

UNITED STATES NUCLEAR REGULATORY COMMISSION

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BACKFITTING WORKSHOP

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King of Prussia, Pennsylvania
Thursday, May 8, 1986

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Backfitting Workshop held in the Franklin Room,
Sheraton Valley Forge Hotel, North Gulph Road and First
Avenue, at 9:00 a.m. on the above date before Neith D. Ecker,
Registered Professional Reporter.

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APPEARANCES:

DR. THOMAS MURLEY
JAMES H. SNIEZEK
THOMAS M. COX
WILLIAM OLMSTEAD
FRANK MARAGLIA
SHELLY SCHWARTZ
ROBERT BURNETT
CARL GOLLER
MAX CLAUSEN

STEVE CROCKETT
JAMES ALLEN
RICHARD STAROSTECKI
TIMOTHY MARTIN
WILLIAM JOHNSTON
JAY GUTIERREZ
JAMES LIBERMAN
SANDY HARTMAN

- - -

SPEAKERS:

Dr. Thomas Murley
Vincent S. Boyer
James H. Sniezek
Thomas H. Cox

Eugene Kurtz
Donald Edwards
Nicholas S. Reynolds
James Tourtellotte

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PROCEEDINGS

MR. MURLEY: Good morning. Welcome to King of Prussia.

My name is Tom Murley. I'm Regional Administrator of the Regional Office of NRC here.

The purpose of this workshop is to promote a general understanding of the recent NRC regulations pertaining to backfitting and the procedures associated with implementing these regulations, especially as they relate to plant-specific backfit.

The NRC has worked for the last several years to put in place some important institutional changes designed to better manage the way we impose new or changed requirements. Today we're going to discuss both the backfit rule and our own internal procedures for implementing that rule. We look forward to hearing from you, particularly the industry representatives, concerning how you plan to deal with the backfitting issues. We're also interested in hearing your ideas on what actions NRC may take to ensure the policy as implemented will achieve our objectives.

This is one of the relatively few NRC

1 initiatives that requires as much or perhaps more
2 from the NRC staff as it does from the industry.
3 However, your understanding of that policy and your
4 interaction with the staff in the implementation
5 of the policy are key ingredients in making sure
6 that it works.

7 There are several NRC managers here today
8 that represent both the headquarters and the regional
9 office, and I would like to introduce them -- maybe
10 they can raise their hand -- so that you can have
11 some informal discussion with them during the break,
12 and so forth.

13 First is Jim Sniezek, the Acting Deputy
14 Executive Director, Regional Operations and Generic
15 Requirements from headquarters.

16 Bill Olmstead is here. He's the Director
17 and Chief Counsel of the Regulations Division, Office
18 of the Executive Legal Director.

19 Jim Liberman from the same office,
20 Regional Operations Enforcement Division.

21 Two gentlemen who are not here but may
22 see this, Frank Maraglia, who is Director of the
23 Division of PWR Licensing and NRR; and Shelly
24 Schwartz from the Office of Inspection & Enforcement.

1 They'll be coming up later this morning.

2 Bob Burnett, Director of Safeguard Division,
3 Office of Nuclear Material Safety and Safeguards.

4 Carl Goller, Director of Radiation Program
5 and Earth Sciences Division in the Office of
6 Research.

7 Tom Cox on the end, he's a Senior Program
8 Manager in the Office of Executive Director for
9 Operations.

10 Max Clausen is here. He's Assistant to
11 Commissioner's exec.

12 I don't know if Steve Crockett is here
13 or not. Steve is from the Office of General Counsel.

14 In addition, there are several key managers
15 from my office here in the region as well. Jim
16 Allen is the Deputy Regional Administrator.

17 Rich Starostecki is Director of Division
18 of Projects.

19 Tim Martin way in the back is Director of
20 Division of Radiation Safety and Safeguard.

21 Bill Johnston is Deputy Director of Division
22 Reactor Safety here.

23 And Jay Gutierrez is Regional Counsel.

24 I should also mention that Vince Foyer, just

1 to make sure you know we haven't left him out, Vince
2 Boyer from Philadelphia Electric. He will be on
3 the agenda later on.

4 With regard to this -- administrative
5 arrangements for this meeting today, we're going to
6 have coffee at the breaks. So that will be out in
7 the hall; and the spirit of Gramm-Rudman will be
8 charging 55 cents a cup for coffee, and there's
9 no free lunches today.

10 There will be a message board outside.
11 Pay phones are in the lobby. I don't know if there
12 are any out here, but I know there are some upstairs.

13 If you need to get in touch with your
14 office or expect messages, they will be taken care
15 of.

16 We don't have special luncheon arrangements.
17 So you'll have to make your own. I'm afraid today
18 is going to be very difficult to make those arrange-
19 ments here in the hotel because there's conventions
20 and all sorts of other meetings going on.

21 So I've asked Jim maybe we can allow more
22 than an hour, say an hour and a quarter today so
23 that if you have to stand in line here, that will
24 give you a little extra time; or if you're familiar

1 with the area -- I know some of you I've seen in
2 enforcement conferences once in a while. So I
3 think you get to King of Prussia -- you might try
4 some of the other restaurants that are a little less
5 crowded.

6 We have a court reporter, as you can see.
7 There will be a transcript available from this
8 meeting.

9 We'll have questions and answers from
10 each of the sessions. We have question cards, if
11 you would like to write them down. We'll collect
12 them in the back; or if you just want to speak up,
13 please use the microphone and give your name and
14 affiliation.

15 Before I turn the meeting over to Jim
16 Sniezek, let me briefly describe what the new backfit
17 process means to the way the region conducts its
18 business.

19 My staff and I firmly support the Commission's
20 backfit policy goals which are a stable regulatory
21 framework and a disciplined process for evaluating
22 and imposing new requirements. Although one focus
23 of this policy is on the kinds of licensing actions
24 that historically have been taken by the program

1 offices and headquarters, we are aware that there
2 may be instances where the Regional Inspectors
3 appear to be asking for new requirements that you
4 believe go beyond what our regulations require.
5 The resident-in-region-based inspectors, as the
6 front-line regulatory presence at operating plants,
7 often must make judgments and interpretations of
8 licensing on IE documents such as tech specs,
9 bulletins, previous enforcement correspondence and
10 regulatory guides. They are sometimes involved at
11 a level of detail that is not explicitly described
12 in existing regulatory documents.

13 Now, we intend to conduct our business
14 with full recognition of our responsibility to
15 assure that you meet the safety level established
16 by your current licensing basis; and, in addition,
17 to assure that we identify additional safety
18 measures where appropriate that we are willing to
19 demonstrate are needed and justified.

20 The reason for many of the inspectors'
21 suggestions for improvements is that we anticipate
22 a level of performance that goes beyond mere com-
23 pliance with our regulations. We're sensitive to
24 the fact that some of your managers may feel

1 pressured into accepting the inspectors' suggestions
2 for fear that disagreeing with an inspector may lead
3 to interface problems in the future.

4 I hope that's not the case; and, in fact,
5 our inspectors and examiners have been instructed
6 that when dealing with licensees, we must be firm
7 and fair; but we must also conduct ourselves in a
8 professional manner. Our inspection actions must
9 be based on technical consideration and not merely
10 on the authority of our businesses as government
11 employees.

12 We have procedures in place for our
13 managers to review inspection reports to ensure
14 these policies are followed. Regulating within the
15 backfit rule and the policy directive of the backfit
16 manual chapter will help assure well-reasoned and
17 justified staff positions. Where instances of honest
18 disagreement with inspectors occur, you should
19 encourage your manager to discuss these disagreements
20 with the inspectors or with their supervisors back
21 here in the region.

22 There will be no retribution on our part
23 for your talking candidly with us. If there are
24 concerns that come to your attention about our

1 inspection program or how its being carried out,
2 even if it doesn't involve backfitting, then I
3 would appreciate a call and would be happy to meet
4 with you and talk about your concerns. If these
5 policies that we're talking about today are to be
6 effective, then you also have a responsibility to
7 bring to our attention serious interface problems.
8 We should not let such problems persist without
9 talking them out.

10 Now, let me turn the meeting over to Jim
11 Sniezek.

12 MR. SNIEZEK: Good morning, ladies and
13 gentlemen.

14 Before we go any further, I would just like
15 to take a few seconds to run through the agenda for
16 today so we understand what's going to happen.

17 The next session will be a discussion of
18 the utility perspective on the importance of the
19 backfit rule, and then that will be followed by a
20 discussion of the backfit rule itself. We will explain
21 what the rule is and why the various aspects of the
22 rule do exist. That will be followed by a break
23 followed by a discussion of the NRC staff implementa-
24 tion of the rule, how the NRC staff will actually

1 go about implementing the rule, and then we'll have
2 our lunch break.

3 The afternoon will start out with the
4 industry discussion of the rule and what it means
5 to the industry, followed by a break and then
6 followed by a panel discussion.

7 I want to emphasize that during each
8 session be sure to ask questions of the speaker if
9 you don't understand. In fact, it's all right to
10 interrupt right in the middle of the presentation
11 for something the speaker is saying that you don't
12 understand. We encourage you to ask questions.
13 That way we'll both walk away with a common under-
14 standing of what the backfit rule means to us.

15 At this time I'd like to introduce Mr.
16 Vince Boyer, who is the Senior Vice President,
17 Nuclear Power, for the Philadelphia Electric Company;
18 and he will discuss utility perspective on the
19 importance of the backfit rule.

20 Vince.

21 MR. BOYER: Thank you.

22 Tom, as a member of the . . . fast and most
23 progressive region of the NRC, we are pleased to
24 accept your invitation to this workshop and work with

1 you in a cooperative atmosphere to obtain the best
2 backfit rule and procedure, implementation of the
3 backfitting rule which will help us in our job of
4 operating our plant most effectively for the pro-
5 tection of the health and safety of the public.

6 The Chernobyl incident has once again
7 raised concern about the NRC and industry's cap-
8 abilities to adequately protect public health and
9 safety. Many of those parties raising concerns
10 forget that we suffered through the Three Mile
11 accident of 1979 and that corrective measures were
12 instituted by the NRC and industry in the years
13 following that event. Our U.S. plants are designed
14 to different standards; and we have developed pro-
15 cedures and systems to cope with severe accidents,
16 including core melt. Have we gone too far? Or,
17 to the contrary, have we gone far enough? That is
18 the question that each of us can address; but to
19 assure a reasoned, responsible approach to further
20 changes, the backfitting rule has been developed.

21 As many of you are no doubt aware, the
22 industry has been working with the NRC for a number
23 of years to develop a sound and sensible backfitting
24 rule. Industry's efforts have been led by the

1 Atomic Industrial Forum, the Edison Electric
2 Institute and the Nuclear Utility Backfitting &
3 Reform Group; and they have been successful.

4 When industry first began to press for
5 the backfitting rule, we believed that the rule
6 was necessary for one overriding reason: to assure
7 the protection of the public health and safety.
8 Our concern in the early 1980s was that so many new
9 requirements had been imposed on power reactors
10 so quickly, that it was just about impossible to
11 implement all the changes and to keep up with our
12 own reviews of plant performance. More and more
13 utility managers found themselves in the position
14 of reacting to NRC initiatives instead of taking
15 preventive measure to ensure that problems did not
16 arise. It also appeared to many of us outside of
17 the NRC that important questions involving the
18 implementation of the new requirements were not
19 often addressed by the NRC in a meaningful or
20 timely manner. This gave rise to increase concern
21 on both the part of NRC and industry that the
22 regulatory process was not working as well as it
23 could be. The backfitting rule is one action taken
24 to address these concerns.

1 Now more than ever I believe that the
2 backfitting rule is appropriate if we, the NRC and
3 the industry together, are to properly manage the
4 nuclear regulatory process and assure the protection
5 of public health and safety. As will become clear
6 during today's discussions, the rule does not pro-
7 hibit backfits. It simply provides that backfits
8 are imposed only when necessary and only after the
9 backfit is thoroughly considered by both NRC and
10 industry. The factors to be considered, as listed
11 in the rule, are factors that should be considered
12 in any decision maker -- by any decision maker,
13 whether inside or outside the NRC, who is questioned
14 whether a true problem exists; and if so, that the
15 problem is solved in the most effective way possible.
16 In this sense I view the backfitting rule as an
17 important management tool.

18 I am also pleased to be here today because
19 this is a joint workshop with participants from both
20 the NRC and industry. Our joint participation
21 reflects one important underlying aspect of the
22 backfitting rule. That aspect is cooperation between
23 the industry and the NRC. I believe in the strongest
24 possible terms that the backfitting rule is not a

1 hurdle that should be thrown in front of the NRC
2 whenever it believes that a backfit ought to be
3 implemented. Rather, it is a means for both industry
4 and the NRC to assure that both of our resources
5 are used to address areas where those resources are
6 truly needed. NRC and industry should be vigilant
7 in identifying potential backfits and assuring that
8 the backfits are necessary. When they are, they
9 should be implemented.

10 The ability to recognize backfits is an
11 essential part of the backfitting process. It is
12 also one for which I believe that licensees must
13 ultimately take responsibility. Because we operate
14 our plants, we know them better than anyone else.
15 And within our own organization those who design,
16 construct, operate and maintain the plants have the
17 most intimate knowledge. Hopefully you are willing --
18 those in the audience today are willing to play
19 a key role in the backfitting process. You are the
20 individuals on whom I and other utility managers
21 will rely to identify backfits. And for this reason
22 it is important that you thoroughly understand the
23 backfitting process.

24 To develop and broaden this understanding,

1 I urge that you consider the backfitting rule not
2 just in terms of what the rule requires or how the
3 NRC plans to implement these requirements. Rather,
4 I urge that you consider the rule in terms of its
5 place in the total regulatory process. Of course
6 it is important to understand the specific elements
7 of the backfitting rule and the procedures in place
8 to implement it. The backfitting rule is a good
9 rule, and the procedures the NRC developed for the
10 implementation are sound. I hope that they are
11 given the opportunity to work. They are structured
12 to assure a quick and correct resolution of back-
13 fitting issues.

14 But familiarity with the rule and its
15 implementing procedures is not enough. It is
16 equally important to understand that the backfitting
17 rule is intended to change the way both we and the
18 NRC do business. As the industry matures and the
19 NRC focuses increasingly on operating plants, it is
20 important for licensees to express their views to
21 the NRC. Neither we nor the NRC has a monopoly on
22 wisdom. But our considerations together of what
23 needs to be done will increase the likelihood that
24 the correct decision is made. The backfitting rule

1 will be a significant tool in this process.

