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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING
DISCUSSION OF REGULATORY TASK FORCE ADMINISTRATIVE PROPOSALS - BACKFIT RULE

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

DISCUSSION OF REGULATORY TASK FORCE -

ADMINISTRATIVE PROPOSALS - BACKFIT RULE

PUBLIC MEETING

Nuclear Regulatory Commission
Room 1130
1717 H Street, N. W.
Washington, D. C.

Thursday, May 12, 1983

The Commission convened, pursuant to notice, at 2:05 p.m.

COMMISSIONERS PRESENT:

NUNZIO PALLADINO, Chairman of the Commission
VICTOR GILINSKY, Commissioner
JOHN AHEARNE, Commissioner
THOMAS ROBERTS, Commissioner
JAMES ASSELSTINE, Commissioner

STAFF AND PRESENTERS SEATED AT COMMISSION TABLE:

S. CHILK
M. MALSCH
J. ZERBE
J. TOURTELLOTTE
E. CASE

AUDIENCE SPEAKERS:

H. DENTON
B. OLMSTEAD
V. STELLO

- - -

PROCEEDINGS

CHAIRMAN PALLADINO: Good afternoon.

On May 5th Commissioner Asselstine circulated to the Comissioners a revised draft of the staff requirements memo on backfitting.

The revised draft was based on discussions between Commissioners Asselstine, myself and members of the NRC staff. I believe that most Commissioners' offices also were represented at the meeting.

I support the revised draft and would like to suggest two changes for Commission consideration that have been brought forth by Jim Tourtellotte. However, I would like to hear those discussed before I give my endorsement to them. As a matter of fact, I lean towards one and not necessarily toward the other, but I want to wait to hear.

I also want to point out that on the basis of my observations at these meetings with the staff there is a difference of opinion within the staff about the merits of the revised SRM.

I would prefer that the staff member state their individual views rather than my attempting to summarize them.

I suggest we proceed in the following manner. First Commissioner Asselstine will highlight the

pertinent points contained in the draft SRM and then Jim Tourtellotte will highlight and comment on the suggested changes. Following that I will call on the NRC staff members to express their individual views of the SRM. Following that, then follow up Commissioner questions, and I propose to ask whether the Commissioners can support the revised draft SRM with or without changes as the case may be.

Any other opening comments?

COMMISSIONER AHEARNE: Yes, I would make one opening comment. You said that all Commission offices were represented at these meetings. All I can can from mine is that I think I had someone there to let me know what was happening, but to the extent that represent meant as part of the negotiations, I don't think that is really what representative was.

COMMISSIONER ASSELSTINE: I think that is accurate. There was some participation by staff assistants, but it wasn't a negotiating session involving all parties, that is for sure.

COMMISSIONER AHEARNE: Right. Thank you.

CHAIRMAN PALLADINO: Okay, I will buy that.

Any other comments?

(No response.)

CHAIRMAN PALLADINO: Okay, Jim, do you want to

go ahead and highlight it.

COMMISSIONER ASSELSTINE: Let me just touch briefly on what I see as the principle elements of the proposal.

I might start by saying I had in mind a simpler version than we have been looking at before and somehow it didn't quite work out that way.

COMMISSIONER AHEARNE: I am glad to hear that.

(Laughter.)

COMMISSIONER ASSELSTINE: In any event, the elements are basically the following.

First, there would be a recognition that for proposed generic requirements the existing review process through CRGR would be preserved, and that would be retained for generic requirements.

For operating reactors there would be a new set of requirements to cover new staff proposed requirements for operating reactors. The first element of that would be a documentation of every proposal for a new requirement.

That documentation would be prepared by the staff review and would consist first of a description of the staff proposed requirement and, second, a statement by the reviewer of how the review believed the proposed requirement would improve safety.

COMMISSIONER AHEARNE: Could I ask the Chairman a question.

Joe, how do you want to handle questions of this. I have a number of questions because I didn't really fully understand it. Now would you like Jim to finish first, or do you want Jim and the staff to finish, or how would you like to proceed?

CHAIRMAN PALLADINO: Why don't we have Jim finish first and then we can ask questions pertinent to that.

COMMISSIONER AHEARNE: Okay.

CHAIRMAN PALLADINO: Then we can ask questions about the proposed changes and open it up to staff comments.

COMMISSIONER ASSELSTINE: The idea is that after this description was prepared, the description would be reviewed by the staff reviewers, management that is, the staff reviewers' branch chief, and any change or any staff position that came out of the proposed new requirement would also be approved by the licensing side of NRR before the proposed requirement would be sent to the licensee.

Once that was done, the next step would be to send the proposed requirement to the licensee and provide the licensee an informal opportunity for appeal within

NRR. The appeal process is described in paragraph 5 of the proposed staff requirements memo. It is intended to be the same as the present NRR appeal process.

If after having taken advantage of the appeal process the licensee was not satisfied with the proposed requirement, the licensee would then have the opportunity to submit a written objection which would then trigger the requirement for the preparation of a cost-benefit assessment for the proposed requirement and that cost-benefit assessment would essentially be comparable to the kinds of assessments that are now done for CRGR for proposed generic requirements.

In terms of the kinds of proposed requirements, plant specific requirements that would be subject to this process, the process would apply to plant specific requirements only with one exception, and that is the plant specific implications of generic requirements would be subject to review as well if the EDO determined that there were significant plant specific issues that were not considered during the CRGR review.

Paragraph three basically references the review elements for CRGR review and says that to the extent practicable and applicable those same review elements would be included in the plant specific reviews.

Paragraph 4 provides the prompt action

exception and basically allows a staff proposed requirement to be put into effect prior to complying with the requirements of paragraph two if the appropriate office director deterinmines that prompt imposition of the requirement is needed to protect the public health and safety or the common defense and security.

Paragraph six directs the staff to prepare an implementation plan for carrying out the plant specific reviews and the appeal process that is specified basically in paragraphs 2, 3 and 5. It requires that that be done by the end of June.

Paragraph 7 basically says that once the Commission has reviewed the staff's implementation plan, the implementation plan and the appeal process would be sent to all operating license holders so that they would then be on notice of what the process is and what their rights and opportunities are under the process.

Paragraph 8 basically says that the staff's performance, at least the performance of staff management in implementing this policy would be looked at as one element in doing staff performance evaluations for management positions.

Paragraph 9 requires the staff to conduct a study of the feasibilty of alternatives for applying backfit controls to plants holding construction permits

but not operating licenses and to come back with the results of that review by the end of September.

That is a quick summary of the principal elements.

CHAIRMAN PALLADINO: Do you want to go to questions?

COMMISSIONER AHEARNE: These are in no order of priority. They are just rather written down in the order as you walked through it.

COMMISSIONER ASSELSTINE: I have got to feel like the staff.

(Laughter.)

COMMISSIONER AHEARNE: Just a clarification question.

COMMISSIONER ASSELSTINE: Yes.

COMMISSIONER AHEARNE: You start out on No. 2 for facilties licensed to operate. You talked about when you just described it operating reactors. Is this supposed to cover just commerical reactors, or does NMSS come in and do research reactors who have facilities licensed to operate?

COMMISSIONER ASSELSTINE: I think my intention was power reactors. Now maybe others had a different intention, but I guess that had been mine, was to focus on power reactors.

CHAIRMAN PALLADINO: However, it is interesting in the paragraph ---

COMMISSIONER ASSELSTINE: It is broader than that.

COMMISSIONER AHEARNE: No. 4 seems to expand.

COMMISSIONER ASSELSTINE: Well, not necessarily because I think even for power reactors there are responsibilities that go beyond NRR. That was the intention anyway.

COMMISSIONER AHEARNE: So NMSS is not meant to be covered by this?

COMMISSIONER ASSELSTINE: Well, I had meant to cover NMSS to the extent that they were involved in physical security requirements for power reactors, yes.

COMMISSIONER AHEARNE: But in your mind it is addressing commerical reactors.

COMMISSIONER ASSELSTINE: That is right. That in my mind had been the focus. Now maybe others think that for some reason it should be broader than that, but at least that was my intention.

CHAIRMAN PALLADINO: Let me just see something. Paragraph 2 talks about reactors licensed to operate, and there we could say we mean commerical power reactors for No. 2.

COMMISSIONER ASSELSTINE: Yes.

CHAIRMAN PALLADINO: Are there any others that are applicable on a broader base?

COMMISSIONER AHEARNE: Well, actually embedded in 2 I think is NRR's organizational structure.

COMMISSIONER ASSELSTINE: It is, that is correct. That is right.

COMMISSIONER AHEARNE: Rather than NMSS, even though they might both have provisions extending it.

COMMISSIONER ASSELSTINE: Yes.

CHAIRMAN PALLADINO: But I think we should make it clear that for facilities licensed to operate that we are talking about power reactors.

COMMISSIONER ASSELSTINE: Yes.

MR. TOURTELLOTTE: You could just substitute for the word "facilities" commerical power reactors licensed to operate.

COMMISSIONER ASSELSTINE: Yes.

COMMISSIONER AHEARNE: I am also suggesting that if you do go with this form as it is, that you at least take a look to see whether the organizational structure you have described can be used by NMSS and I&E.

CHAIRMAN PALLADINO: But right now No. 2 is concerned with commercial power reactors.

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: But I&E and NMSS both

are also concerned with commercial power reactors.

COMMISSIONER ASSELSTINE: That is right. Now I think the review process that is identified in 2 would still fit in those cases because I think even where NMSS issues arise or I&E issues arise the appeal process that would involve those would be the NRR appeal process.

COMMISSIONER AHEARNE: Except here you are talking about how the positions are developed. At least given I&E's smaller size and different type of structure, it wasn't clear to me that that would fit.

MR. TOURTELLOTTE: Let me ask a question in that regard. Does the last sentence in paragraph 5 contemplate that the other offices will develop ---

COMMISSIONER AHEARNE: The second to the last one.

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: An appopriate appeal process similar to the above should be developed.

COMMISSIONER ASSELSTINE: To the extent that that is necessary.

MR. TOURTELLOTTE: Would that answer John's question or not?

COMMISSIONER ASSELSTINE: I think it would. John is right that the process that is embedded in 2 generally is the NRR process. The question was then how

do you account for the other organizational forms, and that was the intention of the sentence in paragraph 5 is that the implementation plan would ensure that there is one that would satisfy all offices.

COMMISSIONER AHEARNE: Why do you have it so explicitly who does what in the sense of rather than saying the staff shall develop a description, you have the staff reviewer developing a description which is then reviewed and approved by the branch chief.

