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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

DISCUSSION OF REGULATORY REFORM TASK FORCE
ADMINISTRATIVE PROPOSALS - BACKFIT RULE

Docket No.

PUBLIC MEETING

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UNITED STATES OF AMERICA
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DISCUSSION OF REGULATORY REFORM TASK FORCE
ADMINISTRATIVE PROPOSALS -- BACKFIT RULE

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PUBLIC MEETING

- - -

Nuclear Regulatory Commission
Commissioners' Conference Room
11th Floor
1717 "H" Street, N.W.
Washington, D. C.

Thursday, April 14, 1983

The Commission met in public session, pursuant to notice, at 2:06 o'clock p.m., NUNZIO J. PALLADINO, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

- NUNZIO J. PALLADINO, Chairman of the Commission
- VICTOR GILINSKY, Member of the Commission
- JOHN F. AHEARNE, Member of the Commission
- THOMAS ROBERTS, Member of the Commission
- JAMES K. ASSELSTINE, Member of the Commission

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

- S. CHILK
- J. TOURTELLOTTE
- J. MONTGOMERY
- H. DENTON
- E. CASE
- D. EISENHUT
- G. CUNNINGHAM

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P R O C E E D I N G S

1
2 CHAIRMAN PALLADINO: Good afternoon, ladies and
3 gentlemen. This afternoon's meeting is to discuss the revised
4 draft staff requirements memorandum to the NRC staff which
5 would provide Commission guidance on the administration of
6 backfit decisions and the Commission's backfit rule 10 CFR
7 Part 50.109.

8 Time permitting, we will also resume our discussions
9 on the proposed rule to revise and supplement Section 50.109.
10 We have asked that the NRC staff office directors most
11 directly affected by backfit policy be present today to
12 respond to Commissioner questions.

13 I would like Jim Tourtellotte to summarize the
14 provisions of the draft SRM. I have a few suggested changes
15 of my own which I have marked up and can distribute to the
16 Commissioners when the time comes. We also have a memo from
17 Commissioner Ahearne making some other pertinent comments and
18 when we get to that point, I have an alternate proposal for
19 paragraph six based on some of his suggestions.

20 Why don't I first let Mr. Tourtellotte summarize the
21 provisions and I will bring up the comments at the appropriate
22 time.

23 COMMISSIONER ASSELSTINE: I have sort of a broader
24 concern, too, after Jim's presentation.

25 CHAIRMAN PALLADINO: Fine. Are there any opening

1 comments?

2 (No response.)

3 CHAIRMAN PALLADINO: All right, Jim.

4 MR. TOURTELLOTTE: By way of introduction, let me
5 say that this Staff Requirements Memo as it is currently
6 drafted, we had an agreement between the staff and those of
7 us who are working on backfit in the task force on the contents
8 of it, so all of these contents are words upon which at least
9 when I last discussed it with the staff, we were in full
10 agreement.

11 CHAIRMAN PALLADINO: We will change that.

12 (Laughter.)

13 MR. TOURTELLOTTE: As you will note, there are six
14 paragraphs. The first paragraph briefly says that we will
15 use the operating license as a baseline for making a determin-
16 ation as to whether to apply Section 50.109 as it now exists.
17 That is, all operating plants after the issuance of this SRM
18 will have that backfitting rule applied to them.

19 Paragraph two discusses generic requirements and
20 the purpose of that paragraph is basically to answer the
21 question which Jim had relative to what are you going to do
22 with generic requirements and are we going to have redundant
23 reviews or are we not going to have redundant reviews. The
24 purpose is to make it clear that we are not. The generic
25 requirements will be reviewed separately.

1 CHAIRMAN PALLADINO: You used the word, "redundant
2 review." I don't like the word, "redundant" with the word,
3 "review."

4 COMMISSIONER AHEARNE: Duplicative?

5 CHAIRMAN PALLADINO: When we get to that, I will give
6 you my suggested changes.

7 MR. TOURTELLOTTE: The idea is that we would not have
8 more than one review of the same subject.

9 COMMISSIONER AHEARNE: You could just say that.

10 MR. TOURTELLOTTE: The third paragraph tells you
11 what procedures will be followed in applying 50.109 to operating
12 licenses and that will be section IV-B of the CRGR Charter
13 approved by the Commission June 16, 1982.

14 Paragraph four was in response to some suggestion that
15 we outline in the SRM exactly what we mean by regulatory
16 requirements.

17 Paragraph five simply says that the EDO will provide
18 the Commission with a plan describing the procedures that the
19 staff intends to use in implementing this SRM.

20 Paragraph six is a paragraph which specifies that a
21 study will be conducted and completed hopefully by July 15th
22 to determine what, if anything, can be done with those plants
23 where they are between the issuance of the construction permit
24 and the operating license. o

25 That, as I indicated, we had agreed upon as being what

1 would be in the contents of the SRM. On the face of my
2 transmittal note, I also suggested that the Commission might
3 want to consider whether this study would be coordinated
4 between the staff and the task force and I stated the reasons
5 why I thought that might be beneficial. I think it would save
6 time to do that and it would also give the benefit of some
7 other expertise perhaps that comes from outside the staff while
8 they are developing it.

9 It seems to me that it would be a better idea to try
10 to coordinate it than to have the staff develop their position
11 totally independent presented on July 15 and then require a
12 rather considerable study of that view and the background.

13 (At this point in the proceedings, Commissioner
14 Gilinsky entered the meeting.)

15 MR. TOURTELLOTTE: That pretty much concludes what
16 I have to say about this. Of course, we did receive a memorandum
17 today concerning the proposed backfitting SRM from Commissioner
18 Ahearne and he is in a position to explain that one.

19 COMMISSIONER ASSELSTINE: That sounds reasonable to
20 me.

21 MR. TOURTELLOTTE: I certainly would not try to
22 explain your position.

23 COMMISSIONER AHEARNE: I would be delighted to.
24 My position is simply that for a long, long time^e and I tried to
25 give some of the background, there has been a struggle to try to

1 get defined what it is that is committed to a time of
2 construction permit. I was very sympathetic to the comments
3 of Mr. Stello that I read in the transcript of one of the
4 meetings where he was essentially saying that it is going to
5 be very, very difficult to go through that kind of a review
6 unless one has the thing fairly clearly defined.

7 So we looked at what had happened and it was brought
8 to my mind that we had some time ago dropped into the abyss
9 and the Commission asked the staff to develop a particular rule
10 by December 1, 1981 and it never reappeared.

11 MR. CASE: It shows you how difficult it is.

12 (Laughter.)

13 COMMISSIONER AHEARNE: Yes.

14 CHAIRMAN PALLADINO: You also made another point
15 that you didn't think that this ought to go out for public
16 comment. We should just implement it because it is an interim
17 position.

18 COMMISSIONER AHEARNE: Right.

19 CHAIRMAN PALLADINO: With which I would be sympathetic,
20 but I would like to see it published.

21 COMMISSIONER AHEARNE: Yes.

22 COMMISSIONER ASSELSTINE: I have a somewhat broader
23 concern about the staff requirements memo. To a certain extent
24 it takes off on the first point that you made, John, and that
25 is, given the fact that it is going to be almost impossible to

1 use the construction permit as a baseline or to apply this to
2 plants before they receive an operating license, it struck me
3 that the staff requirements memo and what we are trying to do
4 here, in essence, amounted to an attempt to force fit this
5 process onto 50.109. I wonder if it just wouldn't be simpler
6 to say or have a simpler staff requirements memo that says
7 basically what we want is for operating reactors, we want to see
8 done a cost benefit analysis using the factors that are used by
9 CRGR and done in the same manner as that done by CRGR. That
10 analysis would be the basis for the judgment on whether on
11 balance the requirement should be imposed rather than trying
12 to say, we are going to use 50.109 but we are attempting to
13 take some things out of 50.109 and change the things that are in
14 it, simply have a simpler staff requirements memo that says,
15 for new requirements, that the staff intends to impose before
16 imposing them, that you do a cost benefit analysis using the
17 factors outlined in the Charter rather than trying to work things
18 into and out of 50.109.

19 It just seems to me that it is more complicated and
20 cumbersome this way and it would be more straight forward to
21 do it the other way.

22 CHAIRMAN PALLADINO: Let me tell you what I have here.
23 You have to permit me to use a two-step process because things
24 happened in two steps. One, I made some comments^o to modify the
25 existing staff requirements memo and I am going to hand out

1 copies of that. Then I got John Ahearne's memo and there were
2 some points I liked in it and so after we see what changes I
3 had proposed in the first place, then I would hand out to you
4 my second part and see if we have an agreement. I think I have
5 about ten copies here.

6 (Whereupon, the previously mentioned documents were
7 distributed.)

8 CHAIRMAN PALLADINO: The first comment is to add on
9 paragraph one, "No action is being taken at this time with
10 respect to plants holding construction permits. The Commission
11 will revisit that subject on the basis of the completed staff
12 study called for in paragraph 6 below." That seemed worth
13 specifying early.

14 Then on the bottom of the first page, cross out the
15 word, "redundant," but then explain more clearly that nothing
16 in the directive shall require the staff to make a review for
17 an individual facility of generic requirements approved by the
18 EDO based on a review by CRGR unless "review of site specific
19 issues was postponed to the site specific stage" or the EDO
20 determines that special consideration is needed for individual
21 facilities.

22 The word, "that" on the top of page two is misleading
23 and I think the word, "the" is less misleading.

24 I had a problem with paragraph four because it
25 defines as regulatory requirements things that I have been

1 saying and others have been saying are not regulatory requirements
2 so I would insert, "for the purpose of this SRM."