2 The NRC has often told industry that it
3 is the regulatory -- that if the regulatory process
4 is to work, there must be a free exchange of views
5 between the NRC and those it regulates. I believe
6 that this is a challenge to industry to scrutinize
7 NRC-proposed backfits from the safety perspective,
8 and industry should accept this challenge and become
9 more familiar with the eating places around this
10 region.

11 After examining a proposed backfit, if
12 we genuinely agree that it is not warranted or
13 that another approach will be more effective in
14 addressing the area of concern, we ought to tell
15 the NRC. On the other hand, we should also be
16 sensitive to the responsibilities to anticipate
17 needed plant improvements. If we believe that
18 improvements are necessary, we should not wait
19 for the NRC to tell us to implement them. We
20 should act on our own initiative. To me this is
21 what backfitting is really about. It is also what
22 sound management is about.

23 After the workshop is completed and you
24 return to your home utilities, I hope that you don't

1 forget today's messages. Industry and the NRC have
2 worked long and hard to develop the backfitting rule.
3 The rule will be effective only if it is used
4 properly. The responsibility for doing so rests just
5 as much with industry as it does with the Nuclear
6 Regulatory Commission. Should we proceed as if the
7 backfitting rule was never issued, we do a disservice
8 to ourselves and to the NRC and also to the nation.
9 We also do a disservice if we attempt to invoke
10 the rule to block an NRC initiative simply because
11 it is an NRC initiative.

12 In considering the changes that have been
13 made not only in our plant but in our operating
14 procedures since Three Mile Island, I do not believe
15 the Chernobyl accident will point out areas where
16 further modifications are required. More information
17 on the Russian accident is needed, however; but
18 if proposals for changes are made, they will be
19 subject to the backfit rule. Thus, today's workshop
20 is timely; and I trust that you will find the
21 presentations useful and informative.

22 Thank you.

23 MR. SNIEZEK: Thank you, Vince.

24 As Tom Murley, Vince Boyer mentioned, we

1 have worked hard through the past several years
2 to develop the backfit management process which
3 ensures that necessary safety improvements are in
4 fact implemented and that unnecessary modifications
5 and requirements are not promulgated.

6 Can I have the first slide.

7 We believe it is extremely important that
8 the industry understands how the staff intends to
9 implement the backfit rule; and, thus, the reasons
10 for the four industry workshops.

11 I'm going to discuss the backfit rule
12 itself. I'll give you a brief background as to
13 what led to the backfit rule, cover the definition,
14 the applicability of the controls contained in the
15 backfit rule, the exceptions to the backfit rule,
16 the analysis required by the NRC staff, the staff
17 responsibilities, backfit resolution; and I'll
18 also cover the request-for-information rule which
19 is a part of backfit.

20 A little bit about the background.

21 As you know, the TMI accident and resultant
22 action plan have far-reaching impact on both the
23 industry and NRC resources. We received feedback
24 from the industry and from the NRC staff that

1 indicated the scope, depth and timing of the
2 changes were causing a problem, a safety problem.

3 As a result of the early indication, the
4 Commission established a task group which was under
5 one of our former regional administrators to go out
6 and survey the industry to find out what type of
7 impact the plethora of changes was actually having.
8 That task group, which was composed of senior NRC
9 managers, both from the headquarters and the regional
10 offices, visited 12 utilities and talked to every
11 level of management and staff within the corporate
12 and plant organization.

13 As a result, in 1981 their report was
14 published, a NUREG 0839; and it had one single
15 finding. Let me quote the finding from that NUREG.

16 "Notwithstanding the competence and good
17 intentions of the staff, that the pace and nature
18 of regulatory actions have caused a potential safety
19 problem of unknown dimensions."

20 As a result of that finding and with the
21 belief that the biggest impact was the impact of
22 generic requirements, in 1981 the Commission formed
23 a committee to review generic requirements. They
24 also established the regulatory reform task force

1 which was chartered to examine several regulatory
2 activities, including the backfit activity.

3 As a result of the regulatory reform
4 task force action and findings and the staff's
5 findings itself, in 1983 procedures were developed,
6 the first procedures were developed to govern plant-
7 specific backfitting and advanced notice of proposed
8 rule making; and 50.109 was published.

9 Backfitting, as we're discussing it
10 today, is consisted of two basic rules: the request-
11 for-information rule, 50.54(f), which we'll only
12 discuss briefly today, and the backfit rule itself,
13 50.109, which is the focus of our discussions.

14 Before I go any further, I want to make
15 something very clear. Backfitting is not bad. Back-
16 fitting is a necessary part of a viable regulatory
17 process. We're always going to find things that
18 we didn't think about previously. We are going to
19 find and we're going to continue to find problems
20 that we believe have to be corrected.

21 However, the decision to make these
22 corrections or modification or fixes must be done
23 in a managed and disciplined process. And that's
24 what the backfit rule and the staff's implementation

1 of the backfit rule is all about.

2 The backfitting rule was published in
3 the Federal Register on September 20th, 1985; and
4 it became effective on October 21st, last year.

5 The rule encompasses generic actions and
6 plant-specific actions. Generic actions; that is,
7 those that apply to more than one plant, are
8 governed by the Committee to Review Generic Require-
9 ment Processes, the CRGR process; whereas the plant-
10 specific actions, which is, again, a focus of our
11 discussion today, the plant-specific backfit processes
12 are governed by Manual Chapter 0514.

13 The rule applies to all power reactors
14 and backfits imposed after October 21st, 1985.

15 Now, you will note that when Tom Cox gives
16 his presentation, you will find that the staff was
17 applying it for any backfit imposed after May 1st,
18 1985, because that's the basic time frame in which
19 the staff put into place Manual Chapter 0514.

20 Let me cover briefly the request-for-
21 information rule. The request-for-information rule,
22 50.54(f) is designed to ensure that there is a solid
23 rationale for information that we request from
24 licensees. The rule states after issuance of a

1 license, the Commission may request statements
2 under oath to enable the Commission to determine
3 whether or not a license should be modified, sus-
4 pended or revoked. It allows the Commission to
5 request information from licensees under oath so
6 that the Commission can make those determinations
7 regarding the license.

8 Now, the rule also requires -- and this
9 is a change from what it required previously. This
10 is the new change. It requires that the staff
11 justify the request. There has to be a written
12 justification to determine if the request is proper
13 in light of the burden to be imposed and the potential
14 safety significance of the information.

15 The thought there is if information the
16 staff is seeking is of no safety significance, we
17 should not be requiring licensees to expend a lot
18 of resources to develop the information that we're
19 requesting. That's the simple purpose of that rule,
20 that provision of the rule.

21 Also, the approval for submitting a
22 request for licensees has been established specifi-
23 cally; and that is it has to be approved by the
24 EDO or his designee prior to issuance. The designee

1 are the office directors of the three headquarters'
2 program offices, NRR, NMSS or IE, those office
3 directors or their deputies or their regional
4 administrators or their deputies in the region
5 for the redelegation. There is a high level of
6 management approval.

7 Now, justification for requesting infor-
8 mation under 50.54(f) is not required if the infor-
9 mation is being sought to verify compliance with
10 licensing basis. And the reason for that is to
11 allow the regulatory process to proceed in an
12 orderly fashion.

13 Are there any questions at this time on
14 the request-for-information rule?

15 Yes, sir. I would ask that you use the
16 microphone.

17 MR. KENNETH ROBERTS: Ken Roberts, Boston
18 Edison. What do you mean what is the definition
19 of licensing basis?

20 MR. SNIEZEK: Licensing basis would be
21 if you have an operating license, it would be the
22 information that's contained in your FSAR, SER
23 analysis of your submittal, any written correspon-
24 dence that you provided to the NRC in support of

1 your license, the information that's in the technical
2 specifications, things of that nature.

3 MR. JUDE DELPERCIO: I'm Jude DelPercio
4 from ConEdison. On the justification for 50.54(f)
5 requests, will they go through the same cost-benefit
6 analysis and regulatory analysis required for items
7 under 50.109?

8 MR. SNIEZEK: No, they will not go through
9 the same analysis. The only analysis is analyzing
10 the burden to be imposed and potential safety sig-
11 nificance. You would not have to go through the
12 nine factors that are in 50.109.

13 MR. ANTHONY ZALLNICK: Tony Zallnick from
14 Niagara Mohawk. What about requests for information
15 that are not requested under oath, for example,
16 information to resolve generic issues or open items
17 like the research activities that are under way
18 on RHR cooling?

19 MR. SNIEZEK: Those requests that are
20 not specifically 50.54(f) requests are not covered
21 by this; and they would be covered by whatever the
22 normal office procedures are.

23 However, if it is a request for a lot of
24 analysis and a detailed request, it may fall under

1 the backfit rule itself. So it could fall under
2 the backfit rule, a request for information. Depends
3 upon the specifics of request.

4 Anything else on the request-for-infor-
5 mation rule?

6 MR. RUSSELL PRESTON: Russ Preston, PSE&G.
7 How does the utility specifically know the proper
8 approval has been received when it receives the
9 correspondence?

10 MR. SNIEZEK: There will be nothing in
11 the correspondence to the utility that is required
12 to be put that says it has been approved. That is
13 a staff process that will have its own internal
14 staff controls and subject to review by various
15 organizations in the NRC.

16 MR. MURLEY: The analysis is available as
17 a document.

18 MR. SNIEZEK: The analysis -- there would
19 be a rejustification being maintained by the region
20 or the office that submitted that -- put forward the
21 request for information. And if you would want it,
22 it could be made available; but there are no pro-
23 visions at this time to provide it to the utility.

24 You will just have to trust us on that one.

1 I think it's very important. It's what
2 Tom said initially. This rule requires the discipline
3 as much of the NRC staff as it requires of the
4 industry. In fact, it requires nothing of the
5 industry. But if it's going to work, the industry
6 obviously has to participate.

7 Anything else on the request-for-information
8 rule? We can get further questions you may think
9 of during -- at the end of this session.

10 Before I go any further, I . . . our two
11 other managers from headquarters have arrived, Frank
12 Maraglia and Shelly Schwartz from IE.

13 MR. SCHWARTZ: I apologize. They're
14 fixing 202.

15 MR. SNIEZEK: Now, let's get into the
16 backfit rule itself, which is the heart of our
17 discussions today.

18 First off, let's define it. Backfit rule,
19 there are two essential components to the backfit
20 rule. The first is the substance of the issue
21 itself, the technical issue itself, the substance
22 of the issue; and the second part is the timing of
23 the proposal, the timing of the staff proposal. Two
24 parts: substance and timing.

1 All right. The definition. A backfit
2 is a change to a system, structure, component or
3 design or is a change to the design approval or
4 manufacturing license or a change to the procedures
5 or the organization.

6 Now, when we talk procedures or organi-
7 zations, we mean it in the broadest sense of the
8 term, not a narrow sense; in a very broad sense.
9 And those changes that we're talking about are
10 those which may result from a new or amended rule
11 or imposition of a new or amended staff position.
12 By "staff position" we mean the contents of a
13 standard review plan, contents of a reg guide,
14 contents of a branch technical position, the content
15 of a bulletin, things of that nature. That's what
16 we mean by "staff position." That's the substance
17 that we're talking about.

18 Now, the second basic component we have
19 to talk about is the timing. Now, that means the
20 proposal to change a rule or publish a new rule,
21 change that staff position or publish a new position
22 occurs after, first, the date of CP issuance. That's
23 October 21st, 1985. That part of the regulation is
24 designed to cover future plants, plants who have

1 not yet received the CP. We're looking towards
2 the future there. So that would be the threshold
3 date for all future plants, the date they receive
4 the CP. Any proposed changes after that date would
5 be covered by the backfit rule.

6 The second basic date is six months before
7 docketing of the OL. That's for CPs that are issued
8 before October 21st, 1985. That's in there to
9 cover all current NTOLs, plants term the current
10 OL licensing process.

11 The third basic date is after issuance
12 of the OL. That applies to all current OL holders.
13 That means if you have an OL, the staff wants to
14 impose a backfit, a changed position, they are
15 covered under the backfit rule today.

16 And also the date of issuance, the fourth
17 timing, is the date of issuance of the design
18 approval under Appendices M, N and O of our regu-
19 lations. This also means that backfits imposed
20 before October 21st, 1985, are grandfathered. They
21 don't come under this process. They're not covered
22 by the rule.

23 However, the NRC Manual Chapter 0514 --
24 Tom will talk about it more -- sets the date as May

1 1st, 1985, because we have the process in place as
2 of that time; but the rule would apply anything before
3 October 21st. So we're picking up a few more
4 issues than we're required to pick up by the rule.

5 Question.

6 MR. JUDE DELPERCIO: Jude DelPercio,
7 ConEdison. What you're referring to is the revised
8 rule. Couldn't that -- those backfits before May 1
9 be covered by the old rule?

10 MR. SNIEZEK: That's true. They would be
11 covered by the old rule.

12 Let's talk about the backfit analysis.
13 Analysis is required for backfits the NRC seeks to
14 impose, and the reason that an analysis is required
15 is to ensure that safety is in fact being improved.
16 We don't want to impose backfits that do not improve
17 safety. That's to no one's benefit, not to ours,
18 not to the public's health and safety and not to
19 the utility. We want to impose backfits that are
20 meaningful from a safety standpoint.

21 In this systematic, documented evaluation
22 there are several factors that have to be taken into
23 account. First of all, we have to determine how it
24 should be prioritized and scheduled in light of the

1 other regulatory activities that are ongoing at that
2 utility. It wouldn't make much sense to require a
3 very tight deadline on a backfit that is of lesser
4 safety significance than something the utility
5 already had under way which is of more safety sig-
6 nificance. We would not want the new backfit that
7 we're imposing to preempt something of greater safety
8 significance and divert the resources away from the
9 activity that has better safety significance than what
10 we are attempting to impose.

11 In the analysis we have to take into
12 account the following factors as they are available:
13 First of all, the specific objections of the backfit.
14 What problem are we trying to correct? That's the
15 very basic thing we have to understand. We don't
16 want to propose the licensee to take some action if
17 we don't know exactly what problems we're trying to
18 correct. So the very first thing we have to do is
19 define what is our objective? What problem are we
20 trying to correct? What things are we -- is necessary
21 to correct that problem? With our proposal, what
22 activities will be required of the licensee? What
23 does he have to do? We should have some idea of the
24 process you have to go through. Is it going to cause

1 you to retrain your staff, develop new procedures?
2 Do you have to do design work, testing work? We
3 need that to even discuss intelligently what type
4 of a schedule it should be on.