COMMISSIONER ASSELSTINE: In part I think the reason why that portion of paragraph 2 is so explicit is that that was the area where I think there was the greatest concern and difference of view within the staff about how this would work and what would be decided at what level, and the reason for the specificity was to try and resolve those concerns now rather than leave it open and then permit this to become a source of further contention and uncertainty when the staff was developing the implementation plan.

COMMISSIONER AHEARNE: I would have thought that the issue the Commission would address would be should the staff explain why they do what they do.

COMMISSIONER ASSELSTINE: Yes.

COMMISSIONER AHEARNE: If the answer is yes, then Bill Dircks, the EDO or you can make sure there is a

procedure for the staff to explain.

COMMISSIONER ASSELSTINE: But the big concern I think within the staff, and let me see if I can characterize it right since both Vic and Ed are here, was the extent to which the staff has to explain at various stages of the process what it wants to do and why it wants to do it, and who has to review that, which parts of it, in the process.

COMMISSIONER GILINSKY: Suppose Ed case has an idea that something ought to get stuck on one or another system, does he then become the reviewer?

(Laughter.)

COMMISSIONER AHEARNE: Well, he has to find his branch chief first.

(Laughter.)

MR. CASE: I plant the seed and it will grow.

(Laughter.)

COMMISSIONER GILINSKY: What about someone who hasn't been here that long?

(Laughter.)

CHAIRMAN PALLADINO: I think you touch on it. The reviewer, at least as I understand it at the present time, could impose the backfit all by himself.

COMMISSIONER GILINSKY: At the present time?

CHAIRMAN PALLADINO: At the present time.

COMMISSIONER GILINSKY: I didn't think that was right.

MR. CASE: Well, it has to go through several review processes in the staff before in writing any such requirement could be imposed. Now that doesn't preclude somebody talking on the telephone or in a meeting. But before any written position can go out it has to be approved by the director of the techical side and the licensing management.

COMMISSIONER GILINSKY: We were told that there is a place for reviewing these decisions.

CHAIRMAN PALLADINO: Well, there were two thoughts, as I recall. One, if you are going to have a process whereby the reviewer sets forth his description and why he wants to propose the change, somebody in his management chain should review it so that it represents more than the thinking of one person.

The other point that I recall was that there was a feeling that project management ought to be brought in before it goes out as a requirement.

MR. CASE: John's questions was why be so specific as to who because, at least in mind, it is a very important consideration because if you make the process too cumbersome and there are too many people involved, you will never get out any new requirements,

and I don't believe that is your intent.

COMMISSIONER AHEARNE: I am just trying to make sure I understand that this document is this detailed because the administrative side of the agency is essentially saying we can't resolve it, because I would have expected that the policy side of the agency, the Commission, would be saying here is the policy, and the administrative side of the agency would be saying, okay, now here is how we are going to implement it. But this isn't. This is more.

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: This is not only the policy, but here the details of the administration down to the staff reviewer will do this and the branch chief will do that.

MR. CASE: Because those details affect policy.

COMMISSIONER AHEARNE: Well, I hear what you are saying.

COMMISSIONER ASSELSTINE: I agree with you, John, that one would assume that the normal process would be the other way. The sense I had after two fairly lengthy meetings ---

COMMISSIONER AHEARNE: You couldn't get there.

COMMISSIONER ASSELSTINE: That is right, that this was perhaps an exception. Maybe I am wrong on that.

COMMISSIONER AHEARNE: Now as I read this it says the staff reviewer and the branch chief agree on why it should be done.

COMMISSIONER ASSELSTINE: Right.

COMMISSIONER AHEARNE: But the licensing management only has to agree on what is to be done and not why.

COMMISSIONER ASSELSTINE: That is correct.

(Laughter.)

COMMISSIONER ASSELSTINE: Maybe Ed would like to explain why that is true.

COMMISSIONER GILINSKY: Let me just ask you, is it true that all these notions come from individuals at the lowest level?

MR. CASE: Most of them because they are the ones that are doing the review, yes. 99. something percent come from the reviewer.

COMMISSIONER GILINSKY: What is everybody else doing?

(Laughter.)

MR. TOURTELLOTTE: They are reviewing the reviewers.

MR. CASE: And the complaints about what the reviewes are doing.

(Laughter.)

COMMISSIONER AHEARNE: I would have thought though that we would have a reason. Here is what we want to do and here is why we want to do it, and I would have thought that the management agrees.

CHAIRMAN PALLADINO: The licensing mangement.

COMMISSIONER AHEARNE: Well, I haven't yet gotten to who that is.

MR. CASE: That who would be, John?

CHAIRMAN PALLADINO: The concept was a little bit like the medical doctors who get together and say this is the medical opinion. Now for some policy reasons maybe the management wants to put in that context that is broader.

MR. CASE: The reason for getting the licensing side involved is because their people have a broader perspective.

COMMISSIONER AHEARNE: Let me ask the question a different way to start with. Who is the licensing management? We have a staff reviewer and a branch chief and suddenly we have this general term by licensing management.

MR. CASE: It is anybody in the Division of Licensing, branch chief or above. So it has to be at least a branch chief approval. Now what we try to handle here is a situation where the branch chief didn't agree

with the position, but the assistant director did, and in that case then the licensing management would be the assistant director, and if he didn't agree, then it has to be the division director.

COMMISSIONER AHEARNE: Let me step back then. You have the staff reviewer. This staff reviewer then is not in the licensing side.

MR. CASE: That is correct.

COMMISSIONER ASSELSTINE: That is right.

MR. CASE: He is in Vollmer's or Mattson's organization or Hugh Thompson's.

COMMISSIONER AHEARNE: So any staff proposed requirement has to come out of that side and it can't come out on the ---

MR. CASE: No, it can, but this thing can't deal with everything. It deals with 99 percent of the things that happen.

COMMISSIONER AHEARNE: All right. In those 99 percent then the reviewer has gotten a branch chief ---

MR. CASE: His branch chief.

COMMISSIONER AHEARNE: Or her's.

(Laughter.)

COMMISSIONER AHEARNE: --- approval of the requirement as to both why it should be done and presumably what should be done.

MR. CASE: Yes, sir.

COMMISSIONER AHEARNE: They they take it to the licensing side ---

MR. CASE: This is the normal path. This happens now.

COMMISSIONER AHEARNE: Yes, I know, and the licensing side, at least at a branch chief level, only has to agree with what is to be done.

MR. CASE: Yes, sir. And the reason that I mentioned before, there are many times when the vote here is five to nothing, but the reasons are not all the same, and I wanted to permit that kind of democracy.

(Laughter.)

COMMISSIONER AHEARNE: Well, that loses my vote.

(Laughter.)

COMMISSIONER AHEARNE: What is wrong with the idea that the management, whatever level issues a directive, has to ---

COMMISSIONER ASSELSTINE: Agree with both the statement and the reason for it.

COMMISSIONER AHEARNE: Yes. What is wrong with that?

COMMISSIONER ASSELSTINE: I guess the reason I went the other way was I was persuaded by the arguments

that Ed made that it will create a good deal more effort and burden to reach that kind of an accommodation in every one of these cases, and for that reason it is worth it at that stage of the process.

COMMISSIONER AHEARNE: Can you give me a rough idea, a rule of thumb, as to back of the envelope or whatever, how many of these cases a year are you talking about?

COMMISSIONER ASSELSTINE: I can't but maybe Ed can. I don't know.

COMMISSIONER GILINSKY: That is a good question. What are we talking about?

MR. CASE: I don't know.

CHAIRMAN PALLADINO: Twenty or a hundred or a thousand?

MR. CASE: It is certainly less than a hundred and maybe ---

COMMISSIONER GILINSKY: For all reactors?

MR. DENTON: I think I mentioned last time, I think this is the minimal set. The majority of new actions that need to be worried about already are generic items and go through CRGR, and I think that is borne our if you look at this list of cost of utilities. So it is not a big item here. I don't have a number.

COMMISSIONER GILINSKY: Are you talking about a

hundred for all plants?

MR. DENTON: I didn't mention a number I didn't think. I don't think it is very big.

MR. CASE: Well, maybe a hundred.

COMMISSIONER GILINSKY: A hundred?

MR. CASE: No more than that for all plants.

COMMISSIONER AHEARNE: No more than one hundred.

MR. CASE: A few hundred.

COMMISSIONER AHEARNE: A few hundred. It doesn't sound to me for that size number that that is an insurmountable burden to know both why and what.

COMMISSIONER ROBERTS: I agree.

CHAIRMAN PALLADINO: Let me try an example that was set forth and I don't think it as exactly an answer to this question but it may shed light on this question. A review says we have got to put sprinklers in every room, and I may not have it right, Ed, but you can get at it better, and I don't know what reason might have been given, but it might have been given to reduce the consequences of any insipient fire. However, when it went to project management they said but look, let't go through those rooms. There are some places where there is nothing that can burn, and they reduced the number.

Now if the reason had been given that well, it

is because of regulations require it, that wouldn't have been an acceptable reason to project managment, but he might have said well, still, we don't think there is anything that can burn in there and therefore they reduced the number of sprinklers by a hundred or two hundred.

MR. TOURTELLOTTE: By fifty percent.

CHAIRMAN PALLADINO: So they might not have agreed for the reason for putting sprinklers in all rooms, but they did decide ---

COMMISSIONER AHEARNE: But they did agree to the reason that sprinklers ought to be put in some of the rooms. I am not familiar with your example.

CHAIRMAN PALLADINO: I know. I say it wasn't quite a hundrd percent applicable.

COMMISSIONER AHEARNE: But you see, that still is a case where they end up knowing both what and why.

MR. CASE: But there may be different why's, John. Why must you make everybody agree on the same why or why's?

COMMISSIONER ASSELSTINE: If they are both in agreement that a particular requirement is right and that it is justified, but in agreement for different reasons, it is necessary at this point in the process to say you have got to have a list of reasons that all of you agree

to?

COMMISSIONER AHEARNE: You see, the NRC issuing a proposed requirement or a requirement.

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: The NRC ought to have here is why it is needed.

CHAIRMAN PALLADINO: But there was another argument given, that the licensing management may not be the expert in the field, and the experts agree this is why something ought to be done. So why would they have to concur in the technical details of that if they can agree what is going to be done? It is little bit like the separation of the experts in any organization and then after they have decided yes, here is why it ought to be done, then you put it in the context of the overall project.

COMMISSIONER AHEARNE: Except the experts ought to be able to explain to the other people and the people there ought to be able to understand it and agree or disagree with it. The analogy I see is closer to when the staff comes to us to propose that they want to do something, I have always presumed that we try to understand why must it be done in addition to what it is.