3 Then if we keep six in accordance with your request,
4 I suggested inserting, "In conducting this study the staff shall
5 consult with the Regulatory Reform Task Force."

6 After I got Commissioner Ahearne's comments, I made
7 the following suggestions. I would first go back and delete
8 the last sentence in paragraph one that I just added.

9 (Laughter.)

10 CHAIRMAN PALLADINO: I would then delete paragraph
11 six and substitute the following, "With respect to plants
12 holding a CP, any change embodied in the Standard Review Plan
13 that is in effect on this date shall not be considered to be a
14 backfit. Any future change to the SRP shall be considered to
15 be a backfit and shall be reviewed by the CRGR. Any plant-
16 specific requirement that is in addition to the SRP shall be
17 considered to be a backfit. The Plan called for in paragraph 5
18 shall cover backfitting of CP holders as described above."

19 COMMISSIONER AHEARNE: That is acceptable.

20 CHAIRMAN PALLADINO: That picks up your thought?

21 COMMISSIONER AHEARNE: Yes.

22 CHAIRMAN PALLADINO: It is a little more definitive
23 and maybe we will avoid undue hardship in making this study.
24 I don't know if the staff has copies. If not, we can make
25 extra copies.

1 MR. CHILK: They have them.

2 CHAIRMAN PALLADINO: So my proposal would be to take
3 a combination of first step and the second step.

4 COMMISSIONER AHEARNE: That shows balanced good
5 judgment and I think I can support that.

6 CHAIRMAN PALLADINO: All right.

7 COMMISSIONER AHEARNE: I would like to get a reaction
8 from the staff obviously.

9 CHAIRMAN PALLADINO: That is why I wanted to make sure
10 that they had a copy. It wasn't invented until about 20 minutes
11 ago.

12 I think this is somewhat in keeping with what Victor
13 Stello had said last time. If we had a cut off for these
14 things, he could work with it and the baseline using the SRP's
15 did seem like a good suggestion.

16 COMMISSIONER ASSELSTINE: Why doesn't Harold and Ed
17 and Darrell come up to the table.

18 COMMISSIONER AHEARNE: They prefer to mutter in the
19 background.

20 MR. EISENHUT: We are trying to understand what that
21 paragraph means.

22 CHAIRMAN PALLADINO: All right.

23 COMMISSIONER GILINSKY: They were going to tell us
24 at some point what the problems were with 50.59 and why it
25 hadn't been implemented in the past.

1 MR. TOURTELLOTTE: I think one thing that I would like
2 to know the answer to relative to the current Standard Review
3 Plans is, for instance, if we take the language in this new
4 paragraph six, does that mean that there is an immediate ratchet
5 of all items which are in the Standard Review Plan to which the
6 licensee has not yet committed and does the licensee if this
7 paragraph is put into effect, is the licensee thereafter pre-
8 cluded from taking exception to any part of the Standard Review
9 Plan or is it thereafter cast in concrete or with rebar and
10 appropriately, that this is the only thing that they can do?

11 COMMISSIONER AHEARNE: We have a regulation on the
12 books now that requires for any application -- I guess that is
13 an OL application -- that is docketed after May 17, 1982. They
14 have to give a comparison to the Standard Review Plan.

15 MR. CASE: It would compare but not comply.

16 COMMISSIONER AHEARNE: Right. That then will give
17 a baseline which you can work against.

18 CHAIRMAN PALLADINO: My feeling would be if they took
19 exception to the Standard Review Plan at some point and you
20 approved it, I would say, and the basis was the one that
21 existed on April 14, 1983, that that would not be a backfit.

22 COMMISSIONER GILINSKY: Jim is asking about the
23 unapproved ones.

24 MR. TOURTELLOTTE: The unapproved and the unanalyzed
25 parts of the SRP.

1 MR. CASE: They are all approved.

2 COMMISSIONER GILI.SKY: At this end.

3 MR. CASE: The things that are in there have been
4 approved.

5 MR. TOURTELLOTTE: They are not all analyzed though.

6 MR. CASE: They are analyzed. They may not have been
7 analyzed your way, but they have been analyzed.

8 COMMISSIONER AHEARNE: I was looking for something
9 that we could take as a baseline and there it is.

10 MR. TOURTELLOTTE: Analyzed beyond "this looks good
11 to me" kind of an analysis.

12 CHAIRMAN PALLADINO: I don't think that paragraph
13 says that you don't analyze them. It was just trying to define
14 what a backfit was for a CP. I think all of the other things
15 and maybe I haven't seen all the words that might have to be
16 changed --

17 MR. CASE: As I would read that, it would say for
18 a fellow who comes in and doesn't meet the current version
19 of the Standard Review Plan, that the staff could if they felt
20 it was needed from a safety standpoint and we always take this
21 into consideration, require him to meet the Standard Review Plan
22 without a backfit analysis. That is the way I read it.

23 COMMISSIONER AHEARNE: And if he did not want to meet
24 the Standard Review Plan, he would have to have the analysis.

25 COMMISSIONER ROBERTS: How many CP plants are there

1 that fall in that category?

2 MR. CASE: That don't meet the current --

3 COMMISSIONER ROBERTS: Yes.

4 MR. EISENHUT: That are required to be evaluated
5 against the current version of the SRP?

6 COMMISSIONER ROBERTS: Yes.

7 COMMISSIONER AHEARNE: Probably a lot.

8 MR. EISENHUT: There will be a lot.

9 COMMISSIONER AHEARNE: Because they are coming in
10 with their OL applications.

11 MR. EISENHUT: No. Any one that is docketed now,
12 has to undergo the May 17, 1982 SRP rule deviation evaluation.

13 COMMISSIONER AHEARNE: That's right.

14 MR. EISENHUT: But all of the OL's in house now
15 and the vast majority of pending future OL's, the majority of
16 them are already docketed. In fact, I think there is probably
17 no more than a dozen units to be docketed in the future after
18 this point. It would be all of the plants where you have
19 multiple units, the Palo Verde 1, 2 and 3 which stretch out
20 for another five or six years to the last unit would fall in
21 that category.

22 CHAIRMAN PALLADINO: I am not sure that I understand
23 the implications of what you are saying, Darrell.

24 MR. CASE: This thing as I read it would be applicable
25 to a fellow who we had already issued an operating license. He

1 has a CP. He application for an OL has been under review for
2 12 or 18 months and yet still this would apply to him.

3 COMMISSIONER ROBERTS: In other words, he has to meet
4 the current Standard Review Plan.

5 MR. CASE: He has to meet it if the staff thinks he
6 has to meet it without going through an analysis.

7 MR. EISENHUT: If you look at the plants in the
8 Beville Report, for example, that just happens to be the listing
9 of the OL plants under review today. There are only about three
10 or four of those that were docketed after May of 1982. You can
11 certainly count them on one hand. All of the other plants, the
12 OL reviews are presently underway. They are not today required
13 to meet the latest version of the Standard Review Plan. Today
14 they are not even required to be evaluated and have all of the
15 deviations evaluated.

16 COMMISSIONER AHEARNE: Right.

17 CHAIRMAN PALLADINO: That's correct.

18 MR. EISENHUT: The way I would read this would be
19 that if the staff decided that from a safety standpoint, a
20 particular Standard Review Plan upgrade or meeting would be
21 appropriate, then the staff could do it without going the
22 formal process as articulated in the previous five paragraphs,
23 that is the rigorous cost benefit analysis by CRGR. That is the
24 way I read that paragraph.

25 COMMISSIONER ASSELSTINE: Yes. I think that is right.

1 MR. CASE: I don't quite remember who the suggester
2 was, but with all due deference, I would suggest that this might
3 be something that the study group consider. I would hate to
4 jump in or jump out.

5 CHAIRMAN PALLADINO: Yes. I am a little leery myself.

6 COMMISSIONER AHEARNE: What I was willing to use was
7 for those plants that do provide the comparison against the SRP,
8 that that then is now a baseline.

9 MR. CASE: It is a clear baseline and it has a lot
10 of advantages from that standpoint. I am not sure of all the
11 other implications that go along with doing this so quickly.
12 As I say, I think it would grant the staff a lot more freedom,
13 authority, or whatever the right word is and perhaps that is
14 what Mr. Tourtellotte had in mind in his original proposal.

15 MR. TOURTELLOTTE: I don't know about that. I do
16 agree with Ed. The problem is that it is so intricate and it
17 is so complicated that I was going to suggest earlier that the
18 suggestion that you had made and I think I would suggest now
19 that this suggestion also might be something that the staff
20 would want to study and come up with some kind of a proposal
21 and be able to talk it out and be able to work it out so
22 that we know precisely where we are going and know exactly
23 how we are going to apply this because if we give general
24 guidance to the staff without telling specifically what it
25 means, then we are going to be back into the mess that we have

1 been in all along.

2 COMMISSIONER GILINSKY: The proposal is not complex.
3 The proposal is simplicity itself.

4 MR. TOURTELLOTTE: Yes. The proposal is very simple
5 but the question is what does the staff do with it and I don't
6 think right now we have a clear picture.

7 MR. CASE: One shouldn't be under the impression that
8 the process has no controls now. The process has controls. I
9 personally believe that when the study looks at those it might
10 well conclude that there are enough and they generally include
11 discussions with the licensee or the CP holder at the time
12 saying, is there any staff position that he doesn't agree with
13 and he can appeal the decision and it will be considered by
14 successive levels of management based on cost-benefit analysis
15 or any argument that he wants to make up and to the office
16 director.

