees and we have gone to NUMARC who  
3 then went to individual licensees to get information, actual  
4 quantitative information with regard to the resources that  
5 have been spent on previously issued generic communications.

6 In every case, we were unable to get numbers. We  
7 were unable to get quantification and the main reason, as  
8 was expressed to us, was that the utilities' bookkeeping  
9 procedures don't allow them the flexibility to identify,  
10 say, a charge item against Generic Letter 88-01, as a for  
11 instance. They would have engineering, they would have  
12 design, they would have maintenance, those types of  
13 categories. But, yet, nobody could say how much was being  
14 spent on each generic communication.

15 So it was difficult other than to make our own  
16 estimates as to what kind of resources would be required.  
17 Priority, I think, has to be a very key factor in  
18 determining how to handle regulatory, cumulative regulatory  
19 impact. Other areas would be schedule and so on. So these  
20 are all being considered, but priority is going to be a very  
21 key issue in that.

22 MR. ROSS: Anything else? Yes, sir?

23 MR. BAUER: I'd just like to, again, reiterate  
24 some comments I've heard made here. Forgive me if I get a  
25 little emotional on these things. I'm not really trying to

1 be adversarial. These things create a lot of anxiety in our  
2 lives out there at the plants. So with that in mind, we  
3 spend -- I don't remember who made the comment. I'm Scott  
4 Bauer from Portland General Electric.

5 We spend 100 percent of our time on NRC issues. I  
6 do my non-NRC stuff on overtime, budgets and that type of  
7 thing. We've heard a lot of comments, and Mr. Paperiello  
8 just made one, and our resident inspectors also made the  
9 same comment about threatening us with ideas that if you  
10 don't follow recommendations, you're going to be in all  
11 sorts of trouble. And if you don't implement information  
12 notices and that, you're going to be in all sorts of  
13 trouble.

14 Well, I'd just like to put out the idea that  
15 hindsight is 20-20. When you're actually working through  
16 these things and you've got 100 of these things and there's  
17 really no priority given to them or if there's an  
18 information sitting on our table that's 18 months old, it's  
19 not because we didn't want to work on it. It's because we  
20 tried to prioritize it in the midst of all the other things  
21 we're doing and it sat.

22 I would also suggest, and I was going to bring  
23 this up before, that we are what I would call daily  
24 subjected to backfits by the inspection people. I think it  
25 has to do with a comment that Mr. Ross made, that CRGR

1 members do not represent their offices, but themselves. I  
2 think that philosophy exists throughout the NRC, that  
3 everybody that comes to our plant represents themselves and  
4 their own ideas, and there is very little management  
5 oversight given to some of the things that we see coming out  
6 to us in inspection reports.

7 Our resident inspectors have basically free rein  
8 to impose anything they want on us. That's probably a  
9 little harsh statement, but that's -- I think the  
10 fundamental underlying problem to this thing is something  
11 we've already talked about here, and that is that our  
12 industry is subject to what I call vague regulation. I came  
13 from the Navy. In the Navy, we had very specific things you  
14 had to meet and when the audit team came on board, you knew  
15 exactly what they were going to look at.

16 There were very specific regulations, and your  
17 citations always came to those very specific regulations. I  
18 think the reason our industry is having so much problem and  
19 the reason that we're not proceeding with new plants and  
20 that is because vague regulation exists where you don't know  
21 what the rules are, and trying to fight out there every day  
22 to make sure we're in compliance, and it's virtually  
23 impossible to tell when we are in compliance because the  
24 regulations are vague.

25 And there's always new interpretations coming out

1 and each person has their own interpretation. So I think  
2 those are some issues that we need to work cooperatively  
3 together on as an industry with NUMARC involved to try to  
4 sharpen our regulations so that we can better know when we  
5 are meeting the criteria.

6 MR. ROSS: I was getting ready to urge my NRC  
7 colleagues to bite their tongues, because we could talk  
8 about that all evening. I'm not going anywhere tomorrow.  
9 I'd be glad to discuss that all evening. But unless you  
10 just have an irresistible compulsion to speak, I'd just as  
11 soon not open that door. How resistible is your compulsion?