CHAIRMAN PALLADINO: And sometimes we change our reasons.

COMMISSIONER AHEARNE: But yet we end up when we issue what is to be done we have what and why. Because for a lot reasons, one of which is we are five instead of one, we may have a mixture. Then the OGC and cohorts go off to defend us in the court and sometimes it is pointed out you didn't do such a hot job of explaining why. At least when we come to the final vote, we are trying as best as we can to agree on not only what must be done and why it must be done.

MR. CASE: You said final, and there is a hell of a lot of difference. This is at the beginning of a process.

COMMISSIONER AHEARNE: Ed, we have a proposal.

MR. CASE: No, you are not even doing that. Here is a fellow and he is management that thinks something should be done and if the licensee doesn't agree he can appeal it through a whole range of other people. Even if he has not agree with that, then he can get a cost-benefit estimate. We are at the beginning of a process.

COMMISSIONER GILINSKY: During which time nothing is happening.

COMMISSIONER AHEARNE: It still strike me that we ought to understand. Whoever is issuing it ought to be agreeing, yes, here is what I thing ought to be done and

here is why I think it ought to be done. If there are two separate reasons why it ought to be done, well, then you ought to be able to say here are the two separate reasons.

COMMISSIONER ROBERTS: I have something to be put on the tailend of that. In paragraph 2, the second full sentence, it is an addition and it starts "The description should include a brief statement of how the proposed requirement would improve safety." That is how it presently reads. I would use the language at 51.09, how the proposed requirements would result in a substantial safety improvement. How do you define improving safety? We have an existing regulation and you can argue whether it is being followed or not. We have heard all that, and the language says a substantial safety improvement.

CHAIRMAN PALLADINO: I don't think we looked at the specific language when we said improved safety.

COMMISSIONER ROBERTS: Improved safety is quite nebulous.

CHAIRMAN PALLADINO: It was shorthand for what we intended. Maybe your improvement would be worthwhile.

COMMISSIONER GILINSKY: It is a regulation which we may apply if we want to.

CHAIRMAN PALLADINO: But the idea of the first

one is that many times it is not clear how this is going to improve safety.

COMMISSIONER ROBERTS: Well, this is the threshold that the staff has got to reach to demonstrate that.

CHAIRMAN PALLADINO: But right now it is not clear that anybody writes down how soon ---

COMMISSIONER GILINSKY: Ed says they do.

CHAIRMAN PALLADINO: No, they don't write it down.

MR. CASE: If I compare this process with what we do now routinely, the only difference is that you must write down a brief description and the reasons why it improves safety. That is done but it is done orally among the staff members and with the licensee. It is not written, and that is the only real difference from our present practice.

COMMISSIONER GILINSKY: Let me ask you, Joe, is your purpose to bring some order to a process, to regularize it, so to speak and make it more rationale or tidy it up, or do you have a feeling that there is too much backfitting or too little backfitting?

CHAIRMAN PALLADINO: Well, let's see, I have got a mixture of things.

COMMISSIONER GILINSKY: You have got three

choices.

(Laughter.)

COMMISSIONER ROBERTS: All of the above.

CHAIRMAN PALLADINO: Or none of the above.

(Laughter.)

CHAIRMAN PALLADINO: Or pieces of all of the above. Yes, I have a feeling that backfitting is going on now, that there is considerable backfitting going on.

COMMISSIONER GILINSKY: But too much?

CHAIRMAN PALLADINO: I don't know. I don't have any quantitative ---

COMMISSIONER GILINSKY: Well, it seems to me that ---

CHAIRMAN PALLADINO: You asked me three questions. The other one is that I think if we are going to have a requirement for backfitting, that we ought to be able to set down what it is we are going to require and why, and then go out and give the licensee a chance to say no, I don't want it and I will use the appeal process.

If after the appeal process they is still a feeling on the part of the applicant that he doesn't want it, then he can ask for the cost-benefit analysis. People are objecting to having the cost-benefit analysis required all the time because that is too big a burden

and it will slow down ---

COMMISSIONER ASSELSTINE: And it will serve as a disincentive for individuals to go forward with proposed changes that they think are justified if they think that every step of the way it is going to be one hassle after another.

If first they have to come up with some real detailed explanation at the outset and, second, if they have to justify some higher threshold like substantial improvement, whatever substantial improvement is and, third, if they then have to go around and convince not only their management but also the licensing people to agree with their specific proposal and, fourth, if they have to do a detailed cost-benefit assessment in every case, that in many instances those people will say this is more trouble than it is worth and clearly the Commission is sending a signal that they don't want to see new safety requirements and therefore we won't do them. That is the concern about adding too many burdens and too many hurdles.

COMMISSIONER GILINSKY: I just say even as it stands it seems to me there is the possibility that licensees at least of operating plants will ask that we go through the entire process in each case. In fact, I don't see why they wouldn't if they object to the

proposed change.

CHAIRMAN PALLADINO: It costs them money to do it.

COMMISSIONER GILINSKY: Why does it cost them money?

CHAIRMAN PALLADINO: Well, they have got to come in for meetings.

COMMISSIONER GILINSKY: Well, that may be insignificant compared to the change involved, and I would suggest that there be some threshold for requiring these analyses, you know, something of the kind that we have in our adjudicatory proceeding, something like summary disposition or things which are below some threshold get handled in the normal course of doing business, because otherwise a licensee that does not want to get involved does not want to go along with one or another of these changes can just take it out indefinitely since the requirements are not imposed so long as this process is still going on.

CHAIRMAN PALLADINO: Well, they do that now. You are supposed to get to a threshold of whether or not you make that cost-benefit analysis.

COMMISSIONER GILINSKY: Well, I think it is an improvement over the earlier suggestions and I think for the reasons that Jim outlined, but I would still

introduce some sort of control.

COMMISSIONER AHEARNE: Following on Vic's line, I was kind of puzzled here, at least as I read this, that a licensee doesn't have to explain why they think the staff is wrong to trigger the requirement for doing the cost-benefit analysis. All they have to do is to say that they think they are wrong. Is that correct?

CHAIRMAN PALLADINO: I don't think that was our intent.

MR. CASE: The words would permit that, but I don't think that will happen.

COMMISSIONER AHEARNE: It says if the licensee objects in writing.

MR. CASE: You can't write anything that can be abused by one side or the other completely.

COMMISSIONER ASSELSTINE: I think if you look at the appeal process in paragraph 5, John, too, it says each side of the issue is to develop the position it intends to take and forward the position statement to the Division of Licensing. It is only after they have exhausted the appeal process that they can come in with the written objection.

Now to a certain extent Vic is probably right. If a licensee wants to simply say well, I am going to force them in every case to do the cost-benefit

assessment, they can probably make the appeal process a proforma exercise.

I think if they do that, what they then invite is the Commission then coming back and saying look, you are not making this process work the want we intended it to work and now we will change it.

COMMISSIONER ROBERTS: We certainly have.

COMMISSIONER ASSELSTINE: That is right.

MR. CASE: But even before that time, if he doesn't present good arguments at the various levels, his position will just never be upheld. So it is always to his advantage to present good reasons why something shouldn't be done.

CHAIRMAN PALLADINO: But I did in an earlier draft say that if he is going to engage in this process, he must make a good faith effort to cooperate and negotiate or whatever, and I have forgotten the words.

COMMISSIONER AHEARNE: When you have, Jim, the cost-benefit assessment, do you mean dollar costs?

COMMISSIONER ASSELSTINE: I mean essentially the same kind of assessment that is done for CRGR now, the one that is called for basically in considering the other requi. ments in Section 4(b) of the CRGR charter. That is what I have in mind.

To the extent that that can be done for a

plant specific requirement ---

COMMISSIONER AHEARNE: But you say to the extent practical in No. 3.

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: I am trying to get an understanding of what you mean by that. I have done a lot of dollar cost estimating for weapon systems and I know you can do a very good job of doing an estimated cost. It just depends on how much work you want to put into it. What do you mean?

COMMISSIONER ASSELSTINE: The way I would envision it is that hopefully there wouldn't be very many of these that would not be satisfied by the appeal process. So we would only have a few and they would be the significant plant specific items.

My hope would be that those cost-benfit assessments would be a pretty good job. One of the reasons I wanted to retain the appeal process or I was persuaded that was a good idea was to try and screen out most of them through the negotiation process so that only the significant ones, the few that really needed a thorough scrutiny, would then be the ones that you would have those assessments done. So it wouldn't become just a routine proforma exercise. It would be something fairly well done.

Now I don't know how that compares with what is done routinely for CRGR in terms of the detail of the cost-benefit kinds of comparisons that get done.

COMMISSIONER AHEARNE: Let me ask it a different want around. You are saying then that you would require no better costing than what is done now for the CRGR?

COMMISSIONER ASSELSTINE: What I had in mind was something essentially comparable on the assumption that that process seemed to be working fairly well and that we we seemed to have a process there that looked at these things fairly well. That was my assumption.

COMMISSIONER AHEARNE: All right.

COMMISSIONER AHEARNE: Is this end of the building about to cave in? Why is Tom back there?

(Laughter -- Commissioner Roberts was standing in the back of the room.)

COMMISSIONER AHEARNE: He wanted to see if it looks different.

(Laughter.)

COMMISSIONER AHEARNE: In moving on I will say that I find No. 2 as it is I have really two fundamental problems. One is the details of the Commission speaking to it and, second, I think any time we go out with something there ought to be that whoever signs that out ought to agree here is what it is and here is why it is.

COMMISSIONER ASSELSTINE: I must say I have got a lot of sympathy with that. I guess the question is where you draw the line in terms of, one, at the point in time where that is done and, second, your perception of how much of a burden that creates in terms of a disincentive to reviewers to look for requirements.

COMMISSIONER AHEARNE: But the reviewer always has to have a reason.

COMMISSIONER ASSELSTINE: Yes, and I think there is nothing in here that changes that at all. It is the question of how far he has to go in also convincing licensing folks to accept his particular reasons.

CHAIRMAN PALLADINO: However, a major part of the discussion centered around whether or not there needed to be a written statement of what is to be done and the reasons for it. I would agree with your policy type approach that says that there shall be developed a description and statement of how the proposed requirement would improve safety and this would have to have the approval of the licensing mangement.

COMMISSIONER ASSELSTINE: And in fairness, too, you ought to recognize that there is a difference among the staff on that very point.

MR. TOURTELLOTTE: If you look into the requirement though that the description would include a

brief statement of how it would improve safety, the question of why is always a subset of that. In other words, the why is to improve safety and how it is would be the reason.