17 It relies on applicants to disagree. The system that
18 Jim is trying to construct relies on only the staff doing all
19 of the work. It doesn't take into account the possibility that
20 the licensee might agree with it and so why are we going through
21 all this.

22 COMMISSIONER GILINSKY: Are you talking strictly about
23 pre-GL plants or just more generally?

24 MR. CASE: It is more specifically in the CP review
25 process.

1 MR. DENTON: I think there are two or three points
2 like that that cut across this. One is, let's take Salem. How
3 would you read this to apply to Salem? Let's take the first
4 one, the changes we have all talked about to be needed. If we
5 are not careful, we are going to create a gridlock where all
6 the changes that everyone would agree on have to be extensively
7 evaluated. In 1983, we are spending about a half a man year
8 and \$50,000 per issue to do the type of regulatory analysis
9 that is wanted.

10 COMMISSIONER GILINSKY: Already.

11 MR. DENTON: Already. If you ask the licensee to do
12 something that is an improvement because we have learned from
13 experience or research or whatever basis and he agrees to,
14 then do you really want to go through and document it. If he
15 is asked at the low level, he could appeal it. This process,
16 in effect, would require that level of expenditure on almost
17 every new action taken across the board.

18 COMMISSIONER AHEARNE: If it were a requirement.
19 As I read it, there is nothing that says that if a licensee
20 wishes to make an improvement or a modification and you people
21 have looked at and agreed that it is safe to do it and he wants
22 to go ahead and do it without you making a change in the
23 requirement.

24 COMMISSIONER ASSELSTINE: But, Joh, that order is a
25 requirement within the definition of this thing, everything in

1 that order whether it is confirmatory or otherwise.

2 COMMISSIONER AHEARNE: It it is a change that requires
3 an amendment to the license, but if it isn't a change that
4 requires an amendment to the license, why can't he do it?

5 MR. CASE: He can do that without even asking if
6 it doesn't require an amendment to his license.

7 COMMISSIONER GILINSKY: It seems to me you do have to
8 give an answer to that question. You can't review the Salem
9 requirements or any similar -- we don't need to get into
10 any specifics -- as an opportunity for the licensee to volunteer.

11 MR. DENTON: Some of these are clearly backfit issues,
12 things that we didn't require before, we were not that smart, we
13 want to make a number of changes. He has agreed to make them
14 because he perceives them and then we have an order, a literal
15 reading of this, I think would require that I do that kind of
16 analysis on each issue.

17 COMMISSIONER AHEARNE: A lot of the things that you
18 had the licensee do in Salem are things that hea has to do to
19 make sure he lives within the regulations.

20 MR. DENTON: Some are and some aren't.

21 MR. CASE: The current definition of the regulations.

22 COMMISSIONER AHEARNE: The regulations that he has his
23 license under.

24 MR. CASE: Some of them aren't, John. There is more
25 frequent testing to be required at Salem than any of the other

1 plants.

2 MR. EISENHUT: Yes, because the definition that was
3 used on number one is the operating license and look at Salem 1,
4 it was issued seven years ago, and certainly the testing, for
5 example, and the tech specs is no where near to what it is
6 that came up on the second unit. This backfit would be a backfit
7 on both units.

8 MR. DENTON: I think we need to examine this one about
9 optional. In other words, do you want the staff to do it even if
10 the utility sees the wisdom of it. I think I read it to say
11 that it imposes any time we want a new requirement. I think
12 you five didn't hesitate this morning to suggest new backfits on
13 Salem and at the same time, today we are talking about each
14 one would require this kind of effort is the way I read this.

15 COMMISSIONER AHEARNE: What backfit did we suggest
16 this morning?

17 COMMISSIONER GILINSKY: I suggested one.

18 COMMISSIONER AHEARNE: He said we five.

19 MR. DENTON: I meant collectively.

20 COMMISSIONER AHEARNE: But that is collectively.
21 I was wondering which collectively -- individually.

22 MR. CASE: Individually.

23 MR. TOURTELLOTTE: I think there is a misunderstanding
24 at least where I was going. I don't really believe at least for
25 those requirements that have been made to date and have been

1 committed to, I didn't want to suggest that we should now go
2 back and analyze it. I don't think anything in here suggests
3 that.

4 MR. CASE: We haven't gotten to that point. We
5 haven't taken the step yet on Salem.

6 MR. TOURTELLOTTE: The other business, too, the
7 question about what we do with those things that an applicant
8 might commit to, I think that is something that we want to
9 consider very carefully for a couple of reasons. One, I think
10 there should be an avenue open between the licensee and the
11 staff that we can agree and say that is the sort of give and
12 take in the ordinary regulatory process that I think is very
13 important.

14 Certainly if the applicant sees something that they
15 can do, they might want to do that for operational purposes
16 as well and certainly if there is no impairment to safety,
17 they should be allowed to do that.

18 The other thing that I think we have to be careful
19 of at least the criticism that has been levied against us in
20 the past is that in some instances they get put in a position
21 of economic leverage where they can't do anything but agree.
22 That is the sort of thing that we want to avert if at all
23 possible.

24 MR. DENTON: I think the issue needs to be redressed
25 so that they have some opportunity. But I hate to see a system

1 which would require us to get over that threshold on every change.
2 I would prefer a system whereby if it got appealed, let's say,
3 to divisional level or my level and we couldn't resolve it
4 between us, then we would revert and go do this and make it
5 official.

6 In effect, I think you have now swung the pendulum
7 all the other way. You put the entire burden of new changes
8 on the staff.

9 CHAIRMAN PALLADINO: I thought with regard to the
10 operating licenses, there was agreement but I gather now there
11 isn't. Is that right?

12 MR. CASE: We are just citing practical difficulties
13 with such a system.

14 COMMISSIONER AHEARNE: Ed says, yes, there is disagree-
15 ment.

16 MR. CASE: Certainly it can be done. Anything can be
17 done.

18 CHAIRMAN PALLADINO: The impression I got when we
19 started was that basically you were in agreement with this
20 document.

21 MR. DENTON: It is a big advance from what it started
22 with.

23 (Laughter.)

24 MR. DENTON: We can live with whatever the Commission
25 wants to impose.

1 COMMISSIONER AHEARNE: He sounds like a licensee.

2 MR. DENTON: I think this one point about options,
3 should it be required when it is optional or not, kind of
4 structures the process. This seems to give it no flexibility
5 and we would have to do it all. I would have to question
6 whether you really want to do it for OL's or CP's. That process
7 is going very smoothly. I hear very little appeals. It is
8 very seldom that anyone appeals in that process. Standard
9 Review Plan, in the years of experience the utilities have had
10 now meeting this, have cut out that process.

11 I would just delete the requirements to look into
12 that area unless somebody knows of a reason to do it.

13 CHAIRMAN PALLADINO: What area?

14 MR. DENTON: The CP/OL area. That area is coming
15 right along. If I had my drothers, I would pick a statement
16 like Commissioner Asselstine's or do it like that.

17 COMMISSIONER GILINSKY: It seems to me one has to have
18 a view or some view of a process and how it is functioning. One
19 view you hear often expressed is that it is wildly out of
20 control and that there are excessive requirements completely
21 out of line with any conceivable benefits that flow from them
22 and my view is that the system is pretty reasonable but could
23 be improved to a certain extent, make it more orderly, perhaps.

24 It seems to me that Jim's view flows from or his
25 position flows from the former view, that things are really

1 very far out of whack and you really need a very tight control
2 to bring them back to a reasonable point.

3 We have to decide. These things have safety
4 implications one way or another and where do you strike the
5 balance. We have not had any sort of presentation other
6 than reports that people complain. Of course, people complain.

7 CHAIRMAN PALLADINO: In the trade journals, one finds
8 numbers. There were some recent numbers where there are claims
9 that the backfitting requirements or the NRC requirements --

10 COMMISSIONER GILINSKY: That just isn't a basis for
11 us to take this sort of action, I don't think.

12 CHAIRMAN PALLADINO: Maybe what you are suggesting
13 is that we get more definitive data on that.

14 I would like to understand the process a little
15 better.

16 MR. DENTON: If you look at the costs that have been
17 reported and I guess the questionnaire that Jim sent out did not
18 go through this process of risk that he would have us go through
19 but a lot of --

20 COMMISSIONER AHEARNE: But he made it very clear in
21 his letter that it wasn't a demand for information, right?

22 MR. TOURTELLOTTE: Correct.

23 MR. DENTON: My perception in reading those things
24 is that they do go back to issues that were before the
25 Commission and dealt with prior to the CRGR. I think if you

1 look at the impact of that in regularizing the process for new
2 generic issues and safety issues, that process is working and
3 new issues that apply to both OR's and OL's or anyone or going
4 through there and that process is achieving it. Most of these
5 calls were rules of security, fire protection, equipment
6 qualification and things that the Commission considered very
7 -arefully.

8 I think the CRGR is being very effective and I guess
9 I only raise the question of do you need to add on more of
10 these types of checks to a process that I think these calls
11 were associated with activities of a few years ago.

12 MR. TOURTELLOTTE: What we are talking about though
13 is devising a new process, a process that will put greater
14 certainty into our regulatory system and you can't talk about
15 the processes going well because we had taken measures in the
16 past several months when the basis for doing that is simply
17 perhaps a little shift in the management.

18 COMMISSIONER GILINSKY: Could you give us an example
19 of such measures?

20 MR. TOURTELLOTTE: In what regard?

21 COMMISSIONER GILINSKY: I may have misunderstood you.
22 I thought you were saying that we imposed requirements on the
23 industry that were result of a slight shift in management here,
24 I assume.