5 Very important one: What's the change in
6 the accidental off-site radiological risk to the
7 public? After all, that's what it's all about. We
8 want it to improve safety. We want it to decrease
9 the potential for radiological exposure to the
10 public. So if we can, in terms of man rem, what's
11 the positive or negative impact on the public? We
12 have to think through our proposal to make sure it's
13 not going to have a detrimental impact on safety.
14 What's the potential impact on radiological exposure
15 of on-site workers? And that we can normally come
16 up with pretty accurately, and that -- this is based
17 on the installation and continued operation. Would
18 it cause a positive increase in the radiological
19 exposure to on-site workers or will it be a decrease
20 in radiological exposure?

21 What are the installation and continuing
22 licensee costs, including plant downtime and re-
23 placement power? We want to impose this modification.
24 What's it going to cost the utility and ultimately

1 the public to have this modification made?

2 What's the impact on the operational
3 complexity and the relationship to other regulatory
4 requirements? We want to make sure that we in our
5 own backlog of generic issues and plant-specific
6 issues are not duplicating the fix to a single
7 problem. Do we have a broader fix in the work --
8 in the workings that will fix this problem and
9 some other problems that we perceive? We want to
10 make sure we're not duplicating effort. We want
11 to make sure we're getting the most safety improve-
12 ment for the amount of resources the industry and
13 the NRC are expending.

14 What is the impact on NRC resources? If
15 we are imposing a new position on the utilities, is
16 it something that is going to have to be reviewed
17 by the NRC before the modification is made by the
18 utility? If it does have to be reviewed by NRC,
19 are resources available to review it on a very
20 timely basis? As you know, we have not always been
21 in that position, to review things in a timely
22 basis. If the fix is necessary, if it's important
23 to safety and we're in the review process, we have
24 to make sure our resources are available to do that

1 with you, even if we have to divert them from
2 something of lesser safety importance.

3 What's the impact on differences in
4 facility type? That's a generic one which does not
5 apply to the plant-specific process we go through.

6 Does modification only apply to combustion
7 engineering plants, only to plants with Mark II
8 containments? What type of plant does it apply to
9 and why?

10 Is the action we're proposing an interim
11 action or a final action? If it's an interim action,
12 why is it necessary to impose it at this time? Is
13 the risk of such a magnitude that we have to take
14 interim action or is there very little risk and
15 we don't have to take interim action; we can await
16 the final action on the issue?

17 Then other germane factors, factors such
18 as how much time is left for facility operation?
19 What's the facility performance record in this area?

20 If we're proposing a modification to a
21 snubber program at a utility and the utility had a
22 dismal record on snubber performance, that will go
23 into our consideration. If it's had an outstanding
record on snubber performance, for example, that will

1 go into our deliberation as far as the need for the
2 fix. That could be the need for the fix, the timing
3 of the fix, things of that nature, other germane
4 factors, qualitative factors that may apply.

5 I want to mention very clearly here that
6 this analysis is not just a quantitative analysis.
7 It's not just based on PRA. If PRA results are
8 available, we should use them. If they're not
9 available, we don't worry about them. We use
10 whatever qualitative factors. This is a mix of
11 quantitative and qualitative factors, and no one
12 factor is overriding. The factor that would be the
13 most important is the impact on the off-site
14 exposure to the public. That would be the most
15 driving factor of them all.

16 Now, after we did that analysis we have
17 to make a backfit determination. Whether or not
18 to impose the backfit is to be based on the backfit
19 analysis. Those factors we just discussed.

20 And the Commission is to require a backfit
21 only if that analysis shows a substantial increase
22 in overall protection of public health and safety
23 or common defense and security.

24 What does "substantial" mean? There is

1 no . . . numerical, no quantitative value of "sub-
2 stantial." It's a judgment call. But "substantial"
3 means of real substance. It's not trivial. It's
4 not a figment of the imagination. It's there.
5 There will be an improvement, a substantial improve-
6 ment, a real improvement.

7 And the other thing that's to be con-
8 sidered is the cost of implementation justified in
9 light of that substantial improvement of public
10 health and safety. There is no algorithm that we
11 apply. It's a judgment call of the approving
12 official. And I will discuss that, who that is in
13 just a minute.

14 Let's talk briefly about the exceptions
15 to the backfit rule.

16 The backfit analysis, 50.109(c) and the
17 justification for the staff required in 50.109(a)(3)
18 is not required if the modification is necessary for
19 compliance with the rules, orders, commitments,
20 license conditions, etcetera, or the action is being
21 taken to ensure there is no undue risk to the public
22 health and safety. If that's the case, the backfit
23 analysis and the justification go by the wayside.

24 Now, there must be a documented evaluation

1 of that exception which covers two things: the
2 basis for invoking the exception and the reason
3 for the proposed modification or proposed change.

4 There is an analysis required by 50.109(a) (2)
5 if a backfit is imposed because of the no undue risk
6 consideration; and that's a very simple analysis
7 which covers just the safety significance and the
8 appropriateness of cost -- I'm sorry; the appro-
9 priateness of the action. There is no balancing
10 of safety and cost. If we find that we are imposing
11 a modification because of no undue risk consider-
12 ations, cost is not a factor in that decision. The
13 fix must be made.

14 However, cost can be taken into account
15 on choosing between acceptable alternatives to fix
16 the problem; but the problem must be fixed regardless
17 of the cost. Cost is not a consideration if there's
18 a no undue risk consideration.

19 I would mention here, also, that if the
20 fix is being made on an immediately-effective
21 basis, this analysis that's required by 50.109(a) (2)
22 may be done after the fact. It does not have to be
23 done before the fact.

24 Let's talk about the impact on the licensing

process.

50.109(d) of the rule states that the licensing action will not be withheld pending the analysis. That's the analysis required under 50.109(c).

The reason for that is the NRC does not intend to hold a utility hostage while we're negotiating during the backfitting process while the staff is doing an analysis. The licensing action is to proceed.

Now, the staff has extended this concept to apply to construction, operations and also the appeals process. You'll find that our manual chapter covers plants under construction, operations and also applies to the appeal process. If there's an appeal under way, the staff's implementation of the rule would not stay the construction, the operations or the licensing actions.

Who is responsible for implementing the backfit rule? The Executive Director for Operations has been charged by the Commission with the responsibility for implementation of the backfit rule. The Executive Director for Operations or his designee approves all analyses.

1 Office Directors and their deputies and
2 the Regional Administrators and their deputies with
3 no further redelegation have been given the authority
4 to approve all analyses required under the backfit
5 rule.

6 This concludes the elements of my presen-
7 tation. I'd be pleased to entertain any questions
8 from the floor at this time.

9 MR. KENNETH ROBERTS: Ken Roberts, Boston
10 Edison: As part of the analysis you had a scheduling
11 factor. For those of us with living schedules or
12 long-term plans that already exist in our license,
13 how will that affect our process?

14 MR. SNIEZEK: We encourage the scheduling
15 to be done through a living schedule if at all
16 possible. It should fit right into that process,
17 and I believe in the manual chapter we tell the
18 staff -- we encourage them in the manual chapter to
19 use that process.

20 MR. JUDE DELPERCIO: Jude DelPercio,
21 ConEdison. Quite frequently you've made a distinction
22 between generic backfitting and plant-specific back-
23 fitting. And this -- what I see happening is I
24 see a gray area being set up.

1 Typically generic backfitting, something -
2 to give you an example, Supplement 1 to Reg 0730,
3 it's required of all operating plants; and the
4 first stage of assessing Supplement 1 requires a
5 substantial amount of engineering and design review
6 of the facility, comparing it to the guidelines
7 that Supplement 1 calls guidelines versus the
8 requirements which are written in Supplement 1.

9 So what I'm getting at, at some point in
10 time the generic backfit becomes a plant-specific
11 backfit. That is, I make a commitment to install
12 some upgrade for, say, Supplement 1. How can you
13 make that distinction and how does the regulatory
14 analysis done by CRGR cover the cost of the plant-
15 specific backfit of results from the generic item?

16 MR. SNIEZEK: Let me address that in several
17 parts.

18 Let me correct a misunderstanding a lot
19 of people have. CRGR does not do regulatory analysis.
20 They review the regulatory analysis prepared by the
21 proposing staff; okay? I think that's a misunder-
22 standing a lot of people have. We challenge them
23 on what's in there, but we do not do it ourselves.

24 Generic analysis, if something is proposed

1 generically such as Supplement 1 to 0737 -- that was
2 a long time ago -- that would not be covered by this
3 backfit rule specifically; but we'll address it,
4 anyway. If it was proposed for a generic action --
5 rather, the regulatory analysis would take and should
6 take into account the impact on the various classes
7 of licensees. It would not be a plant-specific
8 analysis but classes -- if classes were viewed to
9 make a difference. That document would come through
10 the CRGR process.

11 If the CRGR approves that document, what-
12 ever requirements are in there, whatever guidance is
13 in there, that would hold across the board; and there
14 would be no plant-specific backfit analysis required
15 by the staff because it was handled on a generic
16 basis.

17 However, if the EDO says . . . "Maybe this
18 plant was not specifically considered," the Executive
19 Director for Operations could direct that a plant-
20 specific backfit analysis be performed for a specific
21 licensee. I would doubt this would happen very
22 frequently because it would really tie up the staff
23 and it would also tie up the industry long term if
24 that were to happen.

1 Now, since the industry has available
2 to it all the analyses that went into the generic
3 review process, it has available to it the minutes
4 of the CRGR meeting, if, as industry reviews that
5 data, it says, "Hey, this is way off base as it's
6 related to my plant and it doesn't apply," that would
7 be a viable basis for the licensee to meet with
8 NRR or whoever the proposing office was and say
9 "This really doesn't apply to my plant" and go
10 through a process to convince, if you can, the
11 Licensing Office or Inspection Office that it does
12 not apply to your plant and should not be applied.

13 However, as specifically written -- Tom,
14 correct me if I am wrong here, Tom Cox -- the backfit,
15 plant-specific backfit manual chapter does not
16 specifically apply to that situation.

17 MR. COX: Right. It only allows for an
18 EDO to make a special dispensation, if you will,
19 for a plant-specific case.

20 MR. JUDE DELPERCIO: That's the gray area
21 I'm getting at. I don't see it in the manual
22 chapter. I don't see it in the CRGR charter, as I
23 think we're now entering with our particular plant
24 in that gray area.

1 We have made certain commitments to upgrade
2 our plant as a result of the Supplement 1 analysis
3 like control room design or we will be making
4 commitments to upgrade the plant; and my concern
5 is I'll be making a submittal in a month or so with
6 some substantial commitments.

7 Where is that covered? How am I covered --
8 what 50.109 version am I covered under?

9 MR. SNIEZEK: You are covered under the
10 generic review process because that document
11 received generic review --

12 MR. OLMSTEAD: If the backfit is imposed
13 by rule, the generic backfit analysis is all that's
14 required and you're required to meet the rule.

15 If the generic backfit is imposed by
16 orders for your individual facility, 50.109 requires
17 backfit analysis for that facility. The staff
18 may rely on the individual -- on the generic-by-
19 type backfit analysis; but you are free to raise your
20 facility as an exception to that analysis, and we
21 would require them to perfect that analysis before
22 the order would go in place.

23 MR. JUDE Delpercio: This is what I'm
24 getting at. As part of making just commitments to

1 upgrade the facility to meet certain post-accident
2 monitoring requirements and control room design
3 review requirements, I am also, after spending a
4 long time studying our plant, justifying many
5 existing configurations. And this is the area
6 where the staff now comes back and under the require-
7 ments of Supplement 1, are coming back to us in-
8 formally at present that some of our justification
9 are suspect or justifications are being challenged.

10 What I'm getting at: Do I have recourse
11 under the new backfit rule to request any regulatory
12 analysis and cost-benefit analysis to make any more
13 commitments, given one of my justifications is un-
14 accepted?

15 MR. SNIEZEK: I would say the answer to
16 that is no, not under the backfit rule; but if you
17 believe that the analysis did not apply to your plant,
18 you could show why it does not apply to your plant
19 and present that to NRR.

20 The staff, if it was approved generically,
21 was only required and is only required to do the
22 generic analysis. We are to do generic plus a
23 specific analysis for a hundred plants. That would
24 make no sense.

1 MR. JUDE DELPERCIO: I have another
2 question. This relates to -- not an old issue;
3 some issue relatively new.

4 Unresolved safety issue A40 and A46 both
5 deal with seismic design or seismic qualification.
6 There is quite a bit of recent activity before the
7 NRC. Apparently sometime this year it's expected
8 that a generic letter is going to come out and it's
9 going to request again this engineering and design
10 study, plant walkdown, some new analysis of equipment
11 for seismic capability. It will require a report
12 to go to the NRC. Initially a 60-day response is
13 expected where I'll submit a schedule for doing all
14 this work, to submit a report, and that report will
15 contain commitments for modifying the plant.

16 Now, I've looked recently as last night
17 at the regulatory analysis behind Generic Issue
18 A46 where it discusses the impact on the licensee
19 of doing these reviews. And the estimates range
20 from 400,000 to 800,000. We've come up with some
21 estimates; and they appear to be double, as a minimum,
22 double the estimates that are in this -- I guess
23 it's NUREG 1130 or a number like that which has the
24 regulatory analysis.

1 My question really is: Do I have
2 recourse again when this generic letter comes out,
3 instead of responding in 60 days with a schedule to
4 do this review, requesting a new regulatory analysis
5 on a plant-specific basis to justify any improve-
6 ments that may be necessary?

7 MR. SNIEZEK: What you have the option of
8 doing if you don't believe the regulatory analysis
9 is consistent with what you have at your facility,
10 what your costs would be, you have the opportunity
11 to present your figures to the NRC and say how the
12 NRC -- "You are wrong because of these reasons."

13 MR. JUDE Delpercio: So basically --

14 MR. SNIEZEK: Let me mention one thing.
15 It would -- it surprises me you say the estimates
16 are wrong, because it's my understanding they were
17 worked up with the industry group in this area; but
18 that does surprise me.

19 MR. JUDE Delpercio: I mean, for example,
20 plant walkthroughs, we've done quite a lot of walk-
21 throughs --

22 MR. SNIEZEK: I don't want to debate the
23 issue.

24 MR. JUDE Delpercio: They're coming out

1 tripled.

2 MR. SNIEZEK: I want to talk philosophy
3 of what would apply and what would not apply.

4 MR. JUDE Delpercio: That's what I'm
5 getting at, is that all these generic issues, station
6 blackout, seismic, Supplement 1, they get some
7 generic regulatory analysis somewhere. Eventually
8 they become plant-specific items, and it appears
9 that I'm caught in a little bit of a gray area as
10 to how I'm covered.