COMMISSIONER AHEARNE: I agree with that. The difficulty I was having with it is that it seemed to be that the final signoff on yes, this is now something that should be done didn't carry with it a signoff and this is why it should be done. That was my problem.

MR. TOURTELLOTTE: Let me say that I agree a hundred percent with that, but again in the sort of negotiations that we had, and as a matter of fact, I favored that approach to begin with, but as is pointed out, it sort of became a question of what point in time do you make that requirement and everybody sort of agreed that that would come later.

COMMISSIONER ASSELSTINE: In the appeal process.

MR. TOURTELLOTTE: Yes.

CHAIRMAN PALLADINO: There was an expression that the technical people had a basis for having the reason and the other didn't really have a basis for having a reason even though they may agree or disagree with it.

The doctor may tell the hospital administrator the gall bladder has to come out, and the administrator

says as far as gall bladders you are the expert as far as how we are going to use the operating room and what-not.

COMMISSIONER AHEARNE: Are you saying that Darrell Eisenhut and his people are like the administrators?

CHAIRMAN PALLADINO: Well, that was discussed in the meeting.

MR. CASE: They are technical people but from a general standpoint rather than from a narrow techical standpoint. You need both, John.

CHAIRMAN PALLADINO: Seismicity is complicated, and there are some people that understand seismicity well and there are some that just can talk about it and maybe reflect on it but couldn't do a seismicity calculation.

COMMISSIONER AHEARNE: But see this makes me very uneasy because it gives the impression that there is a large segment of NRR whose job is more or less to pass papers across.

CHAIRMAN PALLADINO: I have made the same comment ---

(Laughter.)

MR. CASE: It says you have to agree with the position.

CHAIRMAN PALLADINO: But they are more than that.

COMMISSIONER AHEARNE: They have to agree with the position.

MR. CASE: Yes.

COMMISSIONER AHEARNE: You see to me the position is what and why. It is not just what.

MR. CASE: That is not the way we use position in the licensing process. It is the staff position that you must install a so and so.

COMMISSIONER AHEARNE: And part of the difficulty though I thought was not having a good recording of why it is the staff position that you have to do such and such.

Okay, I guess we have belabored that long enough.

CHAIRMAN PALLADINO: As far as that paragraph, at least the first part of it, your suggestion is that we call for a description in the statement of improving the safety and go forward with the approval of licensing management.

COMMISSIONER AHEARNE: Yes, that is what I would do.

COMMISSIONER GILINSKY: Let me ask you to be serious, what would happen if say Harold wanted some change? Suppose you thought there ought to be diversity in breakers, do you go through this process? Would you

then assign it to whoever is in the ---

COMMISSIONER AHEARNE: A semi-facetious interjection, that would like I think asking the hospital administrator should the gall bladder come out.

COMMISSIONER GILINSKY: Well, back to breakers.

(Laughter.)

MR. DENTON: Well, I would make such a recommendation.

COMMISSIONER GILINSKY: Would you turn it over to that branch and say take a look at this and would it then be up to them to come up with a ---

MR. DENTON: I wouldn't know the condition of the gall bladder unless a specialist had brought it up.

COMMISSIONER GILINSKY: Let's stick to breakers.

(Laughter.)

MR. DENTON: Or unless I visited the plant and saw them. But there is an escape valve in item 4 that says if the agency, or if the director of the office needs to impose a requirement he can.

COMMISSIONER GILINSKY: Well, that is kind of an emergency provision, isn't it, as I read it?

COMMISSIONER ASSELSTINE: I think it is broader than an emergency, but, yes, it is a prompt action.

COMMISSIONER AHEARNE: But it isn't meant to be the way that if Harold wants something done ---

COMMISSIONER ASSELSTINE: No, that is right.

MR. DENTON: I would come to the Commission if I wanted ---

(Laughter.)

MR. DENTON: Let's take a more real life case. Let's suppose there is a routine in-service inspection program going on and it finds cracks in certain pipes and not all of the pipes have to be inspected at this time, and the licensee repairs those pipes. Well, maybe our normal rules only call for that fraction of pipes to be inspected and the reviewer says well, I know you are meeting our normal rules, but you are experiencing the outside bounds of norm and I think you ought to inspect a few more.

Now that is the kind of case I think we are talking about here where there is a specific plant and some specific circumstances. The plant is right in accordance with the rules, but perhaps the experience that is coming in makes the reviewer somewhat uneasy.

So the question is when. So he would write a piece of paper saying I would like to have this applicant inspect ten percent more of their welds and see what they find and see if there are any more bad apples in the barrel and he would say why, because the experience in the first inspection revealed a high rate.

I think the thing we were trying to preserve is to let him at least get that view ventilated and have the applicant come back and say why he didn't think it was appropriate before we would have to trug into the cost-benefit comparison. At least get the technical issues explored and if at the end of that process we couldn't resolve it, then it might be appropriate to do the base study.

COMMISSIONER GILINSKY: Well, you are describing the entire process. I was wondering specifically what happens if you or Ed or someone ---

COMMISSIONER AHEARNE: Or Darrell.

COMMISSIONER GILINSKY: Or Darrell.

MR. CASE: I would call the people in who are reviewing the thing ---

COMMISSIONER GILINSKY: And turn it over to them.

MR. CASE: --- and say I think this ought to be done this way, or what is wrong with that or don't I understand it, and we would talk about it and I either modify or they say, yes, I guess that is the thing to do, and I would say go tell the licensee to do it.

COMMISSIONER GILINSKY: I see. So under this process after that initial conversation they would then run through this process.

MR. CASE: I assume they would tell them Ed case said this ---

COMMISSIONER GILINSKY: What is your assessment of how this would work? Would licensees exercise their full appeals or do you expect sort of reasonable accommodations taking place in relatively few of these ---

MR. DENTON: I think the process is much calmer today than it was say four or five years ago when this was a big issue. There aren't very many appeals going on today. The number that I get involved in is a pretty small number. Maybe Ed gets involved in a few more, but I think as our procedures and standard review plan and standards become widely known there are just fewer and fewer of these appeals and it is more the case I mentioned where someone wants to depart from say because of operating experience or new research.

The reviewer is about the only one in the shop who is aware of that detail because he is look at that kind of level of paper. So he maybe is probing the licensee to do a little better job.

COMMISSIONER AHEARNE: In what major ways does the paragraph 5 process differ from the way you do it now?

MR. DENTON: I think it is the documentation

side, isn't it, Ed?

MR. CASE: Well, we even do documentation now of the appeals process. I don't know how rigorous it is.

COMMISSIONER GILINSKY: What do you see as the effect of this on our own activities? Do you see pretty much what is going on now going on but documented better?

MR. CASE: Yes. I don't it is an undue burden and would have any major chilling effect on the reviewers, and I think the documentation of the process will help people who have been trying to decide for years how badly or how well do we do in this backfitting process.

COMMISSIONER ASSELSTINE: Yes.

MR. CASE: I think we do well, but I can't prove it and others think we do badly and they can't prove it.

COMMISSIONER AHEARNE: In No. 6 what does paragraph 4 mean?

COMMISSIONER ASSELSTINE: Four?

COMMISSIONER AHEARNE: Yes, what does it mean?

COMMISSIONER ASSELSTINE: It basically means that the staff has to come up in the implementation plan with how they intend to use the assessments in making decisions. That is up to the staff to do and what I lifted at the end was one of the findings that we had included in the licensing reform legislation about the

use of cost-benefit asssessments or the consideration of costs, that is recognizing that our paramount responsibility is public health and safety.

COMMISSIONER AHEARNE: What do you think this would end up meaning though?

COMMISSIONER ASSELSTINE: I think it would end up meaning that on balance a requirement would have to be justified and the safety benefit would have to be a clear safety benefit to the proposed requirement and that on balance that safety benefit was justified when one looked at the costs that were involved.

I think that is going to have to probably be in most cases a kind of a qualitative assessment because I don't think you can get down to the same kind of quantification of the safety benefit that you can get down to in terms of the dollar costs. I think you would probably be a lot more precise in terms of estimating the dollar cost of a plant specific proposed requirement than you are going to be able to estimate the benefit.

COMMISSIONER AHEARNE: You may be a little more accurate.

COMMISSIONER ASSELSTINE: That is right, but I think in all candor paragraph 4 basically says to the staff you come up in the implementation plan with more detail on how you are going to make those judgments and

how you are going to use these things and what those judgments are going to be.

COMMISSIONER AHEARNE: In No. 8 I could read this one of two ways and maybe it is meant both and maybe it is meant neither.

One way would be the SES contracts of the SES members are going to have in it one element, their ability to implement this. Another way I can read it is for future management positions when they open up the people will be considered as candidates for those management positions and one will look at how did they do in implementing this policy.

COMMISSIONER ASSELSTINE: I guess for myself i was thinking more about the former rather than the latter. In terms of annual assessments of performance, this was just one element, but it was one ---

COMMISSIONER AHEARNE: One element in the SES contracts?

COMMISSIONER ASSELSTINE: Yes.

COMMISSIONER AHEARNE: All of the senior managers and most managers in the SES, they have a contract which is then here is what they are going to be held to as a standard, and I don't think that you can then put in something else unless that is what you mean. See, this can then be put into those SES contracts, but

if it isn't in there, I don't think that you can hold them to this.

COMMISSIONER ASSELSTINE: That is probably right, okay. I guess I hadn't thought that far enough to that next step down to how it fit into the SES process, but at least the intention was to use this as at least one element.

CHAIRMAN PALLADINO: So this ought to be an instruction to say it ought to go in the SES ---

COMMISSIONER AHEARNE: Well, if that is what you mean. I am raising the question.

No. 9, the staff is conducting a study on the feasibility.

CHAIRMAN PALLADINO: I was counting on you to support me on that one.

(Laughter.)

COMMISSIONER AHEARNE: Oh, I was just going back and reading from a staff requirements memo. See, the staff had originally come in in 1981 with a proposal. This was the post-CP changes rule, and the staff had proposed to delay working on it indefinitely, and the Commission firmly in June of 1981 said absolutely not, you must finish by December of 1981.

CHAIRMAN PALLADINO: What is the date of that?

COMMISSIONER AHEARNE: This was June of 1981.

Now I think 12 extensions later the latest date for it is December of 1983, which I think is a better way of describing it as essentially six months ahead which is sort of the way it has slipped all along.

COMMISSIONER ASSELSTINE: Yes.