25 MR. TOURTELLOTTE: What Harold is saying is this used

1 to be a problem with this but it isn't a problem any more. The
2 process is going well so we don't have to change it. What I am
3 saying is that the process if it has changed at all and I feel
4 like it has probably changed somewhat but I am not sure what the
5 magnitude of that change is, but even if it is changed, it
6 hasn't changed because we have established new standards for
7 staff conduct.

8 It has changed only because somebody in the management
9 is responding to the sum criticism that has been made.

10 We have changed the system out of reactivity but we
11 do not have a blueprint for the future. What we need is a
12 blueprint for the future, how we are going to deal with it.

13 COMMISSIONER GILINSKY: We have a system. We have to
14 have a feeling about whether it is working well or not working
15 well. You have your view. I must say that I can't tell whether
16 the number of requirements that perhaps shouldn't have been
17 imposed is one percent or ten percent or fifty percent. My
18 inclination is toward the low end.

19 There is nothing to base any of this on. Ultimately
20 it comes down to a safety judgment unless you have some
21 different scheme for deciding these things and none of this
22 has been presented to us. We don't have a picture of a reactor
23 and a list of requirements and some demonstration that half of
24 them shouldn't have been on there or whatever. If you had that,
25 you could say, well, we need a different system.

1 MR. TOURTELLOTTE: I understand that. I am concerned
2 as anybody about the lack of information about it. It is very
3 difficult to get this information for a number of reasons. One
4 is that the records haven't been kept in this way and no one
5 has been concerned about it. But you don't have to have -- you
6 don't really have to have -- a whole lot of information to
7 understand the simple logic that what we have done in many
8 instances in the past and the requirements are still there
9 is that we have imposed requirements without making an analysis
10 and therefore, without making the analysis, we have no way of
11 knowing whether say by through systems interaction, whether that
12 has a positive effect or safety, a neutral effect or a negative
13 effect.

14 COMMISSIONER GILINSKY: The system has been a
15 relatively informal one and it is becoming increasingly formal
16 over the years. It is now a great deal more formal than it was
17 ten years ago. That has to do with a lot of things, the way
18 it was set up.

19 MR. TOURTELLOTTE: I agree, but don't you really
20 believe that we ought to know when we impose a requirement that
21 is different than one that is suggested, that we ought to know
22 whether it has a negative effect on safety.

23 COMMISSIONER GILINSKY: In principle, I have to agree
24 with you. One wants to evaluate things as well as you
25 conceivably can. It is also true just as we are accused of

1 doing in other contexts, that you can review things to death,
2 things that are sensible things.

3 You have to strike a balance. I am just not
4 persuaded that things are so bad that you need these drastic
5 solutions.

6 CHAIRMAN PALLADINO: Let me go back. Harold, could
7 you answer for me what in paragraph two, for example, is a
8 problem. "Proposed changes in generic requirements, for which
9 backfitting decisions and findings are required by 10 CFR 50.109,
10 shall be submitted for review by the CRGR in accordance with
11 the CRGR Charter." Aren't you doing that now?

12 MR. DENTON: That is pretty much the way it is
13 working. Unresolved safety issues are going through there, yes.

14 CHAIRMAN PALLADINO: "Proposed changes in regulatory
15 requirements applicable to only one or a few specific plants,
16 for which backfitting decisions and findings are required by
17 10 CFR 50.109, need not be submitted for CRGR review."

18 MR. DENTON: I was going to paragraph one, I guess,
19 with my Salem question, Mr. Chairman.

20 CHAIRMAN PALLADINO: I skipped paragraph one for a
21 purpose. I want to see where we have agreement and where we
22 have disagreement.

23 MR. CASE: In the middle of that number two, it says
24 that you have to do this analysis and it is going to take time
25 and money. The question is, is it worth it.

1 CHAIRMAN PALLADINO: I am just trying to find out
2 where we are disagreeing. "Analysis for either generic or...",
3 I put, "plant specific proposed changes shall be generally as
4 described in the CRGR Charter and referenced in item 3."

5 MR. DENTON: That is what we don't have for Salem.
6 The SER did not go in to the details on the cost and the risk
7 reduction. Some of them just seem obvious and that is, I think,
8 the question, the threshold. At what point if the licensee
9 agrees to do them, do we then need to do that kind of analysis
10 that this would call for?

11 COMMISSIONER GILINSKY: I would say that even on
12 those it somehow our intuitive sense about the cost was way
13 off, I would expect that the licensee would say, "Wait a minute.
14 You guys don't realize that this is going to cost 100 times
15 or 10 times what you think it costs." We would probably think
16 it over.

17 MR. DENTON: Yes, I would think so.

18 MR. EISENHUT: In fact, there was a little bit of
19 that.

20 CHAIRMAN PALLADINO: I gather the word "plant specific"
21 at least gives you a problem? You do the other, don't you?

22 MR. DENTON: The generic is going that way now,
23 yes.

24 CHAIRMAN PALLADINO: Now, on plant specific you would
25 like to say something like if challenged by the applicant or

1 word to that effect and then you would do it for plant specific.

2 MR. DENTON: Yes. What I have in mind if it was
3 so important to him or it cost a lot and he didn't want to do
4 it, then we ought to be required to prove our case but not just
5 do it automatically.

6 CHAIRMAN PALLADINO: The one problem that I have with
7 that is that it is arm-twisting in a sense.

8 COMMISSIONER GILINSKY: It seems to me just the other
9 way.

10 CHAIRMAN PALLADINO: No, it isn't. Yes, you are right.

11 COMMISSIONER GILINSKY: In fact, I wonder if there
12 ought not be some further threshold there because if an
13 applicant will just say from now on in every case we want the
14 analysis and tie everybody up here and we are going to have
15 3,000 cost benefit analysts around here.

16 COMMISSIONER AHEARNE: Except in the case of Salem,
17 I don't think that would likely happen because the plant is down
18 and I think it is well understood that until the staff says that
19 they are comfortable with the plant going up, it is not going to
20 come up. At least in the Salem instance, that is a definite
21 threshold that the licensee has to pass.

22 COMMISSIONER GILINSKY: But it shouldn't have to
23 depend on something like that.

24 CHAIRMAN PALLADINO: The economics are real.

25 COMMISSIONER AHEARNE: I was just saying that that cuts

1 against the idea that the licensee would automatically say
2 analyze everything.

3 MR. EISENHUT: We have an appeal process internally
4 where we tell the utilities in a formal letter that if you
5 run into these kinds of problems, have a management appeal
6 process at each OL that comes along, we have a senior management
7 meeting where Harold or Ed and all the division directors meet
8 with them. I meet with the senior management of the company
9 and I tell them that if you run into a problem where you think
10 the staff is going beyond the requirements, I am counting on
11 you to call me.

12 As Harold says, there are very few times it happens.
13 There may be a few little items but by in large, we take that as
14 an indicator that the reviews are going along. In fact, the
15 utilities are telling us they are going as well as they ever
16 have and, in fact, things are noticeably improving. We had one
17 utility who recently accelerated his OL schedule and one of the
18 reasons he announced was stability in the process.

19 I have to take some comfort from the fact that the
20 process, I really believe, has stabilized and we just don't get
21 that many complaints coming back from the utilities. Maybe there
22 is a lot of arm-twisting going on but if it is, it is at a very
23 low level and I really believe that there is just not that much
24 going on. There is a process in place.

25 COMMISSIONER GILINSKY: I hope there is some going on.

1 MR. EISENHUT: We have an office letter that went
2 to all the staff that said the Standard Review Plan is the
3 requirement and if anybody goes beyond it, here is the formal
4 procedure. We have a letter that goes out to all the reviewers
5 on OL's telling them that this is the procedure. For every
6 question you ask, we want a reference beside it as to which
7 SRP number you are using as the guidance to tell you to even
8 go ask the question. So it is a pretty thorough program.

9 MR. DENTON: Part of our concern is that we have gone
10 from zero documentation as Jim says for the regulatory analysis
11 a few years back to now, a really substantial and an ever
12 increasing amount of information needed on cost and risk
13 reduction.

14 The question I am trying to raise is, is that effort
15 needed for every action or not or is there some threshold of
16 resistance.

17 COMMISSIONER AHEARNE: I am sure that somewhere in all
18 of this material is the answer to the question, but Harold you
19 might be able to give it a lot faster than I could find it. Is
20 there some provision if paragraph one were to go into place,
21 is there some provision that would enable you to take emergency
22 action?

23 MR. CASE: Not unless it was written in the procedures
24 that are required to implement this policy. But I would expect
25 that it would be in there. You would need an emergency

1 provision.

2 CHAIRMAN PALLADINO: Yes, I would think that you would
3 need an escape clause.

4 COMMISSIONER ASSELSTINE: There are a couple of
5 provisions in 50.109 that I would take it would still apply.
6 For example, in no event are you required under 50.109 to do
7 this kind of analysis for an information request nor are you
8 required to do this for compliance with any action that is
9 necessary to assure compliance with the rules, regulations or
10 orders of the Commission.

11 So if it is a question of somebody not being in
12 compliance with the regulations or with some rule or order of
13 the Commission, then you don't go through this analysis in any
14 event. That is the way I read 50.109. Now whether that would
15 cover all emergency situations or not, I don't know.

16 MR. CASE: This supercedes 50.109.

17 COMMISSIONER ASSELSTINE: That is not the way I had
18 read the Staff Requirements Memo. I had read the Staff
19 Requirements Memo as basically saying that 50.109 is the core
20 document and you do the analysis in accordance using the CRGR
21 criteria but in accordance with the standards for backfitting
22 that are in 50.109.

