

Congress of the United States
House of Representatives
Washington, D.C. 20515

November 5, 1985

Nunzio J. Palladino
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Palladino:

We were very encouraged to see the Nuclear Regulatory Commission ("NRC") adopt a new regulation to govern the imposition of new regulatory requirements. The NRC's past undisciplined promulgation and application of safety requirements has, among other things, created a largely unstable regulatory environment for commercial nuclear power. This climate has undermined utilities' faith in the regulatory process and has resulted in completed plants being significantly different and much more costly than originally anticipated. Also, there is evidence that the unstable regulatory climate has had safety, as well as cost, implications.

The new "backfit" regulation is a truly significant reform, and we commend the Commission for taking this action. As we understand this regulation, it will require the systematic, centralized, and documented review of all proposed changes in regulatory requirements. It will cover new requirements on both a plant specific and generic basis. Backfitting will be required or regulations modified only where the Commission finds "that such action will provide substantial additional protection which is required for the public health and safety or the common defense and security."

If properly implemented, we believe the new backfit regulation should result in a fundamental change in the regulatory process. The rule should help foster the stable regulatory environment that is a prerequisite to the development and use of standardized designs, and to the continued viability of the nuclear option.

However, the adoption of the new backfit regulation is only the first step towards fostering regulatory stability. We believe that it is extremely important for the Commission to monitor closely the NRC Staff's efforts in implementing the new regulation. The report we received earlier this year from Mr. James Tourtellotte, who was then Chairman of the NRC Regulatory Reform Task Force, concluded that "there appears to be a deep seated set of values among the staff and staff management of the NRC which perceives there is nothing wrong in failing to follow the statute, their own rules, or Commission direction with respect to the imposition of requirements on licensees." Should this be an accurate assessment of the regulatory climate, there can be no doubt as to the need for closely scrutinizing the NRC Staff's backfitting activities.

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It is with respect to this last point that we are writing to you today. We understand that the NRC is considering a comprehensive revision of 10 CFR Part 20, its rules governing radiation exposure to both the public and workers. We have some concern as to the fashion in which the backfit regulation is being applied in the Staff's consideration of this revision. The importance of this rulemaking proceeding is clear. The application of the backfit regulation to the revision of Part 20 will obviously set a precedent for all future rulemaking proceedings.

In a memorandum dated October 18, 1985, from William J. Dircks, Executive Director for Operations, to Commissioner James K. Asselstine, Mr. Dircks advised that the proposed Part 20 rulemaking does not constitute backfitting as defined in the NRC's rules, and is therefore not subject to the new backfit regulation. The reasons advanced for this conclusion were twofold. First, Mr. Dircks advised that since Part 20 applies to all NRC licensees, and not just power reactor licensees, Part 20 does not constitute backfitting. Second, Mr. Dircks explained that Part 20 is not a backfit because backfits consist of, among other things, modifications to the procedures required to operate a facility. Mr. Dircks stated that the proposed revision of Part 20 will not modify the procedures necessary to operate a facility directly, but only the requirements on which the operating procedures are based. Finally, Mr. Dircks advised that the answer to the question of whether the revision of Part 20 constitutes backfitting is unclear and depends on whether the backfit rule applies to all rulemaking or merely to rulemaking which has an effect on power reactors.

We are surprised by the conclusion reached by Mr. Dircks and have several questions that we would like answered.

- (1) Why is it that a change which would constitute a backfit if required of power reactor licensees no longer constitutes a backfit if required of other licensees, in addition to power reactor licensees? In other words, why would a change constitute a backfit if required only of power reactor licensees but not a backfit if required of power reactor and materials licensees? Does the interpretation advanced in Mr. Dircks' memorandum encourage the extension of new regulatory requirements to other licensees in addition to power reactor licensees in order to avoid the analyses required under the backfit rule? If not, why not?
- (2) We do not understand Mr. Dircks' analysis concerning operating procedures. Mr. Dircks asserts that changes to Part 20 do not cause modifications of procedures necessary to operate a facility because operating procedures "do not establish permissible dose levels for people or permissible radiation concentrations." Rather, Mr. Dircks notes that "operating procedures take the types of standards set forth in Part 20 as given, and go on from there." This would appear to be true of most operating procedures, as almost all operating procedures implement NRC rules. Very rarely would the NRC directly change operating procedures. Instead, the NRC would change the requirements upon which such procedures are based. Naturally, changes in the underlying regulations frequently result in the modification of operating procedures. In this context, could not the interpretation set forth by Mr. Dircks be used to avoid compliance with the backfit rule's requirements in all situations where a facility's operating procedures implement NRC rules?

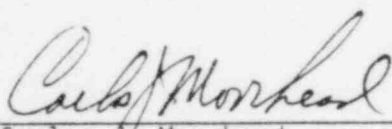
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- (3) Does the Commission intend that the Staff interpret the backfit rule broadly or narrowly? Please set forth the specific principles the Commission wishes the Staff to use as guidance in implementing this rule.
- (4) It is predictable that the Staff would like to interpret narrowly the backfitting rule. Indeed, during promulgation of the rule, some members of the Staff argued that the Staff would be unable to carry out its functions efficiently if it had to do the analyses and provide the appeal process required by the backfit rule. What specific steps does the Commission intend to take to ensure that the rule is fully implemented?
- (5) Please provide a list of all actions required of licensees since the effective date of the rule, October 21, 1985, that licensees have stated constitute backfitting.

It would seem wise for the Commission to review the conclusions reached in Mr. Dircks' memorandum and to ensure that such narrow interpretations do not undercut or thwart the goals of the backfit rule.

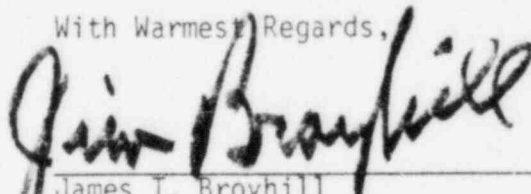
We recognize the difficulty posed by the new backfit regulation for ongoing rulemaking proceedings. In these cases, the Commission must flexibly apply the new regulation -- as in the case of the revision of Part 20 where the Commission decided to issue the revision as a "proposed regulation" before the backfit analyses were performed. However, we would expect that the backfit analyses be performed before the issuance of "proposed regulations" in future rulemaking proceedings. We believe that this is crucial to promote the disciplined promulgation of requirements contemplated by the new backfit regulation.

Thank you for your prompt attention to this matter. We would appreciate your response to our questions by the first of next month. Again, the Commission should be commended for moving forward on this admittedly difficult matter. Stability and reasoned regulation is a goal that we all share, and we appreciate your efforts in this regard.



Carlos J. Moorhead
Ranking Minority Member
Subcommittee on Energy
Conservation and Power

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With Warmest Regards,


James T. Broyhill
Ranking Minority Member
Committee on Energy and
Commerce