12 MR. PAPERIELLO: All I want to say, I think you  
13 misunderstood what I said. The inspectors, if they are out  
14 there imposing backfits or behaving inappropriately, and I  
15 can't do anything about it unless it's brought to my  
16 attention. It can't be vague. I have to have some  
17 specifics. Two, with respect to information notices, what I  
18 said is you have an obligation to run your plant safely.  
19 That means you have to act on all sources of information.

20 We're just one of them. I can't relieve you of  
21 that. The state can't relieve me of my obligation to drive  
22 my car safely. That's all I wanted to communicate on  
23 information notices. You have to use the information. What  
24 happens if we didn't send them? Then people would say  
25 you're aware of a problem and you didn't tell the licensees

1 about it. So it works both ways.

2 MR. ROSS: I'll tell you what happens. The same  
3 thing happened at NRC 12 years ago. You get sued for \$4  
4 billion and \$10 million because we didn't stop TMI. We  
5 didn't pay, by the way. You had a question?

6 MR. SHUKULA: Yes, sir. Girija Shukula from  
7 Detroit Edison. I would like to make a quick comment about  
8 the time estimates required for responses to these generic  
9 communications.

10 MR. ROSS: Did you say time estimates?

11 MR. SHUKULA: Right. We have seen numbers like  
12 two hours, four hours, eight hours required for licensees to  
13 prepare a response to this generic letter or bulletin. We  
14 spend hours and hours on these things, so I don't know where  
15 these numbers come from. Maybe it's time to take a hard  
16 look at those numbers and be realistic, what we really do to  
17 respond to these.

18 MR. ROSS: I think we always have a little  
19 standard clause in there that we won't comment on these time  
20 estimates, don't we? Don't we put that in there as a  
21 general rule?

22 MR. MALSCH: I think there's -- called a  
23 boilerplate language in bulletins and generic letters, and  
24 it follows immediately after the time estimate for response.  
25 It's on the clearance information. It basically says if you



1 disagree with these estimates, here's a name or a phone  
2 number of somebody to contact.

3 MR. ROSS: Let us know.

4 MR. MALSCH: Let us know, and that information  
5 gets fed back to us.

6 MR. SHUKULA: Okay. I know that, but I thought  
7 this is the right time to say something about that. Thank  
8 you.

9 MR. ROSS: Next? Other comments?

10 [No response.]

11 MR. ROSS: I think it's been a highly illustrative  
12 day, hard working day, especially since you didn't get a  
13 break this afternoon. I assure you that we take it  
14 seriously and we'll be reading the transcript, as well as  
15 some of the other areas, in trying to decide what to do  
16 next.

17 I didn't mention at the beginning of this morning  
18 where you would next see some work product out of these  
19 workshops. It will come one of two places. The second half  
20 of the workshop, which is Event Reporting, may result in a  
21 change to 50.72 or 50.73. If that's what we propose, we  
22 would write a Commission paper that explained why we thought  
23 a rule change was necessary, or perhaps it would be a rather  
24 minor rulemaking and it would only be done by the Executive  
25 Director.

1                   We'd have attachments which summarize what we  
2 found out about event reporting, and that might happen  
3 around the end of the year. By reading this public  
4 document, you could see what it was we did with the  
5 workshops with respect to event reporting.

6                   As far as backfitting, I'm not sure that we will  
7 have a Commission paper to propose any change in agency  
8 policy, but I do suspect we'll have some sort of a  
9 Commission paper that digests these workshops and, if the  
10 Commission is willing, then we'd have a public meeting and a  
11 briefing, and on that day, the Commission paper would be  
12 made available.

13                   Again, it's hard to say when that might occur, but  
14 it wouldn't be before the first of the year. Again, thank  
15 you all for coming and we'll see some of you tomorrow.

16                   [Whereupon, at 4:05 p.m., the workshop was  
17 adjourned.]

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission

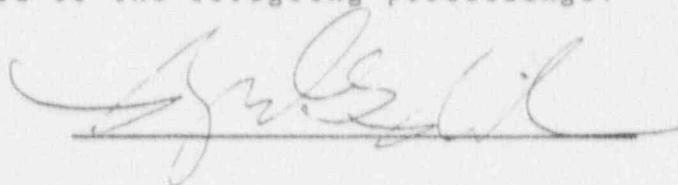
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