23 COMMISSIONER AHEARNE: Jim, I don't understand that
24 last point. Are you saying that your reading of 50.109 says
25 that any change made to live within the requirements is not a

1 backfit?

2 COMMISSIONER ASSELSTINE: That's right.

3 MR. CASE: It is in the regulations.

4 COMMISSIONER ASSELSTINE: That is what the regulation
5 now says.

6 CHAIRMAN PALLADINO: Is that the way you read it?

7 MR. CASE: Yes. But that is a big -- I will speak
8 your speech -- barn door because the staff's idea of what it
9 takes to comply with the regulations changes with time and
10 information.

11 COMMISSIONER GILINSKY: Could you take a moment out
12 and describe what the problem has been in applying 50.109? That
13 was one of the things that I was hoping you could do with your
14 experience. It apparently has only been used twice or something
15 like that.

16 MR. CASE: It has only been used once that I know of.
17 It is not required to be used. It says the Commission "may"
18 backfit under 50.109, et cetera.

19 It doesn't say that you may only backfit under 50.109.

20 COMMISSIONER GILINSKY: What is the precise language?

21 MR. CASE: May.

22 COMMISSIONER GILINSKY: Is it may?

23 COMMISSIONER AHEARNE: Yes, "The Commission may...".

24 COMMISSIONER GILINSKY: I see.

25 MR. CASE: So the staff found that it could backfit

1 other ways.

2 COMMISSIONER GILINSKY: So it was just a big bother,
3 in effect.

4 MR. CASE: If the licensee got on his hind heels and
5 said, "I am not going to do this unless you follow 50.109. I
6 will not give you any other alternative. I won't agree with
7 you." Then the staff would do it.

8 COMMISSIONER GILINSKY: Is there some difficulty in
9 the findings and I remember as I mentioned earlier Howard Shapar
10 telling me that it was just a problem about making that finding
11 and in effect, you had to admit that you were dealing with a
12 situation in which safety was inadequate and to justify the
13 increase you had to admit a deficiency at the present time
14 and, therefore, why was the plant running.

15 MR. CASE: To provide substantial additional protection
16 that is required for public health and safety. The argument is
17 if it is required for public health and safety, you have to do
18 it any way. What does 50.109 mean? It is sort of a circular
19 thing.

20 COMMISSIONER GILINSKY: What do we get if we are
21 requiring that it be employed?

22 COMMISSIONER ASSELSTINE: That is part of the problem.

23 MR. CASE: If you require it to be employed on every
24 change, then it takes away the alternative of doing it other ways.

25 CHAIRMAN PALLADINO: Let me go back to see where we had

1 agreements and differences. I can understand it better that way.
2 This sentence that says, "Analysis for either generic or
3 specific proposed changes shall be generally as described in the
4 CRGR Charter and referenced in item 3." Then if there was a
5 sentence that said for proposed plant-specific requirements
6 that the licensee objects to its implementation, then similar
7 analysis is required.

8 MR. DENTON: Something along that line, yes.

9 CHAIRMAN PALLADINO: That would satisfy you. I don't
10 know what it would do for Jim. I can see one problem.

11 COMMISSIONER GILINSKY: What is the problem to which
12 this is the solution?

13 MR. DENTON: Let me give you a practical problem.
14 We appear before the ACRS. The ACRS says that we recommend
15 this plant be licensed provided and they put it something or
16 other. We may agree with that. Then how do we deal with that?
17 You can deal with generic issues on a longer time frame. We
18 can collect costs and we can do PRA's and go through the process
19 and you don't have any pending cases. It is when you get to a
20 specific plant and you have to respond to the ACRS or you have
21 to respond to a plant being down or a hearing board request,
22 It seems to me we need the flexibility to make judgments in that
23 area without the full nine yards of the analysis that we do.

24 So if in fact the licensee is more or less willing to
25 come along because of other constraints rather than have us take

1 the time and it takes my manpower to do this also on some
2 things. That is the trouble that I have with specific problems
3 where we can often work it out.

4 CHAIRMAN PALLADINO: But this would be an improvement--

5 MR. CASE: Oh, yes.

6 CHAIRMAN PALLADINO: -- at least insofar as Jim is
7 concerned because if there is objection, then there is a
8 procedure by which it is going to be resolved.

9 MR. CASE: We would only say that we have that now.

10 COMMISSIONER GILINSKY: So why do we need to fix it?

11 CHAIRMAN PALLADINO: I am not all that clear.

12 MR. TOURTELLOTTE: In my view, it would just be
13 rewriting the rule to do precisely what we already do. You are
14 not doing anything.

15 CHAIRMAN PALLADINO: One thing, if a person objects,
16 I guess, he could come back under 50.109.

17 COMMISSIONER AHEARNE: I really am sorry to raise this
18 and maybe you can eliminate this confusion very quickly. It
19 is an issue that Jim raised. In looking at 109, (a) it is pretty
20 clear what backfitting is.

21 COMMISSIONER ASSELSTINE: But (b) and (c) take away
22 from (a).

23 COMMISSIONER AHEARNE: That is what I am trying to
24 understand.

25 (Laughter.)

1 COMMISSIONER AHEARNE: What is left after (b)?

2 MR. CASE: Not much.

3 COMMISSIONER AHEARNE: You see, (a) says that
4 backfitting is --

5 COMMISSIONER ASSELSTINE: A new rule.

6 COMMISSIONER AHEARNE: -- any additional, elimination
7 or modification system or components after the construction
8 permit has been issued. So that is after the CP, any of these
9 modifications. But then (b) goes on to say nothing in this
10 section shall be deemed to relieve a holder of a CP or a license
11 from compliance with the rules, regulations or orders of the
12 Commission.

13 At least my understanding, and maybe this is just my
14 faulty understanding, is that --

15 MR. CASE: Watch out when you say that, John.

16 (Laughter.)

17 COMMISSIONER AHEARNE: My understanding had been
18 that the complaints that we get on backfitting -- staff has
19 said in order to live within the regulations or the rules of
20 the Commission, here is something that you have to do or here
21 is an order to change something but number (b) says, that is
22 okay.

23 MR. TOURTELLOTTE: But what is wrong with the
24 interpretation of saying and this is an interpretation, of saying
25 that yes, you must meet the rules and regulations of the

1 Commission but that doesn't of its own force relieve the staff
2 of the responsibility of making an analysis for arriving at that
3 new requirement in the first place.

4 COMMISSIONER AHEARNE: There is nothing wrong in
5 saying that. The problem I am now facing is that where number
6 one says you must follow 109 and the staff has to do these
7 analysis, I read (b) and that could be interpreted as saying
8 except for all of those things that we require the licensees
9 to do in order to live within the rules, regulations and orders
10 of the Commission. That almost sounds like the null set.

11 COMMISSIONER GILINSKY: But we make the rules.

12 MR. MONTGOMERY: That is the reason that the rule was
13 only applied one time. It is also a good reason why we
14 recommended the rule change.

15 COMMISSIONER AHEARNE: But, John, it also means that
16 I am then really puzzled by what does one and two require the
17 staff to do?

18 MR. TOURTELLOTTE: Also, as indicated my interpretation
19 is that it is a tortured interpretation. On the other hand,
20 the interpretation which you just gave said that the Commission
21 passed that rule and within the bounds of the same rule, they
22 defeated the rule that they passed.

23 MR. CASE: It is entirely possible. I was there at
24 the time.

25 COMMISSIONER AHEARNE: I am quite willing to believe

1 that having been here now five years.

2 MR. TOURTELLOTTE: That is in terms of statutory
3 or regulatory interpretation, that is contrary to generally
4 accepted rules of statutory and regulatory interpretation. It
5 is generally considered that someone is going to pass a rule
6 or a law particularly within the bounds of its own -- that
7 individual section is going to be consistent and should be
8 interpreted to be consistent.

9 I suggest that the interpretation that I gave even
10 though it may sound tortured because for 13 years, we have done
11 it the other way, is more of a consistent interpretation than
12 the one offered to the contrary.

13 MR. CASE: You should be interested, John, since you
14 brought up the CP thing, when this was proposed, it was proposed
15 along with a requirement that the matters which are approved
16 at the CP stage are the following and a list was concocted and
17 it went out for comment to the industry saying what comment do
18 you have on this list, are there things to be added or things
19 to be subtracted, and the general response was this was no good
20 and this was a very complicated thing to do and it would take a
21 long time. So we never made that section of the rule effective
22 while we did make this part effective and one without the other
23 just didn't make any sense.

24 CHAIRMAN PALLADINO: This is why I have trouble with
25 (a) because I don't know that we have ever defined what a

1 construction permit is.

2 COMMISSIONER AHEARNE: We have never given it very
3 specifics.

4 MR. CUNNINGHAM: I think the Bailey decision came
5 pretty close.

6 COMMISSIONER AHEARNE: But the Bailey decision led
7 to the series of requests to the staff, okay, let's now develop
8 something and that never happened.

9 What the Bailey decision did is, I think, reraised
10 the consciousness of at least some of us or raised the
11 consciousness of some of us that this really was an issue that
12 was unclear.

13 MR. CUNNINGHAM: And it is still unclear.

14 COMMISSIONER ASSELSTINE: What all this discussion
15 has said to me is that 50.109 has some real problems in
16 understanding what the thing does or means or whether it serves
17 any useful purpose the way it is now. I would go back to my
18 earlier suggestion that we might be farther ahead if we set
19 aside 50.109 and just said in simple terms what we want.