CHAIRMAN PALLADINO: However, at one of our previous meetings we had all this junk on the standard review plan as a reference document and we felt we had better not jump to it and make sure the staff studied it.

COMMISSIONER ASSELSTINE: I don't know what would come out of the study. I am concerned due to the discussion we had either at the last meeting or the one before that about what you use as the baseline which I think is still the tough problem there, but I am willing to go forward with the study and maybe say we really mean it. We could add that.

(Laughter.)

COMMISSIONER AHEARNE: This time we really mean it.

COMMISSIONER ASSELSTINE: This time we really mean it.

(Laughter.)

CHAIRMAN PALLADINO: Well, let's see, I think we could fix up the words with regard to making this less prescriptive. I don't know whether that solves anything

when we do it because that seemed to be the central point of the issue at the last meeting.

COMMISSIONER ASSELSTINE: That is right.

CHAIRMAN PALLADINO: There were arguments that there are some areas that require real expert treatment and those experts are the one that ought to be able to set forth the reasoning and the licensing mangement need to concur. That was on a major item, but we could fix it up so we say the staff should prepare a description and how this would improve safety and it must have the approval of licensing management.

COMMISSIONER AHEARNE: My fundamental philosophy is that whenever the NRC tells a licensee you should do something we ought to know that someone is the person telling them to do that, and that person should know why they are telling them to do it and what they are telling them do, and there should be some kind of a list of any major assumptions that have been make. For example, one major assumption is that it isn't going to cost very much money.

Having done that, and maybe it is in this NRR appeal process, if the licensee disagrees, they have to be able to say more than we disagree. They have to be able to say well, you said it is going to do this and no, it isn't really.

CHAIRMAN PALLADINO: I think we should probably go back to one of these requirements that the licensee must persuade or must give arguments for their position.

COMMISSIONER GILINSKY: That would be helpful.

CHAIRMAN PALLADINO: Well, that I think should probably be in there.

MR. TOURTELLOTTE: At what point? My understanding is that that is in there in paragraph 5.

COMMISSIONER ASSELSTINE: I thought it was.

MR. TOURTELLOTTE: It is at just what point in time it comes into play. The idea was that generally the staff reviewer is the one who imposes the requirement and he alone knows why he imposes that requirement and he is supposed to say why he imposes.

Once he has said why he has imposed it, then the licensee is in a position of answering that.

COMMISSIONER GILINSKY: But he should have to answer it.

MR. TOURTELLOTTE: Certainly, and I think that is what paragraph 5 says.

COMMISSIONER ASSELSTINE: I think so, yes.

COMMISSIONER AHEARNE: But the staff reviewer doesn't impose the requirement. That is all that this says.

MR. TOURTELLOTTE: The staff reviewer is the one

who originates the requirement and he alone is the one who knows why he did it.

COMMISSIONER AHEARNE: He shouldn't be alone in why he knows it.

(Laughter.)

MR. TOURTELLOTTE: Well, presumably that is why ---

COMMISSIONER ASSELSTINE: The others will know his reasons.

(Laughter.)

COMMISSIONER AHEARNE: Even if they don't agree with him.

MR. TOURTELLOTTE: This process has developed in sort of elementary terms. That is that first he is the one who knows and therefore he is the one who writes the description of how this improves safety. Then once that is done, then it gets into the review chain. Now any number of things could happen. It could be that it goes to his branch chief and his branch chief says hey, that is no good, forget it. Then you may get into differing professional opinion and that sort of thing.

Or it may be that he writes his description out and the licensee says oh, why we understand that and we will impose that. We will do that, and then it goes away that way.

COMMISSIONER AHEARNE: What I am trying to say is that there is some point where the internal NRC process transmits something to the licensee.

COMMISSIONER ASSELSTINE: Yes.

COMMISSIONER AHEARNE: At that point I believe the person doing that transmittal ought to be affirming this is both what and why. I read this as saying no, all they have to be affirming is what.

MR. CASE: That is the way it was written.

COMMISSIONER ASSELSTINE: That is right.

CHAIRMAN PALLADINO: That is what I was told by some of you in that meeting. I sat there and was told but you will never get the guy to agree for the reason that he is not expert in that.

MR. TOURTELLOTTE: Could you put the word "why"? In other words, a description should include a brief statement of how and why the proposed requirement should improve safety. Would that be better?

CHAIRMAN PALLADINO: I think we could write around it any way we want. We can say for a commerical power the staff is to provide a plant specific basis and a description of any staff imposed requirement that involves a new staff position or changes an existing position. The description shall include a brief statement of how the proposed requirement would improve safety and

is to be approved by licensing managment and forwarded to the licensee. Now that gets us out of all of that hassle.

MR. CASE: But the allegation is, John, that these staff reviewers for no reason with no approval require these things. Now this thing surely meets that allegation.

COMMISSIONER AHEARNE: But, Ed, I don't think that is true.

MR. CASE: I don't think it is true either.

COMMISSIONER AHEARNE: After almost five years I still am having difficulty seeing any good detailed description, supported description of this bad situation. All I am addressing here is however it is seems to be logical and sound management that if you are regulating something and you are telling the people that you regulate we want you to do this, even if we are proposing we want you to do it that whoever is doing that telling agree or affirm this is what I want you to do and this is why I want you to do it, and it doesn't make any difference whether we have been swamping them with unnecessary things, we haven't been giving them enough things, we have been giving them almost nothing. It just seems logical to do it that way and it seems right.

MR. TOURTELLOTTE: Are you suggesting that the first phrase then of the ---

COMMISSIONER AHEARNE: No I like the way the Chairman just changed it. That would be fine.

MR. TOURTELLOTTE: That would strike the first phrase of the second fully underlined sentence. In other words, if you put a comma after the word "safety," improved safety instead of a period, and then struck out the first phrase of the next sentence and continued "and any resulting staff position must be approved by the licensing management and forwarded to the licensee" ---

COMMISSIONER ASSELSTINE: No, that won't solve John's problem.

COMMISSIONER AHEARNE: The way the Chairman did it was much better.

MR. TOURTELLOTTE: I thought that is what he did.

COMMISSIONER AHEARNE: He struck out a little bit more.

CHAIRMAN PALLADINO: I am trying to fix it up so it can be ---

COMMISSIONER GILINSKY: Let's see, I ---

CHAIRMAN PALLADINO: We are doing a little word engineering and I think you would want to see it.

COMMISSIONER GILINSKY: Well, let me ask you this. Isn't the branch chief in effect approving the statement that was brought to him about how the change

was ---

COMMISSIONER AHEARNE: It is a different branch chief.

MR. CASE: The way we are set up he doesn't sign the letter. His contribution to the letter goes over to the licensing branch chief who signs the letter. Now of course to meet John's logical way of doing it, I could change that process.

COMMISSIONER AHEARNE: You say logical in the pejorative sense.

(Laughter.)

COMMISSIONER GILINSKY: Well, there is a pejorative aspect.

(Laughter.)

COMMISSIONER GILINSKY: Well, let's see, the technical branch chief approves the reason.

MR. CASE: Yes, Commissioner Asselstine's proposal.

COMMISSIONER GILINSKY: That is right, and what you want, John, is that the licensing people ---

COMMISSIONER ASSELSTINE: The licensing people to have ---

MR. CASE: Also.

COMMISSIONER ASSELSTINE: Yes, that is right, they both have to.

COMMISSIONER GILINSKY: I guess you are probably talking about a different way of doing business altogether.

COMMISSIONER ASSELSTINE: Yes.

COMMISSIONER GILINSKY: Which may well be the logical way of doing things.

MR. DENTON: I don't think it is that big an issue. We were just trying to simplify the role so that we didn't discourage the initiation of these. In the great majority of my experience, the project manager and the technical person have worked together on this issue and they both would agree on it anyway.

COMMISSIONER AHEARNE: I would hope so.

MR. DENTON: The great majority of them, it doesn't matter if he agrees. I think there are a few which this one more hurdel then that we would have to make the technical guy go through for those percentages where they don't disagree. It is very seldom that the two disagree and that gets moved up the line when it happens.

COMMISSIONER AHEARNE: I would think so, and if that disagreement has to be moved up this line, the the person up the line might be the one who ends up signing it. But still the principel is that the person who signs it out ought to be agreeing here is what and why.

CHAIRMAN PALLADINO: I can try to read what we

have. I will try it. For commercial power reactors licensed to operate, the staff is to provide on a plant specific basis a description of any staff proposed requirement that involves a new staff position or change in an existing position with respect to the licensee. The description should include a brief statement of how the proposed requirement would improve safety. The description must be approved by the licensing management before it is forwarded to the licensee. And then we continue, or words to that effect. We can try to fix that up.

I haven't lost the thought of your going back to ---

COMMISSIONER ROBERTS: Substantial safety, straight out of 50.109.

CHAIRMAN PALLADINO: But I thought Jim's purpose was to divorce it from 109.

COMMISSIONER ASSELSTINE: That is right.

CHAIRMAN PALLADINO: But there is no reason we can't use those words.

COMMISSIONER ASSELSTINE: Well, but the question is how high a threshold do you want to put in here and how much do you want to discourage the initiative of staff reviewers.

CHAIRMAN PALLADINO: But if he doesn't make a

signficant safety improvement, I think it would be apparent.

COMMISSIONER ASSELSTINE: Yes, and I think that is one of the purposes of the appeal process is to resolve that very issue, that is are you making me do something that really doesn't have that much of a benefit and really isn't worth it.

CHAIRMAN PALLADINO: Since we are on that paragraph, Jim had proposed adding to the underscored sentence just about the middle of the page, except as provided in paragraph 4, the staff proposed requirement will not be imposed and plant operation will not be disrupted during the NRR appeal process if the licensee objects in writing until after the cost-benefit assessment is completed and final determination has been made that the requirement should be imposed. I think that is a good fix.

COMMISSIONER ASSELSTINE: Yes, I didn't have a problem with that one I don't think.

COMMISSIONER AHEARNE: Can I understand how this process is thought to work. The requirement goes out and the licensee objects and it goes into the NRR appeal process, and that goes up to the Director of NRR.

COMMISSIONER ASSELSTINE: Right.

COMMISSIONER AHEARNE: All right. Now at the

end of the that if the Dirctor of NRR still is agreeing the position and at that stage the licensee continues to object, it is at that stage the cost benefit analysis has to be done

COMMISSIONER ASSELSTINE: That is correct. That is right.

COMMISSIONER AHEARNE: Okay, and then what?

COMMISSIONER ASSELSTINE: Once the cost benefit analysis is done, then someone makes the judgment on whether the proposed requirement is to be imposed.