11 MR. SNIEZEK: You are covered under the
12 generic review process. There is no requirement to
13 staff plant-specific analysis.

14 However, you also have the opportunity
15 to present your differences to the NRC staff, and
16 they are to take them into consideration.

17 MR. JUDE Delpercio: I have one more question
18 related to -- I guess it's provision . . . I forgot
19 the provision where licensing actions would proceed
20 without the regulation of the backfit on its critical
21 path. I'm going to pose a hypothetical example.

22 If I was to make an application to the NRC
23 to stretch the power rating of our facility and as
24 a result of that application, numerous analyses that

1 maybe some modifications are done to the facility.
2 Staff comes back with an item on a tangent, which
3 is something that might be recently developed in
4 NRR or wherever, where they want some additional
5 widget installed. Clearly I can show that that widget
6 is not related to stretching the power of the facility

7 Would, under this particular provision in
8 the backfit rule, would I still be able to get a
9 stretch power license; that is, get a license at
10 the higher power level and still not have the issue
11 of this widget resolved?

12 MR. SNIEZEK: If you have provided adequate
13 technical justification for stretching the power
14 level and it is very clear that this widget is
15 completely outside any rationale associated with
16 stretching the power level, you would get your
17 authorization.

18 MR. JUDE DELPERCIO: Thank you.

19 MR. NICHOLAS REYNOLDS: Nick Reynolds,
20 Counsel for NUBARG. In answer to the question from
21 the gentleman from ConEd, you confused me somewhat;
22 and I want to clarify it to make sure that we don't
23 leave the audience confused.

24 I understood you to say if an item in NUREG

1 0737 led to a staff position today suggesting that
2 a licensee did not meet the requirement in 0737, it
3 would not be a backfit; but if you had a previous
4 position from the staff proving your approach to
5 that item and it now changed, that would be a backfit.

6 MR. SNIEZEK: That's correct.

7 MR. NICHOLAS REYNOLDS: Let me add one
8 thing, clarify your perspective on the question of
9 whether your plant is entitled to a specific eval-
10 uation by the staff if the rule was generic.

11 If your plant is outside the envelope
12 of the generic rule, then obviously you have an
13 argument that the rule doesn't apply to your plant.
14 Would you agree with that?

15 MR. SNIEZEK: What do you mean by "envelope"?

16 MR. NICHOLAS REYNOLDS: If it's a rule
17 applying to PWRs, if your plant is not a PWR, it
18 doesn't apply to you.

19 MR. SNIEZEK: No question.

20 MR. NICHOLAS REYNOLDS: If the rule applies
21 to older plants and your plant is newer; and if the
22 rule is not clear, then you have to clarify the
23 envelope to make sure your plant is within it or
24 without it.

1 MR. SNIEZEK: Agreed.

2 MR. NICHOLAS REYNOLDS: If it's within
3 the rule by the terms of the rule but you still
4 feel for some reason that the rule shouldn't apply
5 to your plant, you're in 50.12.

6 MR. SNIEZEK: I believe that's the right
7 reference. I . . .

8 MR. NICHOLAS REYNOLDS: The exception rule.

9 MR. SNIEZEK: Okay, yes.

10 MR. TED ROBB: Ted Robb, Philadelphia
11 Electric. Regarding the objective of backfit
12 improvements and safety, if one has a plant with a
13 plant-specific PRA that shows that that plant is
14 safe enough, can a backfit which is proposed which
15 improves safety really be required?

16 MR. SNIEZEK: First of all, by definition
17 every plant operating today is safe enough or it would
18 not be operating. They would be at an adequate
19 level for public health and safety.

20 The rule that would apply is is there a
21 substantial increase in public health and safety.
22 If the fix that would be proposed by the staff, the
23 modification being proposed by the staff, you have
24 a good PRA that shows staff "You're not going to get

1 the results you expect from making me doing this
2 modification and here's my proof showing you that,"
3 that would be a good rationale or a good argument
4 for not having the modification imposed at your
5 facility.

6 MR. TED ROBB: Thank you.

7 MR. VINCENT BOYER: In your early remarks
8 about the questions that you would ask and that
9 would have to be reviewed and answered, some of
10 them were definitely NRC-type information. Some
11 of them look like they would have to come from
12 knowledge of the specific facility and, therefore,
13 might be requested of the applicant. And some
14 of those questions look like they could require
15 considerable manpower, man hours to respond to.

16 How do you expect to handle this, and
17 have you made any estimates for some proposed
18 modifications as to what your additional manpower
19 requirements might be as compared to the applicants'
20 in the implementation of this rule?

21 MR. SNIEZEK: We have made no estimates
22 regarding our resources versus the applicants'
23 resources or the licensing applicants' resources
24 necessary. These are required to be answered by the

1 staff.

2 I would envision in answering some of
3 these, such as cost information, scheduling-type
4 information and things of that nature would be done
5 in coordination with the affected licensee.

6 MR. VINCENT BOYER: It's not your present
7 plan to submit a list of 20 standard questions to
8 the applicant every time this backfit -- new proposal
9 is suggested requesting information along those lines
10 so that you can perform your job?

11 MR. SNIEZEK: That is not our present
12 plan.

13 Frank, do you have anything you would
14 like to add to that?

15 MR. MARAGLIA: I think that's the right
16 answer, Jim. I think we would probably, if we've
17 identified a potential backfit, we may have some
18 dialogue, Vince, with the utility to make sure we're--
19 "Here's how we see it as a potential backfit. We
20 think the costs are this magnitude. Are we in the
21 right ballpark?"

22 I don't think we're expecting major analyses
23 from them, but they want to at least -- we'll talk
24 with the utilities, affected utility to get responses

1 to that or "Here's our understanding of what's on
2 your plate and schedulewise. Here's how we perceive
3 this" and get that kind of dialogue." I think that's
4 a necessary part of making sure that the analysis
5 is accurate and complete.

6 MR. SNIEZEK: Part of the intent is to
7 promote the dialogue. It's not the intent to cut
8 off the dialogue.

9 Any other questions --

10 MR. VINCENT BOYER: Well, along that line,
11 do you see this effort increasing the workload on
12 the region? Perhaps maybe you might need to take
13 some of the people from I&E or something like that
14 and use them on this type of thing.

15 MR. SNIEZEK: From what I understand, all
16 the regional administrators and inspectors tell me
17 the never backfit. So I don't see how it could
18 increase.

19 CRGR has gone out to 10 utilities over the
20 past three or four years to interact to find out
21 what's on the plate and what type of fixes are being
22 required. What utilities generally have said, "Don't
23 cut off that dialogue with that inspector when he
24 comes and tells us about things he finds aren't

1 right. They have a lot of good insights; know the
2 plants fairly well, especially the residents, and
3 give us a lot of good insights. Plus, as we have our
4 dialogue, if we show them that it's not necessary
5 to do something for safety, they back off because
6 they see the situation."

7 So the major emphasis initially was on
8 the licensing process and the headquarter review
9 process. However, I personally believe there is a
10 lot of backfitting that goes on by the inspectors;
11 and to the extent there is, that may increase the
12 workload of the region.

13 But if you look at our backfit data base
14 now, I don't think there's much of anything from
15 regional based. Primarily all headquarter based.
16 In general, I don't think the regions think they
17 are backfitted. We have not heard a lot of complaints
18 from utilities regarding inspectors backfitting,
19 to be quite honest.

20 Now, they all clearly understand, as Tom
21 Murley said in his opening remarks, they are not
22 to backfit -- I shouldn't say it that way. If they
23 backfit, it's to be done in accordance with this
24 process that we're talking about today. That's what

1 we want to accomplish.

2 The reason why we have a backfit rule in
3 the manual chapter is to make sure we, the NRC,
4 thoroughly understands the implications of the
5 actions that we are taking. Even if we didn't
6 have a backfit rule -- as you know before the back-
7 fit rule, the staff put the manual chapter in place.
8 We had the CRGR process in place because we feel
9 we have to know it before we tell the industry to
10 do something. We have to understand the impact.

11 Other questions at this time?

12 (No response.)

13 MR. SNIEZEK: Why don't we take a short
14 break, and let's be back at 25 to 11:00.

15 (A short recess was taken at 10:20 a.m.)

16 (The proceedings resumed at 10:40 a.m.)

17 MR. SNIEZEK: At the risk of digging a
18 deeper hole on this issue, at the time we broke,
19 before we broke, we were talking about generic
20 versus plant specific. And let me take another shot
21 at the issue.

22 If the staff is proposing a generic change
23 and if that change goes through the generic review
24 process, which means it's reviewed by CRGR, there is

1 no need for the staff to do a plant-specific backfit
2 analysis.

3 However, once the utility gets -- receives
4 that proposed change, the individual utility, and
5 it sees that generic analysis that was done and
6 the utility says, "Hey, that analysis does not
7 cover the situation at my plant," the utility has
8 the opportunity -- in fact, I'd even say an obliga-
9 tion -- to bring the differences to the attention
10 of the proposing office such as NRR; and the staff
11 is obligated to take into account the utility's
12 argument that that generic analysis does not apply
13 to them.

14 However, this is not covered under the
15 plant-specific backfitting process.

16 Yes.

17 MR. GARY GISONDA: Gary Gisonda, and I
18 work for the Long Island Lighting Company. And I
19 was wondering, Mr. Sniezek, if you had this generic
20 analysis for the bulletin -- IE Bulletin 8503, do
21 you have the generic analysis for that?

22 MR. SNIEZEK: What did that apply to?

23 MR. GARY GISONDA: Common mode failures
24 of motor-operated valves. It came out November 15th.

1 1985, very shortly after the backfit rule was made
2 effective.

3 MR. SNIEZEK: There would be a generic
4 analysis. It would be part of the CRGR minutes.

5 MR. GARY GISONDA: Are those minutes
6 available?

7 MR. SNIEZEK: Those minutes should be
8 available in the PDR right now.

9 Okay. What I would like to do now is
10 turn the meeting over to Tom Cox. Tom is the
11 Senior Program Manager in the Office of the Executive
12 Director for Operations. He is probably the most
13 knowledgeable staff person on Manual Chapter 0514
14 which governs plant-specific backfitting; and he
15 will provide a comprehensive description of the
16 staff policy and procedures for the management of
17 plant-specific backfitting.

18 Tom.

19 MR. COX: Thank you, Jim.

20 If we can have the title block on there,
21 please.

22 We will talk primarily about the manual
23 chapter now that you have heard about the rule.

24 For the next hour or hour and a half --

1 I'm not just sure how far we'll go with this this
2 morning -- we will talk about how the staff is
3 implementing the rule but particularly with emphasis
4 on plant-specific backfitting and not on the generic
5 backfits that are managed and conducted through the
6 CRGR process. This will be about plant-specific
7 backfitting as described in Chapter 0514, which is
8 one of your handouts this morning. In fact, most
9 of what we say here you can find paralleled in the
10 chapter. I'll even try to reference you to particular
11 sections as we go through there.

12 There are staff documents at a couple of
13 levels implementing the plant-specific backfitting
14 policy of the Commission. The first level, you
15 have the chapter that we're discussing today. It
16 is essentially a document issued by the Executive
17 Director for Operations, but it has Commission
18 approval.

19 The second level are headquarters and
20 Regional Office procedures, which are written by those
21 organizations to flush out the details that are
22 essentially policy directives in the chapter that
23 you have as a handout. Those office procedures are
24 written for NRR, NMSS, IE and each region.

1 As a result of the rule change in late last
2 year, the office procedures which were already in
3 place in 1985 are now being revised. In fact, the
4 first cut at their revision is already in the EDO's
5 office for review.

6 The chapter itself that you have in front
7 of you was recently revised and issued to the staff
8 and industry for the first time -- I'm sorry; to
9 the industry for the first time. It's been a staff
10 document for over a year. The industry received it
11 on March 3rd of this year as an attachment to a
12 letter to the CEO of each of the 55 utilities.

13 What are we doing about implementing this
14 process? As Jim has mentioned, we had a Chapter
15 0514 in one version or another, in fact since before
16 May 1985; but as of May 1985 it was official within
17 the agency and we started talking to people about it.
18 Nine seminars during 1985 essentially on the chapter
19 itself in the offices you see listed there and the
20 five regions. We talked to well over 700 staff
21 members. That was last year. We're going to do that
22 again this year.

23 There also were additional seminars last
24 year in the regions on how to conduct or go through

1 cost-benefit analyses to -- which is a component
2 of the overall regulatory analyses necessary.

3 That's just a brief review of what we
4 have been doing. Now we're going to go back and
5 discuss this EDO-level directive; that is, Chapter
6 0514. It contains a number of elements which we'll
7 summarize in the next three -- next couple of slides.
8 Then we'll go back and talk about what the contents
9 of those various elements are.

10 The first basic element in the chapter
11 is the responsibilities and authorities in the
12 Section 03. These are outlined for the EDO, for
13 office directors and regional administrators and
14 for the staff. So the policy directive addresses
15 everyone in the agency and talks to their respon-
16 sibilities and authorities in this process.

17 The second element -- in fact, the next
18 several elements are all requirements. As you can
19 readily see from reading, these are essentially
20 requirements on the NRC staff, our self-imposed
21 process, which we will go through in the promulgation
22 of plant-specific backfits.

23 The first one there on 54(f) letter request
24 essentially covered by Jim, I won't add to that in

1 this presentation.

2 No. 3, there are requirements for identify-
3 ing plant-specific backfits in Section 042, a very
4 important part of this whole process. At some point
5 during this hour I'll try to give a few examples
6 on that.

7 And then there are requirements on preparing
8 and handling the regulatory analyses themselves.

9 Further requirements on the appeal process,
10 Section 044. We'll talk about that.

11 Requirements on how to implement backfits,
12 045.

13 Then there are three relatively short
14 sections on recordkeeping and reporting. We do have
15 a plant-specific backfit system in place with
16 terminals at each of the major offices and regions
17 and an agencywide data base which resides in
18 computers at Bethesda, National Institutes of Health.
19 All offices of regionals have access at any time to
20 the data in that data base.

21 There are exceptions briefly discussed.
22 That was also covered by Jim earlier.

23 Then the definitions in Section 050 are
24 quite important to the whole process, of course; and

1 I will spend a little more time on that.

2 Then there's an Appendix A containing
3 some guidance for making backfit determinations,
4 which is essentially a text description under
5 different categories like licensing, inspection
6 and enforcement, giving some discussions of real-
7 life methods and approaches to identifying backfits.
8 This is essentially a help section for the staff
9 members who would chose the chapter.

