

## U.S. Nuclear Regulatory Commission Public Meeting Summary

April 28, 2020

**Title:** Public Meeting Regarding Draft NUREG-1409, "Backfitting Guidelines," Revision 1

**Meeting Identifier:** 20200372

**Date of Meeting:** Tuesday, April 28, 2020

**Location:** Teleconference

**Type of Meeting:** Category 3

### **Purpose of the Meeting:**

The U.S. Nuclear Regulatory Commission (NRC) staff discussed the contents of Draft NUREG-1409, "Backfitting Guidelines," Revision 1 with external stakeholders and provided external stakeholders an opportunity to ask the NRC staff clarifying and amplifying questions on the draft NUREG.

### **General Details:**

The NRC has drafted NUREG-1409, "Backfitting Guidelines," Revision 1 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML18109A498), to conform the NUREG with recent updates to Management Directive and Handbook (MD) 8.4, "Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests," dated September 20, 2019 (ADAMS Accession No. ML18093B087). NUREG-1409, Revision 1, would address all the backfitting and issue finality regulations and policies and the forward fitting policies. The NRC's intent in revising NUREG-1409 is to ensure consistency in implementing backfitting, forward fitting, and issue finality requirements across the NRC.

The public meeting was held via teleconference because of the impacts of the COVID-19 public health emergency. The meeting was attended by approximately 80 members of the public and NRC staff. The meeting started at 1:00 p.m. Eastern Daylight Savings Time and lasted approximately 2 hours. The meeting began with an introduction of NRC staff and a review of the meeting ground rules, followed by description of the NUREG by Ms. Audrey Klett and Mr. Tim Reed of NRC's Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation. The NRC staff provided the public with opportunities to ask questions throughout the meeting. The NRC staff emphasized that if member of the public would like to have formal responses to any questions or comments, they would need to provide comments via the *Federal Register* notices announcing the availability of the NUREG for public comment and extending the comment period.

The following records associated with the public meeting are available in ADAMS at the listed accession numbers:

- Meeting notice and agenda dated April 13, 2020: ADAMS Accession No. ML20115E254
- Presentation slides: ADAMS Accession No. ML20100L462
- Meeting recording: ADAMS Accession No. ML20141L782<sup>1</sup>
- Meeting transcript: ADAMS Accession No. ML20141L779

### **Summary of Presentations:**

The NRC staff discussed the basis for updating NUREG-1409. The NRC staff emphasized that the meeting was intended to provide stakeholders with additional information about the draft NUREG guidance and that stakeholders should provide feedback on the NUREG via the *Federal Register* notice instructions if they would like to receive a formal NRC response. The NRC staff informed the public that it would have an additional 60 days to provide comments in recognition of the COVID-19 public health emergency.

The NRC staff briefly discussed the recent efforts to update its backfitting, issue finality, and forward fitting policy and provisions, which included issuance of Commission policy that was incorporated in MD 8.4. The NRC staff then provided an overview of the draft NUREG's contents. The NRC staff discussed that Chapter 1 of the draft NUREG provides an overview of backfitting, issue finality, and forward fitting; some common terminology associated with these actions; and the proposed implementation of the Commission's expectations on risk-informing such actions and communications. The NRC staff also discussed the proposed roles and responsibilities of NRC offices in implementing the policy.

The NRC staff discussed that Chapter 2 of the draft NUREG provides a means for screening and justifying a proposed backfitting (or issue finality) action. The NRC staff discussed its proposed process for determining if an issue is within the scope of backfitting, affects an entity within the scope of backfitting, and meets the definition of backfitting, and whether a proposed backfit can be justified as necessary for ensuring adequate protection is provided, (re)defining the level of adequate protection, or ensuring compliance, or constitutes a substantial increase in overall protection.

The NRC staff discussed that Chapter 3 of the draft NUREG provides a means for screening and justifying a proposed forward fitting action. The NRC staff discussed the six criteria for determining if a proposed action constitutes a forward fit and the conditions that must be satisfied to justify a forward fit. The NRC staff discussed that Chapter 4 of the draft NUREG covers the process for addressing licensee appeals of NRC backfitting or forward fitting actions. The NRC staff discussed that Chapter 5 of the draft NUREG describes how backfitting and forward fitting relate to various NRC processes to help prevent inadvertent backfitting or forward fitting.

The NRC staff concluded the meeting by describing the next steps in the NUREG process, noting that the staff would update the NUREG after consideration of comments. The NRC staff communicated an estimated final issuance date for the NUREG of either 2020 or early 2021.

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<sup>1</sup> The NRC staff was unable to embed the recording into a pdf, which is required to capture the record into ADAMS, because of a recent agency software upgrade. After the NRC staff has the capability to embed the recording into a pdf, the staff will replace the document at ADAMS Accession No. ML20141L782 or supplement this meeting summary accordingly.

### **Public Participation Themes:**

During the question and answer sessions of the meeting, the NRC staff and public discussed the following topics:

- Whether the guidance about administrative exemptions discussed in Section 1.2.4 of the draft NUREG is needed;
- The relationship of inspection reports to staff positions and backfitting discussed in Sections 1.2.2.2 and 5.11 of the draft NUREG;
- Consideration of the definition of backfitting be the primary factor for excluding actions from backfitting to preclude any overstatements when categorically excluding actions from the backfitting requirements;
- The complexity of the guidance for when backfitting applies to multiple licensees;
- Overlap of the adequate protection and compliance exceptions for performing a backfit analysis;
- Differentiation of an error from a mistake in fact;
- Consideration of risk with respect to the totality of a plant's requirements;
- Need for a discussion of general relevancy with respect to the direct nexus criterion of forward fitting;
- Relationship of the essentiality criterion of forward fitting to adequate protection, compliance, and health and safety of the public;
- Clarification of "staff preference" in the draft NUREG's Chapter 3 discussion of forward fitting.
- The criteria for submitting forward fitting and backfitting appeals with respect to an agency action (e.g., whether an appeal can be filed based on a request for additional information, an oral discussion, or an amendment containing a forward fit is issued);
- The ambiguity in the relationship between the backfit and forward fit appeals process and the adjudicatory and enforcement processes with respect to challenging a staff position;
- Consideration of an informal dispute resolution process in lieu of a formal appeal process;
- Consideration of the current process shifting the burden of backfitting reviews to licensees via the formal appeal process following inadvertent backfits;
- Additional clarification of how Chapter 5 of the draft NUREG relates to backfitting, forward fitting, and issue finality; and
- The importance of understanding a facility's licensing basis.

### **Action Items/Next Steps:**

The *Federal Register* notice announcing the extended comment period was published on May 15, 2020 (85 FR 29358). The NRC staff will consider and respond to comments received in response to the *Federal Register* notices and finalize the NUREG.

SUBJECT: Public Meeting Regarding Draft NUREG-1409, "Backfitting Guidelines,"  
Revision 1, DATED MAY 28, 2020

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**ADAMS Accession Nos.**

**Package: ML20141L770; Summary: ML20141L775; Recording: ML20141L782;**

**Transcript: ML20141L779**

**Meeting Notice: ML20115E254**

**\*email concurrence**

OFFICE	NRR/DORL/LPL4/PM*	NRR/DORL/LPL4/LA*	NRR/DORL/LPL4/BC*
NAME	AKlett	PBlechman	JDixon-Herrity (TWengert for)
DATE	05/28/2020	05/26/2020	05/28/2020

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