COMMISSIONER AHEARNE: But, you see, you go on through this system where this is plant specific and the Director of NRR has agreed that, yes, this should be done. Now the licensee has objected again, and a cost benefit analysis is done.

COMMISSIONER ASSELSTINE: Right.

COMMISSIONER AHEARNE: To whom does that cost benefit analysis go and who now makes the decision?

COMMISSIONER ASSELSTINE: The implementation plan is supposed to tell us who would make the decision.

COMMISSIONER AHEARNE: Well, there is only a few limited ---

COMMISSIONER ASSELSTINE: It is probably going to be one of the people that was involved in the appeal process if the whole appeal process was used.

COMMISSIONER AHEARNE: Well, what I am trying to get at explicitly is that normally in a chain the next cycle would have to go to say Dircks.

COMMISSIONER ASSELSTINE: I didn't intend that this would go to ---

COMMISSIONER AHEARNE: You have gone up this far and the Director of NRR has said still yes. Another piece of information is now developed and normally it would then go up to the next ---

COMMISSIONER ASSELSTINE: Well, I guess I am not sure I see why it would have to go up to the next higher level. If you now have the new information, I don't see why someone in NRR can't then consider the decision based upon the new information.

MR. CASE: The director has the ultimate authority to issue the order to require it if the licensee continues to object.

COMMISSIONER ASSELSTINE: Yes. On a plant specific change I don't see it bumping up above NRR.

COMMISSIONER AHEARNE: I am trying to see what message you are directing here because now there is a new piece of information and you are essentially saying all right now that you have done the cost benefit calculation you want the licensing mangement to reconsider.

COMMISSIONER ASSELSTINE: Yes, that is right, to

see whether that changes their view.

MR. DENTON: By this point it has gotten to be just a question of documentation and then we go back and write it and put that back in and assuming that we had all the same facts the first time around you would come out the same way. But perhaps by doing it you would come out with some new man- m cost or equipment cost or something and the original system might change.

COMMISSIONER AHEARNE: So, Harold, you would envision it almost starting back with the original proposer of the idea ---

MR. DENTON: And have it come back up again then to see if there are any new factors of the cost benefit which would show. Up to this point we are working on less than full information about the issue, but I sure would not keep escalating an issue like this one.

CHAIRMAN PALLADINO: What if after the cost benefit analysis is made and it doesn't convince anybody along the way, including yourself, would you envision their appealing on to the EDO and the Commission?

MR. DENTON: I wouldn't hope so. I think if it doesn't convince the normal ---

COMMISSIONER GILINSKY: When you say it doesn't convince, you mean goes which way?

MR. DENTON: I think if we still think it ought

to be done and the licensee still objecting, then we are back into a normal mode where we think something needs to be ---

COMMISSIONER GILINSKY: I don't think you want to go through the whole process again. I mean the assumption has got to be that if this is working right relatively few cases rise to that level, and I would say at the point the Director of NRR ought to deal with it depending on how this thing comes out.

If it comes out to support the staff position, fine, then you just go forward more fully armed, and if it comes out that it doesn't, why you have the burden of deciding ---

MR. DENTON: I think in real life it is almost a part of the appeal process. If we are talking about the failure of the dam in flooding Yankee, and let's just pick a real example there, how much does it cost to fix the dam and what is the probability of the dam to fail. We will have cost and probabilities of the appeal meetings ---

COMMISSIONER AHEARNE: Isn't that cost benefit analysis sort of done?

MR. DENTON: I was using it as an example.

COMMISSIONER AHEARNE: But if the costs are one of the big arguments the licensee is going to be making,

isn't then that effort debated and developed during your appeal process?

MR. DENTON: Well, he only puts in as much effort as he thinks it would take to win. Then if he loses, he is liable to say at the end of that well, I really didn't properly convey all of the costs and let me go back and get a better study done, and I will come back with more.

CHAIRMAN PALLADINO: But it is even possible that you come along and say by golly you know I think we really ought to have a cost benefit before I can make up my mind. That is not ruled out.

MR. DENTON: Part of the problem in that area is even getting the information to do cost benefits takes money and time and so we try to see if we can resolve it with lack of less than full information and the process kind of keeps on. When there is a difference of opinion, then you have to keep gathering more and more information in to make a decision each time.

But I would think at the end of the process we if there really was a Mexican standoff, that we would do a cost benefit, reconsider the issue and take the action. You wouldn't want it to get further up in the line.

CHAIRMAN PALLADINO: Let me just suppose. Now you say I have reviewed the cost benefit analysis and I

think we ought to take this action. Do you envision having them appeal to the EDO and the Commission?

MR. DENTON: I wouldn't think so. I would propose to issue an order and the licensee would settle it before a board at that time.

MR. CASE: Of course the licensee realize that the EDO and the Commission have effects on director's decisions. So there is nothing that would preclude them from calling Mr. Dircks or calling you or calling anybody and they do that now and we reach our decisions with that in mind.

COMMISSIONER ASSELSTINE: But I think the office director is the right level to have the decision made.

CHAIRMAN PALLADINO: If there a formal position now whereby they can petition the Commission to consider it?

MR. CASE: Just by telephone. There is nothing formal about it.

COMMISSIONER AHEARNE: They can write a letter.

COMMISSIONER ASSELSTINE: Yes.

MR. TOURTELLOTTE: What I put in at the bottom really is directed toward that question, and that is that there would be an appeal to the EDO and to the Commission.

Now the way I envision it is that if the cost

benefit study is done and the Director of NRR in this case would be of a mind that the backfit should still be imposed he would draft up an order using the cost benefit as the basis for his analysis.

That order, it seems to me, and I don't suggest that you have to go through the whole process again, but by the same token, the Director of NRR is not the Commission and the Director of NRR should be accountable both to the EDO and ultimately to the Commission on an important order. If you do not have a means for appeal to the EDO and to the Commission, then you are playing into the hands of one of the largest criticisms that we have in management which is no accountability for management.

COMMISSIONER GILINSKY: But there are all sorts of informal ways to present your views. The question is are you going to set up a whole paraphernalia of appeals. In another area when we are talking about adjudication, we thought we ought to go the informal route. It seems to me that the same notion applies here.

CHAIRMAN PALLADINO: I had a question. I got the impression that you were trying to bring the Commission and the EDO into the chain before there was a cost analysis made.

MR. TOURTELLOTTE: No. In my view, although it is not specified here, and that is why there is a lot of

prescriptive detail in here, but also a lot of it is left to the implementation plan. The way I would see the implementation plan, among other things, developing is that the Director of NRR would use the cost benefit analysis for making his ultimate decision.

But since he is at least organizationally under the EDO, then I think the EDO, he has a responsibility and the Comisssion ultimately has a responsibility and they should exercise their authority that is commensurate with that responsibility.

COMMISSIONER AHEARNE: But, Jim, isn't there always the opportunity for a licensee to come to the EDO and come to the Commission if they disagree? The other part of it is as far as accountability it would seem that No. 8 is your accountability.

COMMISSIONER ASSELSTINE: That is right. I think do.

MR. TOURTELLOTTE: Well, the accountability, of course an individual manager manager may be held accountable, but how how is the Commission ever going to know whether the accountability is being measured up to or not? How is the EDO going to know? If he doesn't review the actual case, then how is he going to know.?

COMMISSIONER AHEARNE: I guess what I was having difficulty with is there is a difference between formally

instituting as a part of the process. It is really a continuation of the chain that you have up above in No. 5 that it is going up, starting at the Director of the Division of Licensing and then working its way up that chain and this chain then just continues on up to the EDO to the Commission as opposed to a system which I think is probably the case now of if one of the directors does something that a licensee views as egregioius, I would expect that they notify that management and I would expect if Harold did something that the licensee felt was really particularly and uncalled for that they would have no problem in notifying Dircks or the Commission.

MR. TOURTELLOTTE: Well, my problem is that if you don't mention in here that there is a right of some licensee to appeal to the EDO and to the Commission ultimately on the decision of the Director of NRR, then if maybe interpreted as meaning that the Commission intended that no such appeal should lie in the future.

COMMISSIONER ASSELSTINE: I think in the formal appeal process that is right. I don't think there ought to be a formal complicated appeal process to either Bill or to the Commission on these plant specific changes.

COMMISSIONER GILINSKY: At least you are not encouraging such appeals.

COMMISSIONER ASSELSTINE: I think the final

decisional authority really ought to be the office director and then there is an informal process that can work if there are really egregious cases.

CHAIRMAN PALLADINO: Jim, you can't put this in No. 5 anyhow because No. 5 is supposed to be the appeal process before you make a cost analysis.

COMMISSIONER ASSELSTINE: That is right.

CHAIRMAN PALLADINO: I think that should stop definitely at the office director, and I am not sure I want to encourage people to appeal to the Commission, but there is nothing to preclude such an appeal.

COMMISSIONER ASSELSTINE: That is right, and I think John is right that you do have the accountability element under paragraph 8.

CHAIRMAN PALLADINO: I don't know what that means under paragraph 8.

COMMISSIONER AHEARNE: What it means is that if you put in the SES contract that one of the criteria that you are going to rate Harold by, Dircks by or Ed by is implementing this process successfully, then if you are getting a lot of complaints about how they are doing it, then they get marked down on that which affects a number of things.

MR. TOURTELLOTTE: But you can't do it on the basis of complaints because a complaint is only a

complaint. Unless you are reviewing on a regular basis to determine whether those complaints are substantial or not, you can't rate somebody down on their SES appraisal simply because somebody has accused them of something.

COMMISSIONER AHEARNE: Most people, managers -- let me put it differently. Certainly if I am a manager and I get a complaint about someone and I read it, and I try to assess is there substance here. If I think there is substance there, then I look further into it.

CHAIRMAN PALLADINO: But most of the complaints will be that they turned down my appeal. I am sure they won't complain that ---

MR. TOURTELLOTTE: Well, let me ask it this way. Is it the sense of the Commission that if you don't have these words in there that there is a remedy that exists anyway on an informal basis for a licensee to take their concerns to the EDO and to the Commission.

COMMISSIONER ASSELSTINE: In an extraordinary case.

MR. DENTON: Before you answer that, I think all this time the licensee is sitting there and making on change in the plant and the safety issue got identified a year ago, it is kind of like taking a traffic ticket to the President before you can actually execute the fine here.

How far do you want to permit this situation? Maybe you ought to have a time limit or something in there, too. By giving the appeal, the presumption is that it is an issue that will probably be decided in the appellate's favor. By the time it has gone this far, I think the presumption is the staff has probably made the correct decision and it ought to be implemented.