10 Now we've just run through those individual
11 elements that are contained in the chapter. Let's
12 back up and go through each of them in a little
13 more detail.

14 Under "Responsibilities and Authorities,"
15 the EDO is responsible to the Commission for the
16 successful conduct of the program. That's been a
17 change that's come about in the manual chapter
18 through the evolution, final evolution of the
19 addition of the backfit rule.

20 However, as Jim mentioned, the EDO dele-
21 gated that responsibility and authority in certain
22 ways to Office Directors and Regional Administration.
23 The most clear and present way that that authority
24 has been delegated is to review cases and make

1 decisions. Most of the signature authority resides
2 with Officer Directors and Regional Administrators.

3 However, it is also clear in this chapter
4 that the EDO may review and modify decisions. It's
5 not required. As you know, the rule says, "EDO
6 or his designee." But the EDO will be an available
7 final appeal authority in the context of the
8 process defined in this chapter.

9 Director of the Regional Operations and
10 Generic Requirements staff -- that is now Jim
11 Sniezek -- shall assure that process controls are
12 developed, maintained and communicated to the
13 licensees. That's essentially -- we're doing the
14 communication this morning and at three other
15 industrywide workshops like this.

16 Also, as I mentioned, we have communicated
17 to the staff and will continue to communicate to
18 the staff.

19 And this document, Chapter 0514, is a
20 living document. It will be changed as necessary,
21 although perhaps not as frequently as in the past;
22 but development and maintenance of the process
23 controls continues. And, of course, we are right
24 now in a pretty early stage of using the official

process.

Office Directors and Regional Administrators will assure that procedures are in place in each office for managing this plant-specific backfitting. Those are the more detailed procedures that I mentioned are being produced right now.

Still under "Responsibilities and Authorities," Office Directors, Regional Administrators shall approve the regulatory analysis and make the backfit determination based on that analysis before a proposed change is transmitted along with that analysis to the licensee. I don't think -- I think that's about as clearly as I can state it. We are .. obligated to reduce the analysis, make the determination and transmit it to the licensee over the OD or RA signature.

Office Directors and Regional Administrators will consider claims of backfit by other than the NRC staff. You will see that in the chapter. Prior versions of this talked primarily about the staff identifying backfits. It is the staff's responsibility and it is their primary responsibility to identify backfits; but from time to time a licensee may feel that they have not identified one, in which case we

1 will consider a claim of backfit.

2 Office Directors make final decisions on
3 appeals. That is unless the licensee carries the
4 appeal all the way to the EDO. In the normal conduct
5 of this process, we fully expect that the final
6 decision will be made by the Office Director on an
7 appeal.

8 And just to reiterate here, because I
9 believe it's the last item in the chapter on the
10 responsibilities and authorities and it's an impor-
11 tant one, the staff has primary responsibility for
12 identifying backfits; but others may identify a
13 potential or claimed backfit.

14 Please identify yourself.

15 MR. JOSEPH COONEY: Joe Cooney, Philadelphia
16 Electric. "others" in this case, other licensees
17 or intervenors? Who are the "others"?

18 MR. COX: Primarily the licensees would
19 have an interest, but --

20 MR. JOSEPH COONEY: That's my question.
21 Who are the "others"? Primarily licensees?

22 MR. COX: That's correct.

23 MR. JOSEPH COONEY: Are intervenors, also?

MR. COX: I don't see why anybody couldn't

1 make a claim, but they would have to have an
2 interest, a demonstrable interest in it.

3 The definition of the backfit is so
4 important that we're going to go over it here again,
5 recognize "again," but to facilitate understanding
6 because it just comes up over and over again.

7 Let's go over the working definition of
8 the plant-specific backfit as it's in the chapter,
9 in Section 052 of the chapter.

10 The staff position may be a proposed
11 backfit if it would cause a change from already-
12 applicable regulatory staff positions. Why do we
13 say "may be"? Because the backfit is both substance
14 and timing; and assuming that you meet substance,
15 which is a change from already-applicable positions,
16 then you go to the timing, which is the No. 2 here,
17 the staff position will then be a proposed backfit
18 if it's a change and is first identified to the
19 licensee in writing after certain licensing milestones.

20 Now, these are listed here in just the
21 opposite order Jim discussed them; but it shouldn't
22 make any big problem. Most of you have operating
23 reactors, and for operating reactor the licensing
24 basis is issued at the time of the license and then

1 with any subsequent documents that may add to that
2 licensing basis, formal documents.

3 For an operating license review, the basis
4 is specified at the time, which is six months before
5 docketing. A change after that time may be a backfit.

6 For new applications it's after the CP
7 issuance. We don't have any of those right now, but
8 that's looking forward.

9 For standardized applications, it will
10 be after the design approval by the NRC.

11 The word "plant specific" bears a
12 little understanding, primarily unique to one
13 docket number, one unit; but we are already realizing
14 that it's quite possible you could have changes
15 in tech specs, as an example, that would apply to,
16 say, three units on the same site, three units at
17 the same site, which is really essentially the
18 identical thing. We would consider that a plant-
19 specific backfit.

20 What is meant by "applicable regulatory
21 staff positions"? That was in the first item there.
22 It's rather a key element to understand.

23 Those are the positions that are in the
24 licensing basis for the plant the time a potential

1 backfit is proposed. They are positions that are
2 already a part of the licensing basis. There are
3 three kinds: legal requirements -- could be regu-
4 lations, orders, licenses, amendments to the license,
5 conditions of a license, tech specs, those things
6 that have legal standing. They are what we call
7 legal requirements. That's the only place I hope
8 you'll catch me using the word "requirements."

9
10 Written commitments by licensee, FSAR,
11 docketed correspondence, material that comes along
12 subsequent to the act of issuing the license but,
13 nevertheless, it is in the licensing basis because
14 of its standing at a commitment by the licensee,
15 formal commitment by an officer of the company. The
16 agency considers that part of the licensing basis.

17
18 Lastly, there are NRC staff positions,
19 generic positions. Since 1981 these should be
20 approved by the CRGR. They are interpretations of
21 the regulations, if you're in documents like standard
22 review plan, branch technical position, regulatory
23 guides, generic letters, IE bulletins, if the licensee
24 has committed to these in some review.

Here's an example. Let me give you an
example. There isn't a viewgraph for this. But in

1 an SER a licensee commits to a portion of a reg
2 guide. Only a portion of it. There may be positions --
3 under Section c there may be four positions and the
4 licensee commits to three of those and proposes to
5 do something else for one of them.

6 This commitment is accepted in the review
7 process, formally accepted in the review process;
8 then a later directive to do something else; that
9 is, after the license was issued, a later directive
10 to do more; that is, go back and pick up that fourth
11 position in the regulatory guide as it is written,
12 would be a backfit.

13 So I'm in a sense modifying the statement
14 on the prior -- no; on the viewgraph right there,
15 which is Item 2c, talking about staff positions.

16 Again, you have to consider the staff
17 position as it's actually in the licensing basis.

18 MR. DAVID HONAN: Dave Honan from Phila-
19 delphia Electric. Staff's SERs and supplements
20 thereto typically do not address or approve each
21 specific detail of an applicant's plans to comply
22 with the Commission's requirements. Can that fact
23 later be used by the staff to say this is a backfit
24 because we did not address it specifically in the

1 SER?

2 MR. COX: That's possible. But if the
3 staff addressed it, then that is part of the licensing
4 basis.

5 MR. DAVID HONAN: Let me extend that one
6 step further. We're in an interesting situation
7 with our Limerick plant at the moment where the
8 operating license for Unit 1 has been issued on the
9 basis stated in the SER. Unit 2 is under construction
10 and in theory still subject to further staff review.
11 Does that provide you additional insight into how
12 the staff might view -- I don't want to call it a
13 deficiency in the SER because we don't believe there
14 is that kind of problem there.

15 MR. COX: Very hard to discuss an individual
16 situation because you can't possibly cover all the
17 nuances in the existing documents in a dialogue
18 such as we're having right here.

19 But I think you're talking about an SER
20 issue for Limerick 1 and talking about a review in
21 Limerick 2.

22 MR. DAVID HONAN: To the extent the basis
23 for reviewing the two are identical, I think the
24 question still remains.

1 If I understand your answer, then, if
2 the SER does not specifically address any given
3 aspect of compliance with the Commission's regulations,
4 it may be raised by the staff at a later date with-
5 out labeling a backfit?

6 MR. COX: If it's not a draft in the SER,
7 there is a possibility that the staff could ask you
8 to do something else. If it isn't clearly covered
9 under some other requirement, some other position,
10 it may be new and it may be that they will need to
11 evaluate that and be . . . authorized to evaluate
12 that, possibly come up with a new requirement; but
13 Jim would like to say something.

14 MR. SNIEZEK: Let me address that because
15 I think . . . what Tom gave you was a correct answer,
16 but I would like to go a step beyond that.

17 If your plant has an operating license,
18 that operating license was based on your SER primarily
19 as amended, and the staff wrote an SER and issued
20 an operating license.

21 Even though that SER may not address a
22 detail in your FSAR, the staff acceptance of your
23 plant licensing basis is your FSAR. If you said
24 you were going to do X in the FSAR, you got an

1 operating license based on your statement that
2 you're going to do X. To make you change from X
3 is a plant-specific backfit because I recognize
4 what you're saying.

5 SER, we do not address every detail that
6 is in the application. However, when we issue the
7 operating license, it's based on the material you
8 submitted to us. Whether or not we review that
9 material in detail, it is still the basis for your
10 operating license.

11 MR. DAVID HONAN: Thank you. We will
12 build a plant to the intent we said we would.

13 MR. RUSSELL PRESTON: Russ Preston, PSE&G.
14 Those remarks would also appl' to the updated FSAR?

15 MR. COX: Yes.

16 MR. RUSSELL PRESTON: Even though changes
17 in that document may have been made for 50.59?

18 MR. COX: The FSAR are required to be
19 updated by regulation now.

20 MR. PRESTON: Yes.

21 MR. COX: So that would become your new
22 basis, your licensing basis.

23 MR. SNIEZEK: Let me address one step
24 further the 50.59 process.

1 50.59 is a good Commission regulation
2 which allows you to make changes provided you make
3 certain safety findings. You may make those changes
4 without coming to the NRC in advance. If you made
5 those changes, did the adequate analysis and the
6 staff found that your analysis was correct -- was
7 technically correct, whatever you changed is still
8 part of your licensing basis. If the staff found
9 that your analysis was flawed, then we would not
10 accept that as part of your licensing basis.

11 So assuming you followed the 50.59 process
12 and did it properly, that's a good way for you to go

13 MR. COX: We have another.

14 MR. JUDE DelPERCIO: It appears that the
15 questions that have just come up somewhat are
16 addressed on Pages 28 and 29 of the manual chapter
17 under the heading of "Reanalysis of Issues."

18 As I look at this -- take your example
19 where you have some staff positions or some reg guide
20 and it's got four items in it and I write a letter
21 and I commit to the first three and on the fourth
22 one I propose some alternate.

23 Five or six years go by and I never hear
24 back from the NRC. What Page 29 says to me, that the

1 silence on an issue is NRC acceptance; and if it's
2 not brought out as an open item in an SER, then it
3 is NRC acceptance.

4 So five years later when an inspector or
5 on a review for the identical unit, question comes
6 up and I didn't hear about it before, that item then
7 could be a backfit.

8 MR. COX: I think that's correct.

9 MR. JUDE Delpercio: My question to you
10 is: What do you mean by -- in this paragraph here
11 they use the words "reasonable time last elapsed,"
12 some general words to that effect. What is -- what
13 do you mean by that?

14 MR. COX: Just that. That's the -- that's
15 our interpretation of this policy. We can't specify
16 a specific time what we mean.

17 If a reasonable time has elapsed for a
18 review of licensee or applicant's submittal, then
19 what you have is tacit approval of that. We're not
20 going to specify whether that's six months or two
21 years. Five years sounds too long; but . . . you
22 know, it will depend on the situation at hand.

23 MR. JUDE Delpercio: So basically again
24 it's a burden of proof would be on the licensee to

1 come back to an inspector and say "In my letter on
2 TMI item five years ago I said I was going to put
3 the widget in turned to the left, not the right just
4 because everybody else has it turned to the right,
5 I don't have to do it."

6 So you're saying I have to identify it
7 and bring it to the attention of an inspector or
8 reviewer. So, again, the burden falls on me --

9 MR. COX: If the inspector doesn't identify
10 it.

11 MR. JUDE DELPERCIO: Thank you.

12 MR. COX: It's also a staff responsibility,
13 to identify a backfit.

14 MR. JUDE DELPERCIO: Thank you.

15 MR. COX: Any other question before we . . .

16 (No response)

17 MR. COX: The NRC is primarily responsible
18 to identify -- that means staff at all levels, staff
19 at all levels -- responsible to identify the backfit.

20 When the NRC identifies a backfit, the
21 staff will complete the regulatory analysis and a
22 determination before communicating it to the licensee

23 The backfit will be issued by the Office
24 Director or Regional Administrator.

1 A licensee may initiate a claim of backfit.
2 The licensee claim should be written to the Office
3 Director or Regional Administrator of the staff
4 issuing the position and a copy to EDO. That's a
5 simple letter.

6 If the staff determines that this position
7 is -- claimed to be backfit is a backfit, the
8 regulatory analysis is started immediately.

9 This identification process that we go on
10 right in here is very important. It requires knowing
11 the licensing basis of that facility.

12 If the staff determines that the position
13 claimed to be a backfit is not a backfit, the Office
14 Director or Regional Administrator will document
15 the basis for decision and transmit it to the licensee.
16 A document basis is required to be forwarded with
17 the transmittal. That is not a regulatory analysis.
18 That's just a short evaluation, perhaps a statement
19 of what the licensing basis is and why it is or is
20 not a backfit.

21 In the case of a licensee claim of backfit,
22 the Office Director or the Regional Administrator
23 receiving this claim shall report to the EDO and
24 inform the licensee within three weeks of receiving

1 this claim of the results of the determination and
2 the plan for resolving the issue. This does not
3 mean it's all over. It just means within three
4 weeks the appropriate official has to recognize that
5 the claim has come in and report to the EDO that it
6 has come in and inform the licensee whether it is
7 determined to be a backfit or determined to be not
8 a backfit and how the process will work from there.