20 CHAIRMAN PALLADINO: Do you have that written down?

21 COMMISSIONER ASSELSTINE: No. I didn't write it up,
22 but the more I looked at 50.109, the more confused I became
23 about what is covered and what is not covered and how it applies
24 and how it wouldn't apply if you are taking out CP's.

25 COMMISSIONER AHEARNE: Yes.

1 CHAIRMAN PALLADINO: I was trying to understand the
2 differences. I don't know if it is worth continuing that way.
3 I would understand now what the difference is if we made that
4 proposed change on that next sentence. I don't think the rest
5 of it gave you a problem on the first two, did it?

6 MR. DENTON: That's right.

7 MR. CASE: I would make your site-specific, site and
8 plant-specific issues.

9 CHAIRMAN PALLADINO: What is that?

10 COMMISSIONER AHEARNE: Site and plant. You have
11 modified to just site-specific at the bottom and he is
12 suggesting site and plant.

13 CHAIRMAN PALLADINO: I see. All right.

14 COMMISSIONER ASSELSTINE: Is it site or plant?

15 MR. CASE: I would just say, "plant," but it could be
16 site, too.

17 COMMISSIONER ASSELSTINE: I would just say, "plant."
18 Plant-specific covers the site.

19 COMMISSIONER GILINSKY: You are still continuing with
20 a notion of a 109 review.

21 CHAIRMAN PALLADINO: Yes. I was just trying to find
22 out where the differences were. I know I don't have agreement.
23 If I had heard Jim's well enough to have gotten it down, I
24 might support it.

25 COMMISSIONER AHEARNE: I came in this afternoon

1 prepared to support the 109 review. But Jim has now -- I never
2 looked at that.

3 COMMISSIONER ASSELSTINE: It is an interesting rule

4 COMMISSIONER AHEARNE: It sure is.

5 CHAIRMAN PALLADINO: I had more trouble with (a) than
6 I did with (b).

7 MR. CASE: (A) is very peculiar, too.

8 COMMISSIONER ASSELSTINE: Even the test, the standard
9 itself, I gather there has been a considerable amount of
10 uncertainty about what it actually means.

11 MR. CASE: If it is required, it has to be required
12 under the regulations, so you keep hitting your head.

13 COMMISSIONER ASSELSTINE: Yes.

14 COMMISSIONER GILINSKY: What do we do now?

15 COMMISSIONER AHEARNE: I would like to see Jim write
16 up what he had suggested.

17 CHAIRMAN PALLADINO: I haven't quite given up on 109
18 although I have some sympathy with Jim's approach. Give me
19 the privilege of another ten minutes at most.

20 COMMISSIONER ASSELSTINE: Sure.

21 CHAIRMAN PALLADINO: Does number three give you a
22 problem? "Ensure that the staff, in making backfitting
23 decisions and the findings required by 50.109," assuming we
24 made the change to the previous one.

25 MR. DENTON: The same kind of change that unless it

1 crossed some threshold of a complaint.

2 CHAIRMAN PALLADINO: "... considers that information
3 normally reviewed by the Committee to Review Generic Requirements,
4 as documented in Section IV-B of the CRGR Charter approved by
5 the Commission on June 16, 1982." If you made the change in
6 two, this wouldn't bother you?

7 MR. DENTON: That's right.

8 CHAIRMAN PALLADINO: I had some problem with number
9 four.

10 MR. CASE: I would put a "generally," so you didn't
11 have to do exactly the same information.

12 CHAIRMAN PALLADINO: It says, "normally."

13 MR. CASE: Normally, that would be fine.

14 CHAIRMAN PALLADINO: It says "normally," right there,
15 but "generally" would be fine, too.

16 MR. DENTON: Recognize the time problems. For
17 example, if we did get in to doing one, it could have time
18 implications on specific plants where I read three to be more
19 on a specific plant so once we kick off the need to do it, it
20 gets more time consuming.

21 CHAIRMAN PALLADINO: That's right. If it is for a
22 generic requirement, it would go to it.

23 MR. DENTON: That's right.

24 COMMISSIONER AHEARNE: You are on number ^ofour.

25 CHAIRMAN PALLADINO: On number four, my problem was

1 that number four defines as a requirement things that are only --

2 COMMISSIONER GILINSKY: I thought one of the great
3 advances here was to narrow the definition of requirement.

4 CHAIRMAN PALLADINO: I was willing to go along with
5 it for the purpose of this SRM.

6 MR. CASE: I think that is a useful addition for the
7 purposes of this SRM.

8 COMMISSIONER AHEARNE: Of course, if we follow
9 Commissioner Asselstine's approach, then he can reword it
10 so that it can be explicitly identified what is covered.

11 COMMISSIONER ASSELSTINE: That's right.

12 MR. CASE: But if this is to be a requirement for
13 staff imposed changed, then there is no need for putting
14 regulations or rules in there because they obviously come from
15 the Commission.

16 COMMISSIONER AHEARNE: That's right.

17 MR. CASE: It is a null set. It doesn't do any harm.

18 COMMISSIONER ASSELSTINE: That's right.

19 COMMISSIONER AHEARNE: Except that I thought underlying
20 this -- well, one of the advantages I saw to it was to require
21 Commission required changes to meet some standard of logical
22 consistency.

23 MR. CASE: But don't ask me to do the cost benefit
24 for the standards you have already approved.

25 COMMISSIONER ASSELSTINE: But those ought to be picked

1 up though under the generic process, shouldn't they?

2 COMMISSIONER AHEARNE: Why?

3 COMMISSIONER ASSELSTINE: Regulations, proposed
4 regulations, go through the CRGR review.

5 MR. CASE: Whatever the staff would propose, yes.

6 COMMISSIONER ASSELSTINE: That's right, but not what
7 changes the Commission makes. Yes, you are right.

8 MR. CASE: But not what is added at this table.

9 COMMISSIONER ASSELSTINE: That's right.

10 COMMISSIONER GILINSKY: Why would you put regulatory
11 Guides?

12 MR. CASE: Because they are the mechanism that you
13 use to require a new requirement. They are not requirements
14 of and by themselves.

15 COMMISSIONER GILINSKY: We keep saying this is an
16 acceptable way of meeting a requirement. The requirement has
17 already been established. This is an acceptable way of meeting
18 it.

19 MR. CASE: But some say the staff will not accept any
20 other way and that is the mechanism.

21 COMMISSIONER GILINSKY: It seems to me that we have
22 to decide.

23 CHAIRMAN PALLADINO: Sometimes they have some other
24 things slipped in that are a little bit stronger than just,
25 if you do it this way, you will get by. They prescribe things

1 in such a way that you can't --

2 COMMISSIONER GILINSKY: But originally, the --

3 CHAIRMAN PALLADINO: I agree. That is why I had
4 to put for the purpose of this SRM.

5 COMMISSIONER GILINSKY: I wouldn't even say for the
6 purpose of this SRM. Do you really want to run them through
7 this sort of process?

8 MR. DENTON: Guides are now going through CRGR. All
9 new guides are getting reviewed generically.

10 COMMISSIONER AHEARNE: The Reg Guide is just by
11 definition generic, is it not?

12 MR. DENTON: Yes, it is.

13 CHAIRMAN PALLADINO: Let me ask you a question. Do
14 you need number four?

15 MR. EISENHUT: I don't think so because the regula-
16 tions or rules, any generic order if it is a package of all
17 orders, it generally comes here. Standard Review Plans, Reg
18 Guides, all that stuff goes through the CRGR already. It is
19 all listed in the CRGR Charter.

20 CHAIRMAN PALLADINO: My purpose was to make as little
21 change as possible. Is this number five a problem assuming
22 that one change in number two?

23 MR. EISENHUT: No.

24 CHAIRMAN PALLADINO: Then, of course, we know about
25 number six. But you are arguing that rather than jump to

1 something such as the alternate six, you think a study would be
2 better.

3 MR. DENTON: It depends on the study.

4 CHAIRMAN PALLADINO: I thought you wanted a study.

5 COMMISSIONER GILINSKY: No, he didn't want a study.

6 CHAIRMAN PALLADINO: Ed, I thought you said you did.

7 MR. CASE: I said that it was a matter of degree.

8 COMMISSIONER ASSELSTINE: A study is better than
9 paragraph six.

10 MR. CASE: Yes.

11 COMMISSIONER GILINSKY: These are different fallback
12 positions.

13 COMMISSIONER AHEARNE: If you are going to throw him
14 in the oil, he would like the heat turned up slowly.

15 (Laughter.)

16 CHAIRMAN PALLADINO: Then I say six ought to do a good
17 job for you. By that I mean, you saw some light in the approach
18 that John Ahearne had proposed and it might give you an opportu-
19 nity to define better what ought to be done to construction
20 permits. You didn't want to jump right to it and I don't blame
21 you. You propose the study better.

22 MR. CASE: As long as the study includes what we are
23 doing now --

24 CHAIRMAN PALLADINO: Maybe we don't understand what
25 you are doing now?

1 MR. CASE: I think that may be true.

2 CHAIRMAN PALLADINO: Maybe all you have to do is to
3 define it and start doing that.

4 MR. CASE: That's good enough.

5 COMMISSIONER GILINSKY: What about your ten minutes?

6 CHAIRMAN PALLADINO: Give me one minute more. As
7 I understand it, if we made the change in number two and one
8 possible way is to say that the proposed plant-specific require-
9 ments that the licensee objects, then the analysis would be
10 called for.

11 That would make this palatable to you?

12 MR. DENTON: Provided we all agree on how Salem would
13 fit in with one. One seems to lay right on the principal
14 requirement and what is my escape for one?