COMMISSIONER ASSELSTINE: I agree with you and I think that is what would be required absent that kind of an appeal process, that once you did the cost benefit analysis and you made your judgment that the change was justified, you would make your decision and the change would then have to be implemented as soon as you directed that it be and any further review on an informal basis in some kind of an extraordinary case would be after the fact.

MR. OLMSTEAD: I would like you to consider one other thing, too, and that is if you do review this decision, then you impose a requirement on an operating reactor by order, you then aren't going to be able to review the Licensing Board decision because you have reviewed the merits.

COMMISSIONER AHEARNE: Do you agree with that?

MR. MALSCH: No. It is always possible to make a preliminary determination on the merits prior to

instituting a Board action.

MR. OLMSTEAD: You are treating it as a prosecutorial order then at that point.

COMMISSIONER AHEARNE: We have done that in a number of orders.

CHAIRMAN PALLADINO: Are there other changes?

COMMISSIONER AHEARNE: No. The other point that I had been concerned about, and I guess it is embedded in No. 5, is I believe that the licensee, if they disagree, they have got to have some reason for disagreeing and not that they disagree.

COMMISSIONER ASSELSTINE: I agree.

CHAIRMAN PALLADINO: Jim, did you have any more comments on this?

MR. TOURTELLOTTE: No, this generally I think achieves the same results that we were trying to achieve earlier in seeking to simply give a force and effect to 50.109 and it is a little more expansive than the one that we started out with, but I think that is a result of the negotiations that we had among the staff.

CHAIRMAN PALLADINO: Well, also there were some more angles or we were introduced to more angles.

MR. TOURTELLOTTE: Yes.

CHAIRMAN PALLADINO: How about the staff? Anybody can go first.

(Laughter.)

MR. CASE: My personal opinion is much in accord with something I heard Commission Gilinsky say at the last meeting or the meeting before the last one, which I wouldn't do anything until there had been some further proof that there was a problem that needed to be addressed. That is my basic position. Short of that I agree with Commission Asselstine's proposal in that given all the smoke there may be some fire and this antedote will not put too much of a burden on the staff reviewers of coming forth, as I think they should, and as I think we pay them to do, we shouldn't discourage them from doing the job they are hired to do.

CHAIRMAN PALLADINO: Well, one thing this might enable us to do is count backfits and get the data that we say we need.

MR. CASE: Yes.

CHAIRMAN PALLADINO: Harold.

MR. DENTON: I concur with Ed's adoption of Commissioner Asselstine's proposal. I think it is reasonable to document these changes. We don't really know the data base, as Jim said. It may be that not all the changes we want to be made are even being made. So once we begin to accumulate these documents we could look back and see if it appeared to be that there were too few

or too many, and I don't think this burden of having the additional documentation done will prevent the serving of real safety problems. But I was concerned that if we required the full paraphernalia of cost benefit at the first glimmer of a safety improvement, that we would discourage them, but I think this is a very liveable document.

COMMISSIONER GILINSKY: If we do go forward, as I expect we will, I think we ought to get a report on the statistics of how many appeals there are at various levels, and if the process is working right, then most cases ought to get handled at lower levels and a few cases ought to get appealed all the way. If it isn't working that way, I think it needs to be adjusted.

COMMISSIONER ASSELSTINE: Yes. I would agree to that.

CHAIRMAN PALLADINO: Vic Stello, did you have a comment?

MR. STELLO: I notice that Bill is in the back of the room and he might want to reinforce ---

(Laughter.)

MR. STELLO: There is one area that I am concerned about. We are getting into an awful lot of detail in here which I think is basically okay. You have to recognize the backfit issue is an issue that is

agency-wide. It is clearly going to include the regions. They haven't been mentioned. They are lacking. Harold, if fact if he chooses, he could issue an order pursuant to 50.109 and require backfitting.

So when he has gone through this whole process and he thinks it is appropriate, he ought to be in a position to issue the order then that he could issue now. So that doesn't trouble me, but that authority doesn't exist everywhere. So I hope there is an understanding of the need to have some flexibility with the EDO coming back with that program to include the spectrum of how the agency in its broadest sense needs to handle this.

We mentioned NMSS and we mentioned I&E, but we failed to mention the regions which are five more offices where all of this activity can go on because after all inspection does provide another vehicle where an inspector goes in and he says well, I think you ought to double or triple the amount of stuff you are inspecting because of problems.

So I think there is a real need to understand the language that is in here. I understood it to mean in the broadest sense for the EDO to sit down. If it appropriate for him to be in the process, I read this to mean that he should include himself when it is necessary in the regions since the regions report to him for him to

be in the process that he will logically be there when it is logical that he ought to be there.

I don't mean to interfere with Harold since he could do that today. There is nothing to preclude Harold from doing it.

I guess there is one other comment that came up and that is that the brief description ought to include any notion at all of impact, cost. Do I need to shut a plant down to do what I am requiring to do. Should some of those considerations be in. We talked about it and I think it was decided we wouldn't put them in.

COMMISSIONER ASSELSTINE: In that initial description it is only how it would improve safety.

MR. STELLO: I wanted to bring up again that was a point that didn't get discussed and that can weigh especially as you now broaden it to include the reasons.

COMMISSIONER AHEARNE: I would have thought that in your description of why if you had as part of that some kind of a fundamental assumption, you would have to put that down. Fundamental assumptions are of a character. The plant doesn't have to shut down or it is not going to cost very much or it is very easy to do.

MR. STELLO: I agree with you that they ought to be in and I recognize that there is a potential for criticism in doing it, but it can be a significant

factor in weighing which way you ought to go and you can put all the proper words to make sure that the extent that they are just assumptions, guesses or call them whatever you want. To the extent they are important to the consideration, it could add something to the process, and I guess Bill feels that this was an important issue and it didn't get discussed and I felt the need to bring it up.

(Laughter.)

COMMISSIONER AHEARNE: He is nodding yes, you mean.

MR. STELLO: He is nodding yes.

CHAIRMAN PALLADINO: Which issue?

MR. STELLO: The whole question of the impact of the backfit. I want to avoid using cost because that only means dollars and there is ---

COMMISSIONER AHEARNE: My point wasn't that I thought that every time someone has a proposal they ought to be able to say that. My point was that many times that is an assumption in the person when they are making that proposal, and if it is they ought to be explicit.

MR. CASE: But you see you don't want to combine with that several layers of agreement with this whatever you call it. You are going to have them agree to a hundred page thesis before you are done.

CHAIRMAN PALLADINO: We wanted to say somewhere along the line that we had one page or two pages ---

COMMISSIONER ASSELSTINE: We ended up with a brief statement of how the proposed requirement would improve safety, that is what is the benefit to be achieved from imposing this requirement.

COMMISSIONER AHEARNE: I think you are better off saying what ought to be there and using ---

COMMISSIONER ASSELSTINE: That is right.

COMMISSIONER AHEARNE: You can cover it in several pages.

COMMISSIONER ASSELSTINE: Just a brief statement of how the requirement would improve safety, that is the benefit to be achieved.

CHAIRMAN PALLADINO: Well, let me ask, first of all, whether you think this is in good enough shape such that we would get it retyped, send it out to the Commissioners for notation vote.

COMMISSIONER AHEARNE: That is fine with me.

COMMISSIONER ASSELSTINE: Does this have John's suggested modifications to the first part?

COMMISSIONER AHEARNE: I was going to accept Joe's.

COMMISSIONER ASSELSTINE: I thought you would.

(Laughter.)

COMMISSIONER ASSELSTINE: I still prefer the other formulation because I think that there ---

CHAIRMAN PALLADINO: Which other formulation? Oh, the detailed ---

COMMISSIONER ASSELSTINE: Yes. I grant you there is a lot more detail than is normally there and it also doesn't call for full agreement on the statement of reasons, but I guess I am concerned about erecting burdens or what will be perceived as burdens by the reviewers. It seems to me the appeal process does provide an opportunity to make sure that there is unanimity at some point in the process on what all the reasons are or agrement on what the reasons are for the proposed requirement. I guess I would stick with what is there for myself.

CHAIRMAN PALLADINO: All this detail.

CHAIRMAN PALLADINO: Well, it doesn't preclude that detail.

COMMISSIONER ASSELSTINE: Well, except that it does go to the point where you are basically saying you want both sides of the NRR to agree on the statement of reasons.

CHAIRMAN PALLADINO: No, I didn't. I said the description should include a brief statement on how the proposed requirement would improve safety. This

description must be approved by the licensing management before it is forwarded to the licensee.

COMMISSIONER ASSELSTINE: That is what it means.

COMMISSIONER AHEARNE: It says the NRC must agree on what and why.

COMMISSIONER GILINSKY: Ed, when you say you are concerned about having the man agree or woman with the reason, what happens now? In sending the thing forward, isn't he ---

MR. CASE: He agrees that something should be done, but not necessarily for the same reasons that this does.

CHAIRMAN PALLADINO: Excuse me, I am in a very tight time bind between now and 4:15 we have got to have affirmation, agenda planning and a break.

(Laughter.)

CHAIRMAN PALLADINO: Why don't we retype this version. John said why not put out both verisons and give the Commission an option.

COMMISSIONER GILINSKY: I would want to underline what Jim said which is that we want to be very careful about skewing the process one way or the other since we really don't know whether there is too much backfitting or too little backfitting.

CHAIRMAN PALLADINO: One doesn' preclude the

other. The general version doesn't preclude the specific. in there, but if the Commission votes to include the specifics, fine.

In view that Jim Asselstine had in getting the staff requirements memo into shape, maybe that proces would be worth taking to look at the policy statement so that at least we will have some better background.

Well, let me talk to Jim afterwards.

Okay, we will stand adjourned.

(Whereupon, at 3:35 p.m., the meeting adjourned.)

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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings before the NRC COMMISSION

In the matter of: Commission Meeting-Tegulatory Reform Task Fprce

Date of Proceeding: 12 May 1983

Place of Proceeding: Washington , D.C.

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

Mary C. Simons
Official Reporter - Typed

Mary C. Simons
Official Reporter - Signature

SECRETARIAT RECORD COPY

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

OFFICE OF THE
COMMISSIONER

May 5, 1983

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts

FROM: James K. Asselstine

SUBJECT: BACKFITTING STAFF REQUIREMENTS MEMO

Attached is a final revision of my previous draft staff requirements memo on backfitting. The revisions are to my first draft and are intended to reflect my discussions with the staff and the Chairman on April 26 and 27.

cc: OGC
OPE
RRTF
SECY
EDO

May 4, 1983

DRAFT

The EDO is directed to undertake the following activities:

1. The staff is to continue to review the costs and benefits of proposed generic requirements in accordance with the CRGR Charter.