9 There are some reasons why a staff-proposed
10 position may be found not to be a backfit even in the
11 incidence of a claim. That is -- you probably are
12 beginning to get this -- one, it is position is a
13 previous-applicable regulatory position. The licensee
14 is already prepared to meet that or the director of
15 the program often determines that a modification is
16 necessary to ensure no undue risk.

17 In these cases -- Jim discussed this earlier,
18 too -- no regulatory analysis is required but the
19 OD must provide a documented evaluation to support
20 the action taken, merely writing it down why the
21 action was taken.

22 Then the licensee is informed. He's informed
23 that his claimed backfit in this case perhaps is not
24 a backfit. When that occurs, the licensee may appeal

1 that determination.

2 Let's take a minute out to do a couple
3 of examples. This will put a little light into
4 perhaps this dry presentation, give you some examples
5 of identifying some.

6 In this case the licensee received a
7 certain EQ approval -- oh, I have to preface this
8 by mentioning any resemblance of this situation to
9 situations living or dead is purely coincidental,
10 purely. As a matter of fact, these have been
11 simplified because in any given case you really have
12 the licensee pointing to documents, we point to
13 documents. It's just not -- it is often, let me
14 say, not clean and simple. It's why we have managers
15 involved and very sharp technical people who will
16 review the situation at hand and decide what the
17 real licensing basis is. These are slightly simplified
18 examples, but I think they're meaningful.

19 A licensee receives a new EQ approval on
20 some electrical equipment in 1982. He was officially
21 notified in February '85 that the staff wants an
22 additional test of that equipment.

23 Now, those involved have to ask themselves
24 some questions. Is it a changed staff position? Yes.

1 He wanted an additional test.

2 When is the staff position changed? After
3 licensing. This is a licensee we're talking about
4 and in February after -- it's after the license
5 was issued.

6 Is there a previously-applicable position?
7 That is, is this additional test a previously-
8 applicable position? No. It's something new.

9 Was the licensee directed to do it? Yes,
10 as nearly as we can determine. May have been a
11 letter written, but the licensee -- it was stated
12 to the licensee the staff wants this additional test

13 So what's the conclusion? Well, in this
14 case it's almost simple. The new position was taken
15 prior to May 1st, '85. So it doesn't qualify for
16 consideration under the backfit process. It is a
17 grandfathered backfit. February '85 was laid out
18 it should have been done.

19 MR. ANTHONY ZALLNICK: Tony Zallnick from
20 Niagara Mohawk. Does this mean even if it is a
21 backfit, you have no recourse?

22 MR. COX: No, of course not. It means you
23 can go through a program office and talk to the
24 managers there. I'm sure Frank Maraglai will entertain

1 your --

2 MR. ANTHONY ZALLNICK: Wouldn't you still
3 be covered under the old rule 50.109 and generic
4 letter 5408 to request relief from a backfit?

5 MR. COX: At the time the old rule was
6 in force you certainly would have been. We now have
7 a new rule.

8 What we're saying here is that --

9 MR. ANTHONY ZALLNICK: Your recourse would
10 be under the 5008 --

11 MR. COX: We're now in a different time
12 period. If you come up with that now, your recourse
13 now is to appeal to the NRR Division Director that
14 has issued this position.

15 All I want to point out here, it is not
16 covered under the current processes in place. You
17 would go to the NRR appeal process outside of this
18 backfitting management process.

19 MR. ANTHONY ZALLNICK: Because it doesn't
20 meet the May rule, you're not precluded from taking
21 recourse under other provisions.

22 MR. COX: Absolutely. That's correct.

23 MR. ANTHONY ZALLNICK: It's a little bit
24 misleading.

1 MR. COX: All we're pointing out, you
2 cannot get treatment out of 0514.

3 MR. SNIEZEK: You are not entitled to
4 0514.

5 Frank, what process are you handling that
6 under, procedures?

7 MR. MARAGLIA: We're right now modifying
8 the office procedures to implement the new manual
9 chapter; but if there had been -- and even prior
10 to that there was staff requirements, memos issued
11 by the Commission and the NRR staff was directed
12 to implement the staff requirements, memos from the
13 Commission from June of '83 at the first draft of
14 the manual chapter, which was October '84.

15 MR. COX: '84.

16 MR. MARAGLIA: We adopted those provisions
17 as existed then. So there would be a process for
18 the utilities to go through. That would perhaps not
19 be the specific here but certainly in concept and
20 principles would be laid out and this would be
21 available to the utility.

22 MR. OLMSTEAD: May I elaborate there? because
23 I think everybody is getting tied up in procedure.

24 If you look at the safety finding in the

1 old rule and compare it to the safety finding in
2 the new rule, you will find it's exactly the same.
3 The difference between the old rule and the new
4 rule is the old rule said "may" and the new rule
5 says "shall."

6 It's very unlikely, in my opinion, under
7 this Commission and under this staff that if you
8 came in under the existing procedures for the new
9 rule, even though it was filed under the old rule,
10 that it would be treated any differently.

11 MR. RAYMOND HARRIS: Ray Harris from
12 Pennsylvania Power & Light. If you have got an
13 open issue with NRC that the NRC has not in fact
14 stated the position or required you to do anything
15 but the open issue has been hanging around a long
16 time and in today's world now comes to you and says,
17 "What you're doing is unacceptable and here's what
18 you have to do," maybe they've been on record
19 they don't find what you have done acceptable for
20 a long time but they have never told you exactly
21 what you have to do until now, can you handle it
22 under the backfit rule?

23 MR. COX: Yes. If you have been -- you
24 have to establish among the parties involved when

1 you were directed to do something.

2 MR. RAYMOND HARRIS: If you have never
3 been directed to do anything --

4 MR. COX: If you haven't been directed
5 to do it --

6 MR. RAYMOND HARRIS: And it happens today,
7 it's under the backfit rule?

8 MR. COX: Uh-huh. Correct.

9 I would like to get on to the next example
10 which is a little more than just a grandfathering
11 situation.

12 Here is an inspection report issued in
13 June '84. This is an inspection report explicitly
14 approved the licensee's procedure for design change
15 control. It stated that the applicable standards
16 were met and that the design change control program
17 was okay.

18 Now there's another inspection report in
19 September '85 stating that regarding the adequacy
20 of the procedure, there's a new staff position. You
21 must have certain additional material included in
22 this procedure. In other words, it no longer meets
23 a prior position.

24 Again, what are some questions? Is it a

1 changed staff position? Yes, it is.

2 It's after the licensing of this operating
3 reactor.

4 Is it a previously-applicable position?
5 No; it's a new position.

6 And the change is to be imposed? You
7 were directed in writing that additional material
8 should be included in a procedure. Yes, the change
9 is to be imposed.

10 The conclusion is that it is a backfit.

11 Take another look at another one, one more,
12 and then we'll get on with it.

13 A plant in OL review, the OL docketed
14 in December 1981.

15 The NRC says the positions on accumulator
16 tank level and pressure in the reg guide 1.97 of
17 December 1980 should be met. The licensee claims
18 a backfit under 50.109.

19 Is it a changed staff position? No.

20 The reg guide was invoked in December 1980
21 and the plant wasn't docketed until December '81,
22 a year later. So the timing is that this position
23 was before OL docketing.

24 Is it a previously-applicable position?

1 Yes, by that definition having occurred well before
2 OL docketing.

3 Do we want -- does the staff want the
4 change to be imposed? Are we speaking strongly and
5 directly about it? Yes.

6 The conclusion is that it's not a proposed
7 backfit because it is in front of the licensing
8 basis measurement line set for operating license
9 applicants.

10 MR. JOHN SUTTON: John Sutton. I'm from
11 Stone Webster. This example has two points that I
12 would like clarification on.

13 One is that the implication here is that
14 a reg guide has been raised to the status of a
15 regulation. Now basically this, as stated, it
16 should be met. We all know the reg guides always
17 include the disclaimer that there are alternate
18 acceptable means of meeting the stated positions in
19 the regulations.

20 Could you clarify that point?

21 MR. COX: Sure.

22 I don't think I said this reg guide is
23 a requirement. It's a staff position. It's the
24 position arrived at during the licensing review.

1 It's an interpretation of what's necessary to meet
2 our regulations. Nevertheless, it comes under this
3 backfitting process in that we are going to agree
4 that we'll work the backfitting process on this if
5 the licensee doesn't want to implement that. We're
6 not making a regulation.

7 MR. JOHN SUTTON: You're basically saying
8 if the staff would say "The only way you can satisfy
9 me is to conform to that reg guide," then that
10 isn't appropriate?

11 MR. MARAGLIA: That's correct. The reg
12 guides, as you said, have the disclaimer; and if
13 the utility or the applicant wants to come forth
14 with another position that they maintain meets the
15 intent of the reg guide, then you would be showing
16 you met the staff position.

17 The only point is the staff position would
18 have to be addressed, and that position would not
19 be considered a backfit and the dialogue would have
20 to continue as to whether the proposal by the
21 utility is an acceptable -- another acceptable way
22 of meeting that staff position. It's not mandating
23 that that is the only way. It's not changing that,
24 as you said, disclaimer in most of the reg guides.

1 MR. JOHN SUTTON: My second question is:
2 Those of us that have been involved in discussions
3 with the staff with regard to the detailed inter-
4 pretation of reg guides know that it's not always
5 possible to address every issue in a written word.
6 So you can point to many instances where the staff
7 themselves have chosen a particular additional
8 detailed interpretation that can be documented in
9 other dockets.

10 What happens in the case where the
11 applicant can make a case that his situation is
12 completely similar to the case of a plant in another
13 docket where the staff has interpreted in detail
14 the implementation of the reg guide and how it
15 changes their interpretation or at least in the
16 eyes of the applicant has changed their interpretation
17 based on the use of this other document?

18 MR. MARAGLIA: If we're talking about the
19 same hypothetical case, then that's a matter that
20 goes through the appealing process where you're
21 appealing the technical point at technical resolution.

22 MR. JOHN SUTTON: You maintain this would
23 not be a backfit?

24 MR. COX: Oh, the example said that it is --

1 that's correct, not a proposed backfit because
2 of the early notification to the licensee or appli-
3 cant that this was our position.

4 But that doesn't mean you can't come in
5 with some reason based on an argument such as you
6 just developed why a previously-applicable position
7 ought to be accepted. You know, you're essentially
8 saying a position was taken in another case and
9 that you would do it this way; am I correct?

10 MR. JOHN SUTTON: Yes.

11 What I'm saying is: You can point to
12 another plant that has a similar situation where
13 the staff has interpreted the reg guide in such a
14 fashion and you want to use exactly that same
15 approach; and you're told "No, that's really not
16 acceptable now," and my understanding that --

17 MR. MARAGLIA: Then you could come in
18 and say it's in the other -- as the other category,
19 identified as a potential backfit and get it into
20 this process.

21 MR. OLMSTEAD: Provided the two plants
22 were in the same date time frame.

23 MR. JOHN SUTTON: I understand that.

24 MR. SNIEZEK: Let me address that.

1 "applicable," "previously-applicable staff
2 position" is not defined as a position that the NRC
3 took on any individual licensee. A previously-
4 applicable regulatory position is something a standard
5 review plan, something in a reg guide, something
6 in a bulletin; it's an NRC document. It's not
7 something we have approved on an individual licensee.

8 A staff reviewer, inspector on that case
9 could have been wrong and could have made a mistake.
10 Because the NRC had one utility do something does
11 not mean that other utilities have to do that or
12 anything like that.

13 Likewise, we don't expect the argument
14 to be used from the other direction, either; okay?
15 Does that answer your question?

16 MR. JOHN SUTTON: To a degree.

17 I guess -- I guess I would then ask the
18 question: You would maintain the position, then, if
19 say, an applicant attempted to approach and he was
20 told that the detailed implementation on the other
21 plant may have been an independent judgment of
22 another staff reviewer and -- or it may have been
23 an error, then you would imply that the staff would
24 take it upon themselves to go back and correct the

1 situation vis-a-vis that other plant, also?

2 MR. SNIEZEK: It may be, assuming the
3 other plant even wanted it corrected, also.

4 What I am saying, the basis of departure,
5 point of departure is the standard review plan,
6 reg guide, branch technical position, bulletins,
7 documents that have received NRC management approval.

8 Now, if, for example, a reg guide is
9 being applied, there is a basis for reg guides.
10 There is more detailed analysis. Reg guides in
11 CRGR go to the CRGR. Reg guides, NUREG guides
12 require an analysis, the regulatory analysis. That
13 is documented, publicly available where there is
14 discussion as far as what the intent of the staff
15 is proposing in the issues that are in the reg guide.
16 That is our point of departure, not the application
17 to an individual plant.

18 MR. JOHN SUTTON: I guess I'm still a
19 little bit confused with regard -- you know, again,
20 the implication here is that the addressment of an
21 issue in a reg guide is total and completely com-
22 prehensive and not subject to any subjective additional
23 interpretations on the part of the people reading
24 those reg guides. And I -- that has not been my

1 experience in dealing with staff members in dis-
2 cussing the detailed implementation of reg guides.

3 MR. SNIEZEK: If you were told to do
4 something -- I agree with you. If you are told
5 to do something which you believe goes beyond the
6 scope of the reg guides, you have an opportunity
7 to claim that as a backfit.

8 MR. JOHN SUTTON: Thank you.

9 MR. ANTHONY ZALLNICK: Tony Zallnick,
10 Niagara Mohawk again. Clarification. If you have
11 a case of a vender topical area -- issues a topical
12 report as far as how they would apply a certain
13 requirement and the staff reviews that document and
14 issues an SER and a NUREG that accepts that and
15 it's subsequently applied to several plants, if on,
16 say, the fifth or sixth plant the NRC comes in and
17 says, "We made a mistake here. We never intended
18 that topical to mean that," would that be considered
19 a backfit to a staff position that was stated, that
20 type of situation?

21 MR. SNIEZEK: That's a nice hypothetical;
22 real world, too. But if the staff said -- this
23 topical report satisfies this NRC position or this
24 NRC requirement, may be used as a reference for future

1 licensing cases and then changed that position, that
2 change would be a backfit.

3 MR. ANTHONY ZALLNICK: Thank you.

4 MR. SNIEZEK: Generally speaking. There
5 may be some exceptions; but, you know, I hate to...

6 MR. OLMSTEAD: I guess I'm concerned about
7 the exception, so let me jump in here for a minute.

8 When you get into this area of interpre-
9 tation, you are in an area that's got to be looked
10 at on a case-by-case basis. And I'm not sure there
11 are general answers that we can give you.

12 For example, let's say there's a long-
13 standing staff interpretation that's never been
14 considered in the licensing process and some utility
15 ends up litigating it and the licensing board,
16 appeal board or Commission interprets it different
17 than the staff has been interpreting it.