15 CHAIRMAN PALLADINO: I was relying on the fact that
16 number two picks it up.

17 COMMISSIONER ASSELSTINE: Except that there are some
18 things in there that wouldn't --

19 MR. CASE: I think a better place to fix it up would
20 be in one.

21 MR. EISENHUT: One and two could really be put
22 together. There are two aspects. One is the generic aspect
23 and one is the plant-specific aspect.

24 MR. DENTON: One at the moment did not have this idea
25 in there of the optional--

1 MR. CASE: Or if the applicant agreed.

2 MR. DENTON: -- if the applicant agreed either.

3 MR. CASE: Then the emergency provision, I think we
4 could leave that to the detailed --

5 COMMISSIONER GILINSKY: Let me ask you this. If we
6 set up this system, why wouldn't an applicant always ask for a
7 review?

8 MR. DENTON: He might.

9 MR. CASE: If he is told it will take six months to
10 get it.

11 COMMISSIONER AHEARNE: And he is not going to allow
12 his plant to come up.

13 COMMISSIONER GILINSKY: Then we get back to this
14 whole business of imposing these --

15 MR. EISENHUT: Look for example at Salem. Before the
16 staff can make any determination on any one of the items on
17 Salem, they would have to go get some information.

18 COMMISSIONER GILINSKY: Suppose you are talking about
19 improving fire protection?

20 MR. EISENHUT: That one, I guarantee you, they will
21 all appeal. If you look on top of the list, fire protection
22 and environmental qualification are their two biggest complaints.

23 COMMISSIONER AHEARNE: I think, Vic, if the plant is
24 operating and these are advantages that are being^g proposed by
25 the staff that must be made on some future schedule, then I

1 would expect they would ask. If the plant is down and these
2 are changes the staff has said it would be in order for us
3 to have confidence that the plant can come up, then I would
4 expect that they would only ask in the case that they feel
5 that it is really egregious.

6 MR. EISENHUT. Yes, I think that is right.

7 MR. TOURTELLOTTE: I have heard the phrase used and
8 applied, "Physician, heal thyself," but I have seldom seen
9 it applied when a brain tumor was the problem.

10 (Laughter.)

11 MR. TOURTELLOTTE: It is always very difficult for
12 a physician to do that for himself. The thing that amazes me
13 about this exchange and I think it is a very interesting exchange
14 and in arriving at an agreement, I think it is very interesting
15 to hear what the folks in licensing are saying, but you have to
16 understand that where we are coming to is simply codifying what
17 we already do.

18 If that is the case, what we ought to do is fold these
19 papers up and forget about backfitting, forget about the SRM and
20 go home because what the staff is really telling you and what I
21 hear from Harold right now is that the staff does not want to do
22 the analysis. They want to require the licensee to do the
23 analysis. That is precisely what is required now.

24 They want them to be in a position where they have to
25 come in and demonstrate that they do not have to have this

1 backfit and that is what happens now. So we are not changing
2 the process. All we are doing is codifying it in an SRM. It
3 is not changing substantially what is now going on.

4 COMMISSIONER ROBERTS: For what it is worth,
5 Commissioner Roberts agrees with you. I think you just made
6 an excellent summary.

7 CHAIRMAN PALLADINO: There is one difference. The
8 analysis has to be made by the staff if they object at least
9 the way I perceived even this change. If they come back and
10 object to a proposed item, the staff has to make the analysis.
11 Isn't that what you want? At least, you want that much.

12 MR. TOURTELLOTTE: I don't think it is going to make
13 a lot of difference in light of the fact that in most instances
14 when the backfit is required by the staff, the guy who is on
15 the other side, the licensee, is in a position of economic
16 leverage and he has the alternative of putting in a widget
17 for two million dollars or contesting it and the staff is then
18 going to be in the same position. They are going to say, "Oh,
19 yes, we will do the analysis but your plant won't start up for
20 another six months."

21 COMMISSIONER GILINSKY: We are not recommending that.

22 CHAIRMAN PALLADINO: What would happen under your
23 proposal? Suppose I didn't make the change proposed by Harold,
24 what happens on an applicant and you tell me that I have to put
25 a water level indicator and won't start up until you do it?

1 How what do I do under the backfit rule?

2 MR. TOURTELLOTTE: Under the backfit rule if we were
3 to come to a conclusion that we needed, for example, a water
4 level indicator, we would have to make the analysis before we
5 make that requirement and when we come up to the time that we
6 impose that requirement on them, we would already have the
7 analysis in hand.

8 COMMISSIONER GILINSKY: But that is what they are
9 doing now?

10 MR. TOURTELLOTTE: No, it isn't.

11 COMMISSIONER GILINSKY: On water level indicators?

12 MR. TOURTELLOTTE: On that one, yes.

13 CHAIRMAN PALLADINO: Maybe I didn't pick the best
14 example.

15 MR. TOURTELLOTTE: There are a lot of requirements
16 which are still outstanding generic requirements which CRGR is
17 not reviewing and which have not been analyzed and we are still
18 requiring that they be imposed.

19 COMMISSIONER AHEARNE: Continue on this. Here is a
20 plant that is shut down. The staff says that we think that in
21 order to restart, you have to put in this particular device.
22 Under the current system, your concern is the staff does not
23 have to have prepared the analysis to show that device is really
24 needed on a benefit and cost basis.

25 MR. TOURTELLOTTE: On a safety basis even.

1 COMMISSIONER AHEARNE: Any analysis, detailed
2 analysis, documented and presented. Under your proposal, they
3 would have to do that.

4 MR. CASE: The way he is proposing, let the plant
5 operate in the meantime.

6 COMMISSIONER AHEARNE: May I finish? It would seem
7 to me that under your proposal, however, for the plant to operate,
8 the staff has to -- someone like Harold or Darrell or someone --
9 has to sign off and say, yes and let's say the plant has just
10 had some kind of an accident, yes, I believe this plant is now
11 safe to operate.

12 It would seem to me that they might not be in a
13 position to have finished the analysis to say in order for the
14 plant to be safe to operate, you have to put this device in,
15 but I don't see how we could by rule and/or by directive
16 require Harold to say, yes, it is safe to operate because he
17 would be in a position of saying, I believe or my staff has told
18 me and I agree that they have to put this device in and we
19 haven't finished doing the analysis yet, so I can't say that
20 this device must be put in. I think in conscience, he would
21 have to say, "but I can not sign this piece of paper saying the
22 plant is now safe to operate."

23 I think the Chairman is right. Once the plant is
24 down, whoever does the analysis is --

25 COMMISSIONER GILINSKY: In a way, John is making a

1 point. At bottom, you are dealing with a safety judgment. It
2 is not a lawyer's judgment. I don't know if he put it that way.

3 COMMISSIONER AHEARNE: I think it is a conscience
4 judgment.

5 MR. TOURTELLOTTE: I think a safety judgment is a
6 judgment that concerns all of us whether we are lawyers or
7 engineers or managers.

8 COMMISSIONER GILINSKY: I don't mean that directed to
9 you because you are a lawyer and Harold is an engineer. What I
10 am saying is that where you strike the balance here has to be
11 determined not on the basis of administrative procedures or
12 whatever, but on the basis of where you think the plant ought to
13 be and is the current process arriving at a set of requirements
14 that is about right or way off.

15 If you can make the case -- the same things that you
16 are suggesting in these individual backfits applies in making
17 a case for changing the rule. If you make the case that things
18 are way off and backfits are required which are way out of line,
19 unreasonable and not worth the money, then I am ready to support
20 changes, but I guess that case at least as far as I am concerned,
21 that case has not been made.

22 MR. TOURTELLOTTE: If he says that I am not ready to
23 sign off on the safety of this plant, he ought to be able to
24 state a rational basis for why he isn't able to sign off on it.
25 That is all I am saying. As far as that goes, the

1 Administrative Procedures Act requires that we not act
2 arbitrarily or capriciously.

3 COMMISSIONER GILINSKY: The Administrative Procedures
4 Act doesn't say that he has to start up a plant that he is
5 worried about.

6 MR. TOURTELLOTTE: I know, but it does say that if
7 he decides, it seems to me, if he decides as an administrative
8 act that he is not going to allow that plant to operate because
9 it is unsafe, he has a responsibility to the person to whom he
10 is making that or the entity, to explain why he believes it is
11 unsafe.

12 It may well be in the scenario that is given that
13 that turns out to be one of those (a) case but that is only one
14 case. But what we are talking about is a broad range of cases
15 where that is not going to be the case in every case. That
16 might be a worse case.

17 COMMISSIONER AHEARNE: That's true.

18 MR. TOURTELLOTTE: What we want to do is regardless
19 of the regulatory action that we are taking if we are telling
20 them they can't go back up or if we are telling them they can
21 only go back up if they put a widget on, we should state a
22 rational basis for our position and not simply because I don't
23 feel good in the pit of my stomach about this.

24 CHAIRMAN PALLADINO: Wait a minute. I think most of
25 the things that have been put on these plants starting with

1 ECCS was because we thought you would need them and they were
2 intuitive. When automobiles started and I don't know if you
3 remember what kind of braking system they had, but there
4 were people that had intuition that you have to stop this
5 some time and they didn't wait to prove it.

6 So I wouldn't dismiss technological intuition.
7 As a matter of fact, most innovations came about by intuition
8 so I wouldn't dismiss that out of hand although he may have to
9 say that that is my intuition.

10 MR. TOURTELLOTTE: There is a difference, though
11 between intuition in my view and engineering judgment, what
12 I would call scientific or engineering judgment based upon
13 a reasonable set of facts and just a gut feeling or intuition.