2. For facilities licensed to operate, the staff reviewer is ~~directed~~ to provide, ~~assess,~~ on a plant-specific basis, ~~the costs and benefits of~~ a description of any staff-proposed requirement that involves a new staff position or a change in an existing position with respect to the affected licensee. The description should include a brief statement of how the proposed requirement would improve safety. The description must be reviewed and approved by the staff reviewer's Branch Chief, and any resulting staff position must be approved by licensing management and forwarded to the licensee. If, after use of the ~~established~~ NRR appeal process described in paragraph 5 below, ~~that~~ the licensee notifies the staff in writing that it objects to the proposed requirement, the staff must assess the costs and benefits of the proposed requirement. Except as provided in paragraph 4, a staff-proposed requirement will not be imposed, and plant operation will not be disrupted, during the NRR appeal process and, if the licensee objects in writing, until after the cost-benefit assessment is completed. However, the staff is not required to make such plant-specific assessments for requirements that have been reviewed by the CRGR and approved by the EDO unless the EDO determines that there are significant plant-specific issues that were not considered during the CRGR review. For purposes of this paragraph, a staff proposed requirement includes all those mechanisms used by the NRC to set forth regulatory positions requesting compliance by an OL holder that involve, with respect to that OL holder: (a) a new interpretation or a change in an existing interpretation of the rules or regulations; or (b) a new staff position or a change in an existing staff position as set forth in, for example, Safety Evaluation Reports, License Conditions, the Standard Review Plan, Regulatory Guides, Branch Technical Positions, official letters and other approved documents.

3. Any assessment of costs and benefits required by Paragraph 2 should consider, to the extent practical and applicable, the information required for CRGR review of generic requirements, as described in Section IV-B of the CRGR Charter.

4. A staff-proposed requirement ~~for-which-a-cost-benefit-assessment-is required-under-paragraph-2~~ may be imposed prior to ~~the-conduct-or completion-of-the-cost-benefit-assessment~~ satisfying the requirements of paragraph 2 if the appropriate Office Director ~~of-Nuclear-Reactor-Regulation~~ determines that prompt imposition of the requirement is needed to protect the public health and safety ~~of-the-public.~~ or the common defense and security.

5. The staff is to provide an informal appeal process to provide an opportunity for licensees to discuss any areas of disagreement with a staff-proposed requirement. Under this process, the licensee should notify the Director, Division of Licensing, of any disagreement with a staff-proposed requirement. Each side of the issue is to develop the position it intends to take and forward the position statement to the Division of Licensing. From these positions, an agenda will be developed containing appropriate discussion items and will be distributed prior to any meeting. A first stage of appeal meetings will be conducted by staff management at the Assistant Director level. If the matter is not resolved at the Assistant Director level, a second stage of appeal meetings will be held with appropriate Division Directors in attendance. If a satisfactory resolution has not been developed by the end of the second stage meeting, an appeal to the Director of Nuclear Reactor Regulation may be submitted. A summary report will be prepared and distributed, and a copy will be placed in the Public Document Room. An appropriate appeal process similar to the above should be developed for the other offices that can initiate proposed new requirements for OL holders. That process should be incorporated into the implementation plan called for in paragraph 6.

6. The staff is to provide the Commission with a plan for implementing paragraphs 2 ~~and~~, 3 and 5 of this SRM by June 30, 1983. This plan should include: (1) a description of the procedures to be used in carrying out the requirements of paragraphs 2 ~~and~~, 3 and 5; (2) the assignment of decision-making responsibility; (3) requirements for documenting any cost-benefit assessments, and (4) a description of how the cost-benefit assessments will be used in the decision-making process for staff-proposed requirements in a manner consistent with the Commission's paramount responsibility to protect the public health and safety.

7. ~~This-memorandum~~ Following Commission review, the staff's implementation plan and the ~~established~~ NRR appeal process will be sent to all OL holders.

8. ~~The-performance-measures-of-appropriate-management-will-contain-a critical-element-reflecting-implementation-of-this-policy.~~ The performance of staff managers in implementing this policy will be considered as one element of the performance evaluations for staff management positions.

9. The staff is to conduct a study of the feasibility of, and alternatives for, applying backfit controls to plants for which a construction permit, but not an operating license, has been issued. The results of the staff study and any staff recommendations should be reported to the Commission by September 30, 1983.

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

CHAIRMAN

May 12, 1983

MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

FROM: Nunzio J. Palladino

SUBJECT: RRTF MEETING ON BACKFIT SRM

For this afternoon's meeting on the backfitting staff requirements memo, I wanted you to have the attached changes proposed by Jim Tourtellotte which I believe are worth our consideration.

Attachments:
As stated

cc: OGC
OPE
SECY
RRTF

and a final determination has been made that the requirement should be imposed

May 4, 1983

DRAFT

The EDO is directed to undertake the following activities:

1. The staff is to continue to review the costs and benefits of proposed generic requirements in accordance with the CRGR Charter.

2. For facilities licensed to operate, the staff reviewer is ~~directed~~ to provide, assess, on a plant-specific basis, ~~the costs and benefits of~~ a description of any staff-proposed requirement that involves a new staff position or a change in an existing position with respect to the affected licensee. The description should include a brief statement of how the proposed requirement would improve safety. The description must be reviewed and approved by the staff reviewer's Branch Chief, and any resulting staff position must be approved by licensing management and forwarded to the licensee. If, after use of the ~~established~~ NRR appeal process described in paragraph 5 below, ~~that~~ the licensee notifies the staff in writing that it objects to the proposed requirement, the staff must assess the costs and benefits of the proposed requirement. Except as provided in paragraph 4, a staff-proposed requirement will not be imposed, and plant operation will not be disrupted, during the NRR appeal process and, if the licensee objects in writing, until after the cost-benefit assessment is completed. However, the staff is not required to make such plant-specific assessments for requirements that have been reviewed by the CRGR and approved by the EDO unless the EDO determines that there are significant plant-specific issues that were not considered during the CRGR review. For purposes of this paragraph, a staff proposed requirement includes all those mechanisms used by the NRC to set forth regulatory positions requesting compliance by an OL holder that involve, with respect to that OL holder: (a) a new interpretation or a change in an existing interpretation of the rules or regulations; or (b) a new staff position or a change in an existing staff position as set forth in, for example, Safety Evaluation Reports, License Conditions, the Standard Review Plan, Regulatory Guides, Branch Technical Positions, official letters and other approved documents.

3. Any assessment of costs and benefits required by Paragraph 2 should consider, to the extent practical and applicable, the information required for CRGR review of generic requirements, as described in Section IV-B of the CRGR Charter.

4. A staff-proposed requirement ~~for which a cost-benefit assessment is required under paragraph 2~~ may be imposed prior to ~~the conduct or completion of the cost-benefit assessment~~ satisfying the requirements of paragraph 2 if the appropriate Office Director ~~of Nuclear Reactor Regulation~~ determines that prompt imposition of the requirement is needed to protect the public health and safety ~~of the public.~~ or the common defense and security.

5. The staff is to provide an informal appeal process to provide an opportunity for licensees to discuss any areas of disagreement with a staff-proposed requirement. Under this process, the licensee should notify the Director, Division of Licensing, of any disagreement with a staff-proposed requirement. Each side of the issue is to develop the position it intends to take and forward the position statement to the Division of Licensing. From these positions, an agenda will be developed containing appropriate discussion items and will be distributed prior to any meeting. A first stage of appeal meetings will be conducted by staff management at the Assistant Director level. If the matter is not resolved at the Assistant Director level, a second stage of appeal meetings will be held with appropriate Division Directors in attendance. If a satisfactory resolution has not been developed by the end of the second stage meeting, an appeal to the Director of Nuclear Reactor Regulation may be submitted. A summary report will be prepared and distributed, and a copy will be placed in the Public Document Room. An appropriate appeal process similar to the above should be developed for the other offices that can initiate proposed new requirements for OL holders. That process should be incorporated into the implementation plan called for in paragraph 6.

6. The staff is to provide the Commission with a plan for implementing paragraphs 2 ~~and~~, 3 and 5 of this SRM by June 30, 1983. This plan should include: (1) a description of the procedures to be used in carrying out the requirements of paragraphs 2 ~~and~~, 3 and 5; (2) the assignment of decision-making responsibility; (3) requirements for documenting any cost-benefit assessments, and (4) a description of how the cost-benefit assessments will be used in the decision-making process for staff-proposed requirements in a manner consistent with the Commission's paramount responsibility to protect the public health and safety.

7. ~~This memorandum~~ Following Commission review, the staff's implementation plan and the ~~established~~ NRR appeal process will be sent to all OL holders.

8. ~~The performance measures of appropriate management will contain a critical element reflecting implementation of this policy.~~ The performance of staff managers in implementing this policy will be considered as one element of the performance evaluations for staff management positions.

If a licensee disagrees with the resolution by NRR, further appeal may be taken, first, to the EDO and, ultimately, to the Commission for final determination.

9. The staff is to conduct a study of the feasibility of, and alternatives for, applying backfit controls to plants for which a construction permit, but not an operating license, has been issued. The results of the staff study and any staff recommendations should be reported to the Commission by September 30, 1983.

12/82

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ADVANCED COPY TO: ☐ The Public Document Room

DATE: 5/13/83

FROM: SECY OPS BRANCH

cc: OPS File
C&R (Natalie)

Attached are copies of a Commission meeting transcript(s) and related meeting document(s). They are being forwarded for entry on the Daily Accession List and placement in the Public Document Room. No other distribution is requested or required. Existing DCS identification numbers are listed on the individual documents wherever known.

Meeting Title: Discussion of Regulatory Reform Task Force Administrative Proposals - Backfit Rule

Meeting Date: _____ Open ✓ Closed ____

Item Description:	Copies Advanced To PDR	*	DCS Copies (1 of each checked) Original Document	May be Dup*	Duplicate Copy*
1. TRANSCRIPT ___ When checked, DCS should send a copy of this transcript to the LPDR for: _____	1	*	1	___	___
2. 5/5/83 Memo from Comm Roberts to Commissioners Backfitting Staff Requirements Memo	1	*	___	1	___
3. 5/12/83 Memo from Chairman Palladino to Commissioners RRTF Meeting on Backfit SRM	1	*	___	1	___
4. _____	___	*	___	___	___

(PDR is advanced a copy of each document, two of each SECY paper.)

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