18 Suddenly it may look like a backfit to
19 you, but it's not a backfit. That interpretation
20 now becomes binding on the staff, and they will
21 have to apply it to all future reviews. So that's
22 one interpretive difficulty.

23 The other interpretive difficulty is you've
24 got the same set of staff that's interpreted on a

1 sister plant -- let's say it's identical in all
2 respects. They use the reg guide in one case and
3 accept a different interpretation in the other case.
4 If the plant that had the reg guide used wants to
5 come in and claim a backfit, I think NRR would accept
6 that challenge.

7 MR. COX: Okay. You can see that it does
8 get pretty interesting when we talk about real
9 examples. I will offer no more real examples, at
10 least for a while here.

11 Let's talk about -- this is regulatory
12 analysis, while we're in that element of regulatory
13 analysis, and just -- we'll cover about just what
14 it is, how do we do with it. This is Section 043 in
15 the chapter.

16 Initiated on staff identification of a
17 backfit, identified initially by the staff or claimed
18 by the licensee and subsequently determined to be
19 a backfit.

20 So first we have to start with an agreed-on
21 proposed backfit. Then an analysis is done, an
22 analysis is started.

23 The analysis can be terminated by the
staff if at any time the analysis done so far supports

1 just dropping the issue. In that event, all parties
2 will be notified and the position of this issue
3 would be entered in the plant-specific backfit
4 system.

5 Assuming that it goes to completion, it
6 must be completed and a termination made that the
7 backfit is warranted and will be imposed prior to
8 communicating the backfit and the analysis to the
9 licensee. The Office Director or Regional Adminis-
10 trator would make this determination, and he would
11 forward a copy of the documents to the EDO prior to
12 transmitting to the licensee.

13 That's just what it says there. It
14 doesn't mean that the EDO is going to make any
15 approval of these things prior to transmitting to
16 the licensee. That's just a copy of the documents
17 will go there.

18 To impose the backfit, the Office Director
19 or Administrator must determine that there is a
20 substantial increase in protection and that the
21 direct and indirect costs are justified. Those are
22 the key elements in the backfit rule.

23 Now, what is the content of the analysis?
24 In the chapter --

1 MR. COURTNEY SMYTH: Courtney Smyth,
2 GPU Nuclear. If the staff decides to back off
3 from the requirement, does the documentation of
4 the analysis proceed? In other words, can it be
5 turned off at the point the staff decides not to
6 pursue it, or does that run to completion regardless?

7 MR. COX: Oh, the analysis can be
8 terminated if the staff decides that the analysis
9 done to that point is showing that it will not be
10 worth doing or that there is not substantial addition-
11 al protection.

12 The chapter lists 13 elements in this
13 analysis. Why is that? There are only nine in the
14 50.109(c) analysis. The chapter adds five more and
15 drops one from the rule analysis because one of
16 them is generic dealing with changes relative to
17 plant age -- variation in plant age and condition.
18 That really applies only to consideration of classes
19 of plants or groups of plants. The chapter, you
20 remember, is plant-specific backfit.

21 The five that are added here are listed
22 here. They are qualitative factors, including
23 operational trends, SALPs or similar performance
24 reports.

1 There is an element we want the staff
2 to address, NRC inter-office coordination coming
3 down that this must be done.

4 A basis for schedule for implementation.
5 Somebody earlier mentioned they have an integrated
6 schedule. As Jim said, we certainly use integration
7 scheduling process wherever possible.

8 A schedule for staff actions, and the
9 importance of the issue relative to other safety-
10 related work ongoing at the facility which may well
11 turn up in an integrated schedule.

12 When you get right down to it, the
13 primary emphasis in this regulatory analysis as
14 shown on the next viewgraph here is on the evaluation
15 of the four items: the effect on public risk due
16 to accidents; that is, the expected value and
17 may be done with PRA, not necessarily; the effect
18 on occupational exposure of the on-site people; the
19 installation and continuing costs, including down-
20 time or construction delay; and NRC costs.

21 Just to --

22 MR. EDWARD HOWARD: Ed Howard, BostonEd.
23 Given the prospective of those goals in the prior
24 slide, there was -- we talked about living schedule.

1 In order to implement the living schedule
2 obviously there's interaction required between the
3 licensee and the NRC. How do you envision that
4 would happen in developing those considerations in
5 the staff analysis that went to scheduling and the
6 importance of other ongoing safety-related work?

7 MR. COX: Frank can add to this, if he
8 wants to; but I don't think there's any substitute
9 for NRC managers talking to licensee managers during
10 the time the analysis is developed. Dialogue must
11 go on.

12 MR. MARAGLIA: Developed the same way the
13 integrated schedule developed the initial amendment.
14 That process was set up; and looking at what the
15 priority is from safety importance of this thing,
16 where does it fit with the ongoing activities of
17 the facility. Again, it's that exchange.

18 MR. COX: Okay. Just to give you -- this
19 just shows some of the documents -- in fact, the
20 key documents used by the NRC in pursuing these
21 things over the last year and a half or so.

22 The NUREG/BR0058 calls for the staff to
23 be responsibly addressing new requirements, propose
24 new requirements by using these regulatory analysis

1 guidelines.

2 CR-3568 is essentially a workbook and
3 discusses individually the attributes of a cost-
4 benefit analysis and how to arrive at quantitative
5 values for them, where the information is available
6 to do that.

7 CR-3971 is still more details, a handbook
8 for cost estimating. And I believe that it's pri-
9 marily from the energy data base; and that involves
10 using that, which, as you all know, is an item
11 worked on by, I believe, UHC for some period of
12 time. Those are key documents we use in deciding
13 how we go about the analysis.

14 Let's talk about the appeal process, how
15 does it work. This is Section 044 of the chapter.

16 There are essentially two types of appeal:
17 to reverse a denial of a licensee claim of backfit
18 or to modify or withdraw a staff-proposed backfit.

19 The appeal to reverse a denial of a claim
20 should be addressed by the licensee to the director
21 of the program office having responsibility for that
22 proposed position; copy to the EDO. Don't expect
23 the EDO to act on it at that point; just a courtesy
24 copy.

1 The appeal should be based on the NRC
2 evaluation of the licensee claim. Remember that
3 NRC evaluation is not a regulatory analysis. It's
4 any new -- well, the appeal should be based on that
5 NRC evaluation and anything new that the licensee
6 can bring to the table bearing on this backfit
7 determination by NRC.

8 That appeal will be decided by the program
9 OD if not resolved at a lower level.

10 Now, within these regional office procedures
11 there will be some more detailed evaluation that
12 we're not discussing here. For instance, there
13 might be a two-level appeal process within the
14 region, perhaps a Division Director and a Regional
15 Administrator; but ultimately the appeal will be
16 decided by Program Office Director if it goes
17 that far.

18 This is the other kind of appeal. Given
19 that there was a proposed backfit, an appeal to
20 modify or withdraw that should be addressed by the
21 licensee in a letter to the Office Director for
22 the Regional Administrator who issued it, again
23 with a copy to the EDO.

24 This appeal should focus on the regulatory

1 analysis for which there exists now one, since it
2 is a proposed backfit issued by the staff. So your
3 appeal should focus on the rationale in that analysis,
4 bringing additional information to it that was
5 perhaps not used or pointing out what you consider
6 a defect in the analysis.

7 This appeal will be decided by the program
8 Office Director if it is not resolved at a lower level.

9 For both of those types of appeals the
10 Office Director or the Administrator is going to
11 report to the EDO within three weeks -- that's our
12 commitment -- within three weeks after the receipt
13 of the appeal concerning what would be the next steps
14 in resolving the appeal unless, of course, the appeal
15 is granted right then and there.

16 The licensee at this point is also going
17 to be promptly and periodically informed. There
18 would be meeting summaries, and these would be in
19 PDR.

20 Decision by an Office Director may be
21 appealed to the EDO as a last resort.

22 Claims of backfit and subsequent denials
23 that are upheld through this process are not to be
24 pursued in the context of this chapter past that final

1 appeal.

2 I mentioned the summaries provided to the
3 licensees and placed in public document rooms.

4 Once the appeal process is exercised,
5 we eventually come to the point of implementing
6 a backfit to fill the position of the staff.

7 The licensee has a choice. If the Office
8 Director has finally said, "I think you should do
9 this," the licensee at this point can either implement
10 it or appeal it. I'm sorry. That's after the
11 issuance of the backfit. After the final decision
12 by an Office Director, you still have an election
13 to implement it. If you don't elect to implement
14 it at that point, the backfit may be imposed by
15 an order by the Office Director.

16 The implementation will normally be
17 accomplished on a negotiated schedule. We talked
18 about even if you don't have a living schedule, the
19 obligation is to negotiate a schedule with the
20 licensee that will make sense in terms of what
21 other pending changes are about to be made for that
22 plant.

23 Just remember, a staff position may be
24 imposed without the regulatory analysis if the

1 position is not a backfit or if the backfit is
2 absolutely necessary in the view of an Office
3 Director to assure no undue risk at that facility.
4 The EDO is notified in a documented evaluation
5 stating objectives, and reasons must be prepared
6 in the case of the no undue risk decision. Evaluation
7 must normally issue with the action taken by the
8 NRC.

9 If the program Office Director believes
10 that immediately-effective action is necessary, the
11 evaluation will follow.

12 As Jim mentioned earlier, a key element
13 in our whole process, that while all this is going
14 on, the backfit management process shall not interrupt
15 or delay construction, operations or licensing unless
16 in that one case where it was an immediately-effective
17 action taken by an Office Director.

18 So what are the fundamental concepts here?
19 There are some questions we have to ask, as you
20 saw in the examples. Is it a previously-applicable
21 staff position? You must decide that. We recognize
22 that as something that may well require dialogue
23 and some research by all the people involved. It's
24 very plant specific, very case specific, something

1 that may need some work.

2 The timing of the position relative to
3 the regulatory milestones, that's relatively
4 straightforward. We've been over the three points
5 in time.

6 Has the licensee really volunteered to
7 take the action? Remember, a backfit that is
8 imposed is one for which we go through this process.
9 If the licensee volunteers to take an action, then
10 the staff has not imposed a backfit.

11 Actions proposed by the licensee from
12 normal staff-licensee discussions concerning an
13 issue are not backfits.

14 Would the position cause the licensee to
15 change the design, construction and operation?
16 Change generally means backfit.

17 Is the staff action directing, telling
18 or coercing or is it merely a dialogue between
19 inspector and licensee over an exit interview?
20 Remember, the imposition by NRC is a key element
21 here.

22 Is the licensee in non-compliance with
23 an NRC rule, regulatory requirement, license condition
24 or tech spec? Those are legally-binding requirements.

1 Written commitments to the NRC are not
2 backfits when the staff expects the licensee to meet
3 those commitments.

4 We'll just look quickly at some applications
5 in different areas for inspection.

6 Inspection by itself is not a backfit.
7 It's merely arriving at findings.

8 Identification of deficiencies and dis-
cussions are not backfits.

10 A licensee agreement to take action in
11 response to this kind of discussion is not a backfit
12 as long as the staff doesn't say to the licensee,
13 "This is the only way" or "This is the way, and I
14 really believe you should do X." Up to that point
15 it's not a backfit.

16 If the staff indicates a certain action
17 is the only way, that's a backfit. Assuming that
18 it's one of these changed positions.

19 In the enforcement area, enforcement of
20 the requirements and commitments is not a backfit.

21 A notice of violation just requesting a
22 corrective action is not a backfit.

23 Commitments in response to these NOV's
24 are not backfits.

1 Discussions we've mentioned are not backfits
2 and responses to request for advice.

3 And a statement to the licensee directing
4 a specific action to take place is a backfit.

5 Briefly look at licensing. Standard review
6 plan is the management-approved scope and depth of
7 the review to give the staff reasonable assurance
8 that the regulations will be met.

9 Using the current SRP in an operating
10 license review is not a backfit if the SRP was
11 effective six months before the start of the OL
12 review; that is, six months prior to docketing the
13 application.

14 Using the acceptance criteria more
15 stringent than or in addition to the applicable
16 standard review plan criteria is a backfit.

17 And in the licensing arena, staff discussion
18 with --

19 MR. EUGENE KURTZ: Gene Kurtz, Duquesne
20 Light. Can you go back to the previous line? That
21 first bullet -- second bullet, using the current
22 standard review plan is not a backfit, am I to
23 interpret that that that means the staff using the
24 current SRP to review you is not a backfit; is that

1 correct?

2 MR. COX: I said, "if."

3 MR. KURTZ: If the staff would apply
4 that review process saying you must do a certain
5 thing in the SRP, that would constitute a backfit.

6 There is a section called, you know, the
7 review and acceptance criteria. Acceptance criteria
8 usually goes back to a reg guide or to a --

9 MR. COX: Yes.

10 MR. EUGENE KURTZ: -- particular regulation.
11 There are parts in the review process which identify
12 certain methodologies; okay? The staff would mandate
13 a methodology. That would be a backfit.

14 MR. COX: If it's the acceptance criteria,
15 it's not a backfit.

16 MR. EUGENE KURTZ: I'm asking about the
17 review section.

18 MR. COX: If it is not part of the accep-
19 tance criteria, you might have an argument that it
20 is a backfit. Again, this is a very case-specific
21 kind of situation.

22 MR. EUGENE KURTZ: I was just curious --

23 MR. COX: Basically you're right.

24 I'm not -- I'm trying not to use the word

1 "requirement" here for standard review plan. You
2 can propose another way to do it, but you're
3 expected to meet the intent of that acceptance
4 criteria.

5 MR. EUGENE KURTZ: Okay.

6 MR. SNIEZEK: Let me add something here.
7 Frank, maybe you want to chime in.

8 It is a backfit for the staff to use
9 acceptance criteria and guidance that is not con-
10 tained in the standard review plan. The staff is
11 not to use that. If they intend to use it as their
12 review basis, they should do a backfit analysis.

13 Again, standard review plan is not a
14 regulatory requirement. It is the things the staff
15 considers in arriving at its determination of
16 reasonable assurance whether or not the utility
17 will meet our regulations in that area. There
18 are alternative proposals which may be proposed
19 by the utility.

20 MR. COX: Staff discussions with licensees
21 regarding merits of actions -- these are just
22 discussions talking about the merits of actions
23 beyond SRP criteria -- are not backfits unless the
24 staff leaves the licensee no other reasonable

1 alternative.