14 CHAIRMAN PALLADINO: There was very little analysis
15 when people said, "By golly, we better have accumulators.
16 You have to get water in there fast." There is no way you
17 could have analyzed it.

18 I would like to ask a question about number one.

19 COMMISSIONER GILINSKY: You are past your ten
20 minutes.

21 CHAIRMAN PALLADINO: All of the people spoke part of
22 my ten minutes.

23 (Laughter.)

24 CHAIRMAN PALLADINO: What findings are required for
25 109? It says, "Ensure that changes to regulatory

1 requirements proposed by the NRC staff for facilities licensed
2 to operate and which fit within the definition of backfitting
3 as found in 10 CFR 50.109...".

4 MR. CASE: Provide substantial additional
5 protection as required for the public health and safety.
6 That is the finding that you have to make.

7 MR. TOURTELLOTTE: Correct.

8 CHAIRMAN PALLADINO: Where does it say that?

9 COMMISSIONER ASSELSTINE: In paragraph (a), which
10 also doesn't say anything about costs

11 MR. CASE: That is correct.

12 COMMISSIONER ASSELSTINE: It is purely a benefit
13 judgment.

14 CHAIRMAN PALLADINO: Now you make that judgment
15 that it is required and now because you made that judgment
16 this says you have to go and make the analysis.

17 COMMISSIONER GILINSKY: But if it is required for
18 the public health and safety.

19 MR. CASE: You are saying require the finding in
20 every case but only the analysis if the licensee objects.

21 CHAIRMAN PALLADINO: Are you sure? "Ensure that
22 changes to regulatory requirements proposed by the NRC staff
23 for facilities licensed to operate and which fit within the
24 definition of backfitting as found in 10 CFR 20.109 are
25 classified as such and are imposed only if the findings

1 required by section 50.109 are formally made and documented."
2 So if you say that backfitting is needed to protect the
3 public health and safety, now what must be do?

4 MR. DENTON: I could make that and that is sort of
5 a tacit finding we make often. One though would couple that
6 with three that in making such backfitting decisions, we
7 would prepare the regulatory analysis documentation.

8 COMMISSIONER ASSELSTINE: It is a combination of
9 one and three together.

10 MR. DENTON: Yes.

11 CHAIRMAN PALLADINO: Except as defined in number
12 two that says you don't do it if the --

13 MR. EISENHUT: It doesn't say. I read them as
14 separate. If the first one, you are saying, only applies
15 to generic, that would be a different interpretation.

16 CHAIRMAN PALLADINO: I was trying to make number
17 two modify that.

18 MR. EISENHUT: I think that was our question about
19 Salem because it would say that before you require management
20 evaluation and study, you would do a cost benefit analysis
21 or give consideration as to whether one is needed. It really
22 puts the burden on the staff to decide that the plant is
23 unsafe rather than the burden on the utility to demonstrate
24 that the plant is actually safe. You run into a major
25 problem. The burden has got to stay with the utility. The

1 staff is just not equipped to do it.

2 CHAIRMAN PALLADINO: But if it were written such
3 that you only had to do it if the applicant objects.

4 COMMISSIONER GILINSKY: It seems to me that there
5 has to be some kind of threshold. It is like hearings. You
6 can't let everybody who comes in and asks for a hearing get
7 a hearing.

8 CHAIRMAN PALLADINO: If the whole context were
9 changed, that for a proposal to which the licensee objects,
10 that is the one on which you would have to make an analysis.

11 COMMISSIONER GILINSKY: It seems to me that you
12 may well end up in the situation where that is asked for in
13 every instance and I don't know how you would phrase it
14 and I don't have an idea of how to do it, but there has
15 to be some kind of a threshold.

16 CHAIRMAN PALLADINO: For operating licenses?

17 COMMISSIONER GILINSKY: I thought we were talking
18 about more generally.

19 MR. CASE: No. He is just talking operating
20 license.

21 CHAIRMAN PALLADINO: Operating license.

22 MR. CASE: But it could be abused.

23 MR. DENTON: The difference I see as between
24 general generic and specific, generic ones really lend
25 themselves to doing formal analysis and it works well. They

1 are being done. It is only when you get to the specific
2 ones that present the difficulty because usually you have
3 not anticipated it and you may not have the information you
4 need and yet you have to make a timely decision on it.

5 COMMISSIONER GILINSKY: That's right.

6 MR. DENTON: This kind of rolls it over and says
7 that every one of those has to get the same treatment. That
8 is what I was trying to address.

9 COMMISSIONER GILINSKY: So you get in the pre-OL
10 situation and the post-OL situation.

11 COMMISSIONER AHEARNE: I think we are focussed here
12 on post-OL.

13 COMMISSIONER GILINSKY: If you are talking about
14 post-OL then I would guess that they would ask for it every
15 time. Why wouldn't they?

16 COMMISSIONER AHEARNE: If they were down, they
17 would.

18 COMMISSIONER GILINSKY: I don't think that this
19 thing ought to depend on trapping utilities when they are
20 down.

21 COMMISSIONER AHEARNE: You were saying, why
22 wouldn't they. I was just saying that is why they would.

23 COMMISSIONER GILINSKY: Then you start --

24 MR. CASE: That situation, John, is no different
25 than it is today.

1 CHAIRMAN PALLADINO: You are going to face those.

2 MR. CASE: When it is operating, we can't require
3 them to put on something if they don't want to do it
4 without an order and surely an order is enough trapping
5 to satisfy even Mr. Tourtellotte, I believe.

6 (Laughter.)

7 CHAIRMAN PALLADINO: You had something that sounded
8 good enough so that had it been written down, we might have
9 been able to act on it.

10 COMMISSIONER ASSELSTINE: I would be happy to try
11 to do that fairly quickly.

12 CHAIRMAN PALLADINO: I think I understand the
13 differences and I will work with Jim to see an alternative
14 that he may or may not buy.

15 I am sorry that we are not ready to vote but we
16 apparently are not ready to vote.

17 COMMISSIONER ASSELSTINE: I would be happy to put
18 down the thought that I had fairly quickly.

19 CHAIRMAN PALLADINO: If there is nothing to come
20 before the Commission at this time, we stand adjourned.

21 (Whereupon, at 3:30 the Commission adjourned to
22 reconvene at the Call of the Chair.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
NUCLEAR REGULATORY COMMISSION

in the matter of: Disc. of Regulatory Reform Task Force
Administrative Proposals -- Backfit Rule

Date of Proceeding: Thursday, April 14, 1983

Docket Number: _____

Place of Proceeding: Room 1130, 1717 "H" St., N.W.
Washington, D. C.

were held as herein appears, and that this is the original
transcript thereof for the files of the Commission.

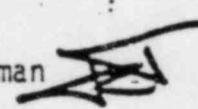
Marilynn M. Nations
Official Reporter (Typed)

Marilynn M. Nations
Official Reporter (Signature)

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 12, 1983

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

FROM: James R. Tourtellotte, Chairman 
Regulatory Reform Task Force

SUBJECT: STAFF REQUIREMENTS MEMO--INTERIM GUIDANCE ON
BACKFITTING DECISIONS

Attached is a revision of the Staff Requirements Memo on backfitting as directed by the Commission in its meeting of March 31, 1983. The contents of the memo were coordinated between the offices of the Executive Director for Operations and the Chairman of the Regulatory Reform Task Force.

It may be appropriate to coordinate between the Staff and the Task Force in conducting the backfit study mentioned in paragraph 6 of the SRM. Qualitatively, such coordination would add the perspectives of other offices to that of the Staff. In addition, it would facilitate the disposition of the ultimate issue to be addressed in the study by having the Task Force input concomitant with the development of the Staff position rather than having that input after the report is developed.

Enclosure:
Revised Staff Requirements Memo

MEMORANDUM FOR: William J. Dircks
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - INTERIM GUIDANCE ON BACKFITTING
DECISIONS

The EDO is directed to undertake the following activities:

1. Ensure that changes to regulatory requirements proposed by the NRC staff for facilities licensed to operate and which fit within the definition of backfitting as found in 10 CFR 50.109 are classified as such and are imposed only if the findings required by §50.109 are formally made and documented.
2. Proposed changes in generic requirements, for which backfitting decisions and findings are required by 10 CFR 50.109, shall be submitted for review by the CRGR in accordance with the CRGR Charter. Proposed changes in regulatory requirements applicable to only one or a few specific plants, for which backfitting decisions and findings are required by 10 CFR 50.109, need not be submitted for CRGR review. Analysis for either generic or specific proposed changes shall be generally as described in the CRGR Charter and referenced in item 3. Nothing in this directive shall require the staff to make a redundant review for an individual facility of generic requirements approved by the EDO based on a review by CRGR unless the EDO determines that special consideration is needed for individual facilities.

3. Ensure that the staff, in making backfitting decisions and the findings required by §50.109, considers that information normally reviewed by the Committee to Review Generic Requirements (CRGR), as documented in Section IV-B of the CRGR Charter approved by the Commission on June 16, 1982.
4. Shall interpret the term "regulatory requirements" to include all those mechanisms used by the NRC to impose requirements or set forth regulatory positions requesting CP or OL holder compliance, including regulations, rules, orders, Standard Review Plan, Regulatory Guides, official letters and other approved documents.
5. Provide the Commission with a plan describing procedures to be followed in implementing items one through four of this directive, outlining the process to be used, who will make decisions and how such decisions will be documented.
6. Conduct a study to determine how 10 CFR 50.109 or an alternative means of backfit control may be applied to plants which have received construction permits but have not yet received operating licenses. The results of that study along with appropriate recommendations shall be reported to the Commission by July 15, 1983.

Samuel J. Chilk
Secretary