2 In other words, asking the licensee
3 questions to verify conformance with the standard
4 review plan.

5 This is during the review process or
6 with the FSAR or conformance with a reg guide,
7 asking questions in a normal request for information
8 in a routine is not a backfit.

9 Application of the current criteria in
10 the SRP to an operating plant, to an operating plant
11 generally is considered a backfit unless the standard
12 review plan was specifically approved for operating
13 plant implementation.

14 Just to summarize, backfitting is expected.
15 It is not bad. It is necessary in a responsible
16 regulatory process. We expect it to take place;
17 but we are committed to conducting it in a controlled,
18 managed way. And you, I hope, have seen from this
19 there are checkpoints by the regulated industry
20 embedded in our proposed process.

21 The concepts are relatively straightforward
22 even if their application requires some effort.

23 Is the position a previously-applicable position? If
24 so, it's not a backfit.

1 You must know the status of the licensee
2 in the regulatory process. Timing is important,
3 but the licensing basis current for that licensee
4 is also a key element.

5 Is the licensee being coerced or is
6 compliance or conformance involved?

7 So just to run down the backfit process
8 element, you have them now in your mind and you
9 will see them in the chapter. The identification
10 and determination of what is a backfit; the analysis
11 is then necessary by the NRC; the management
12 approval by the NRC and transmittal to the licensee,
13 at which point the licensee has an opportunity to
14 essentially critique the analysis; and they implement
15 it or appeal it. Then there is a final disposition
16 by the staff.

17 That concludes my remarks. If you have
18 any questions.

19 MR. JUDE DelPERCIO: I just want to pick
20 up on a point before. We were talking about examples.
21 Topical reports were mentioned.

22 A specific instance -- I'm just -- very
23 general question -- at our facility back in its
24 original design, topical reports were used as part

1 of its licensing basis in the particular area of
2 electrical isolation, which are devices you would
3 use to separate safety grade protection equipment
4 from non-safety grade equipment and you protect
5 for electrical fault. That's been something that's
6 part of our licensing basis. It's been approved
7 either on our docket or another plant's docket, and
8 it's a Westinghouse topical report on these devices.

9 As part of 50.59, when we implement, take
10 a modification for a non-safety grade item, we
11 obviously apply our licensing basis; and it would
12 include electrical isolation, if it's appropriate.

13 We recently received questions from the
14 NRC about the installation of our SPDS. We had
15 previously told the NRC SPDS is non-safety grade.

16 My question to you is: Do I even have
17 to answer these questions?

18 MR. COX: I'm sure Frank may want to say
19 something about that, but the --

20 MR. MARAGLIA: I think if it hadn't been
21 said -- I missed the introduction -- I don't think
22 it's our intent here today to discuss any particular
23 case or merits of any particular case. I think
24 we're to describe the process. And I think if you

1 want to come to NRC management and claim backfit
2 or dialogue with the management in the appeal
3 process in that specific instance, I think you have
4 that opportunity.

5 I don't know the specifics of what you're
6 addressing. And based on your description, I don't
7 know -- it's not clear what the timing of the reg
8 guide is and what -- I couldn't address with any
9 of the points what current licensing points is.
10 I'm not prepared to give you an answer to the question.

11 MR. JUDE Delpercio: What I was getting
12 at, the request itself, the piece of paper that
13 came out of Washington, I mean is that request
14 required to undergo cost-benefit analysis with
15 the resources I have to extend now, whatever they
16 may be, in order to answer these items again?

17 MR. COX: Is it a request for information?

18 MR. JUDE Delpercio: It was a request for
19 information.

20 MR. COX: Was it to determine whether or
21 not your plant is in conformance with current
22 requirements?

23 MR. JUDE Delpercio: I'm still analyzing
24 that.

1 MR. COX: Well, maybe . . . you have to
2 decide that.

3 MR. JUDE Delpercio: Right, I understand
4 that.

5 MR. MARAGLIA: Like I said, there's a
6 lot of specifics one would have to consider, the
7 timing and this kind of thing.

8 Based upon what you said, it appears
9 ConEd elected for a post-implementation review?

10 MR. JUDE Delpercio: That's correct.

11 MR. MARAGLIA: So these questions are
12 being asked in the context of that post-implementation
13 review. And --

14 MR. JUDE Delpercio: We intend to answer
15 the questions. They're going to be answers
16 referring to 1971 material.

17 MR. COX: A generalized piece of guidance
18 could be this: There certainly was guidance issued,
19 SPDS design and placement. If you feel that
20 currently you're being asked to do something which
21 is outside of the staff position, outside of a
22 formerly-approved staff position on this, then you
23 should go to NRC -- the NRR management and dialogue
24 with them on this. You have to decide that first.

1 MR. JUDE Delpercio: I understand that.

2 Thank you.

3 I have some other questions.

4 I recently was involved -- not myself --
5 our company was involved in some discussions with
6 the NRC on our in-service testing program; and much
7 of the items we agreed to required changes to test
8 procedures. There was some items which we recently
9 are getting back to our office. We had agreed to do
10 certain testing. And what we found is that we could
11 not do the testing without installing some hardware
12 in order to get the data to answer the particular
13 test items. These agreements were out of discussions
14 with NRC personnel.

15 Do I have an issue here which warrants a
16 filing under a backfit?

17 MR. COX: Doesn't sound like it to me.

18 MR. MARAGLIA: No. Again, not -- not
19 knowing the specifics; but what I heard you say --
20 let me play it back to you. If I say it wrong, you
21 can correct me. I heard you say that there was --
22 you were dealing on the in-service inspection and
in-service test program as to what was going to be
done and how it was going to be done. During the

1 conduct of those discussions you made commitments
2 in good faith of --

3 MR. JUDE Delpercio: Verbal commitments.

4 MR. MARAGLIA: -- verbal commitments in
5 good faith. And I guess as a result of those verbal
6 commitments you were told, "Well, come back and
7 document those commitments to us."

8 MR. JUDE Delpercio: That's correct.

9 MR. MARAGLIA: Upon going back and looking
10 at it in more detail, you can't meet those verbal
11 commitments.

12 MR. JUDE Delpercio: Correct.

13 MR. MARAGLIA: I think your next step is
14 to say, "We went back and looked. While we said
15 this in good faith, we've looked at it, we've
16 determined thus and so and here's another alternative
17 or another approach"; and you still have to deal
18 with the in-service test and inspection program and
19 get that issue resolved.

20 MR. JUDE Delpercio: So you would say that--
21 I mean I have a letter which is addressing that
22 right now, and I've stopped this letter because I
23 was going to consider changing this letter as a
24 50.109 claim.

1 So you would say I should not go that
2 far now --

3 MR. MARAGLIA: Unless you're going back
4 and claiming that the staff's interpretation --
5 again, not knowing the specifics. If you're saying
6 that there was a previously agreed-upon position
7 as to what would constitute acceptability for
8 in-service inspection and test and this goes beyond
9 that, then you may have a claim for a backfit.

10 MR. JUDE DELPERCIO: What I'm getting
11 at: Do I have a case to request from NRC their
12 cost-benefit analysis for those additional items
13 they wanted me to test?

14 MR. MARAGLIA: Was that within the
15 context of the plan, in-service inspection?

16 MR. JUDE DELPERCIO: We had not proposed
17 it. It was in the context of these discussions
18 we had of getting the whole program approved.

19 MR. MARAGLIA: So you never had a staff
20 position that said this was an adequate in-service
21 program?

22 MR. JUDE DELPERCIO: That's correct. It
23 was a little bit of arm bending. "Give us these
24 items; we'll give you your program approval."

1 They went back and looked at it and
2 asked to put those commitments in writing --

3 MR. MARAGLIA: That's part of the normal
4 licensing dialogue.

5 Not knowing the specifics, if you feel
6 you had a specific staff approval and that staff
7 approval is being changed, then it's a backfit. If
8 you can't make that claim, then I don't think it is,
but you know the specifics better than I.

9 MR. OLMSTEAD: Can I make one quick point?
10 And I think we have to get this gentleman's question.

11 But if you make the commitment during
12 licensing review that you could have claimed a backfit
13 on but didn't and then you get nailed with it later,
14 you can't come in and claim it's a backfit. You
15 have got an obligation to raise the backfit issue
at the time it occurs.

16 MR. SNIEZEK: Let me add something that's
17 very generic, something that you said that bothers
18 me somewhat.

19 Good faith. I understand that you and the
20 staff were having a discussion and you agreed to
21 do something. I would hope that you would not go
22 back and all of a sudden with a letter you did not

1 raise that issue in the meeting, because that is
2 not the way to do business.

3 I would hope that whatever dialogue you
4 have across the table would be the same dialogue
5 that is reflected in the written correspondence.
6 That enhances goodwill on either side of the table.

7 MR. JUDE Delpercio: I understand that.
8 That's the point I'm trying to really weigh in
9 my own mind. Should I make that decision or should
10 I go with the commitments and the installation of
11 hardware by some date that we haven't determined yet.

12 MR. SNIEZEK: I think Frank gave you a
13 good answer. If you went in good faith and committed
14 to something and can't in good faith now, I would
15 hope you would have dialogue with the staff before
16 you sent a letter.

17 MR. JUDE Delpercio: I have just one other
18 general question.

19 In December 1985 the General Accounting
20 Office issued a report on the process for backfitting
21 changes in nuclear plants. In that report on Page
22 24, I just want to read one sentence. It says,
23 "The agency's senior staff officer, the Executive
24 Director for Operations, has publicly stated that

1 there are as many as 87 ways that the NRC uses to
2 transmit new requirements to utilities.

3 Does anybody have a list of those 87 ways?
4 I can only come up with about two dozen.

5 MR. SNIEZEK: Those ways are listed in
6 the appendices to CRGR. I don't know if it comes
7 up to 87.

8 MR. JUDE DELPERCIO: I checked that, also.
9 Doesn't come up to 87.

10 MR. SNIEZEK: You'll have to ask whoever
11 was Executive Director of Operations at that time.

12 MR. JUDE DELPERCIO: Thank you.

13 MR. JOHN SUTTON: John Sutton, Stone
14 Webster. To your knowledge, to this point in time
15 has there been any instances where the staff has
16 initiated the backfit process on a plant-specific
17 issue?

18 MR. COX: I do not know of one right now.

19 MR. JOHN SUTTON: That leads to a followup--

20 MR. SNIEZEK: Let me ask Mr. Burnett to
21 answer that question.

22 MR. BURNETT: Yes. My staff from a safe-
23 guards perspective has identified to me something
24 like five that we have started into the backfit; but

1 that has not gone up to my Office Director. As
2 you know, until he decrees it a backfit, it is not.

3 MR. JOHN SUTTON: These are issues that
4 are plant specific, or are you talking about five
5 issues --

6 MR. BURNETT: Plant specific.

7 MR. JOHN SUTTON: I was interested because,
8 you know, it has been my past experience in the
9 process that the applicant is usually the initiator
10 on a plant-specific basis; and I was interested in
11 what kind of internal NRC management reviews or
12 functions were going to be performed to make sure
13 that in fact these reviews are being initiated or
14 what kind of indications you were going to be looking
15 for internally that the process was being implemented
16 correctly at --

17 MR. BURNETT: I think Jim said it right
18 in the beginning. This backfit has a -- at this
19 point, anyhow, a great deal more effect on the
20 staff than it has on the licensees. Staff are
21 raising issues that are triggering the threshold
22 backfit.

23 MR. JOHN SUTTON: You're saying that you're
24 looking to basically your middle management people

1 who are very sensitized to this to make sure the
2 process works.

3 MR. BURNETT: In fact, we've had internal
4 seminars on how to apply this.

5 MR. MARAGLIA: I think we can say the
6 same thing in NRR. A number of issues have been
7 identified as potential backfits that are working
8 their way through the process.

9 As a way of showing the management commit-
10 ment to this, is that we've had the seminars not
11 only of the staff. I think the managers are committed
12 to make this process work. It's been part of the
13 assessment process within the agency, is to evaluate
14 the managers on the implementation of the Commission's
15 policy as much as two years ago, even before the
16 backfit rule, when the Commission spoke in terms of
17 staff requirements.

18 MR. COX: Excuse me. Tom Murley would
19 like to make a comment.

20 MR. MURLEY: As I listen to the dialogue
21 here and even to Tom's presentation, there's a thought
22 that I think I would like to get out here.

23 That is, with regard to the appeal process,
24 it's kind of written down as a fairly formal structured

1 procedure here; but I hope you realize that it's
2 really far more efficient to do it first, try it
3 out first informally by raising an issue with
4 management at the appropriate level, either in the
5 region or in headquarters. I think things tend to --
6 if you follow the formal procedure, it tends to
7 harden positions prematurely. Let me give you an
8 example that came up not too long ago.

9 Contrary to Jim Snizek, I don't think
10 backfitting is a way of life out here in the region.
11 I spent most of my career in Washington, but there
12 are cases that come up in inspection where an in-
13 spector thinks that things ought to be done a
14 certain way.

15 One example that we had recently was in
16 the exit interview. The inspector said, "I think
17 you ought to be keeping certain records a certain
18 way."

19 And I guess the licensee disagreed, and
20 the -- it got up to the Vice President, and he
21 called one of our Division Directors and said, "Let's
22 have a talk."

23 So he came in and talked; and the Division
24 Director, when he reviewed it and saw the facts, said,

1 "Oh, yes. That's a backfit clearly. It's not our
2 intention to backfit."

3 That was settled informally without
4 invoking this kind of process.

5 My experience here in the region has been
6 that it's really not a way of life like maybe it
7 became back in headquarters. And the good thing I
8 like about this is that I never got involved. I
9 was informed after the fact.

10 So this kind of informal procedure I
11 think is, quite frankly, a more efficient way to
12 go about it. I don't want to have that point lost
13 sight of.

14 MR. COX: Let me just work over here first.
15 Then I'll be over to you next.

16 MR. DONALD EDWARDS: Don Edwards, Yankee
17 Atomic. One quick question on the responsibility
18 slide. You have a bullet there that says, "others
19 may" -- the staff would entertain assertion by
20 others that there's a potential backfit. That would
21 include, for example, owners' groups filing a comment
22 back to the staff, would it not?

23 MR. COX: Sure, but are you filing a
24 comment or backfit claim?

1 MR. DONALD EDWARDS: Assertion that a
2 backfit is taking place.

3 MR. COX: We would certainly look at a
4 letter -- we really deal with licensees in a licensing
5 action -- if they're going to claim a backfit.

6 MR. MARAGLIA: It would appear to me,
7 Don, an owners group would be acting in claiming a
8 backfit that had a generic implication to it as
9 opposed to a plant specific.

10 MR. DONALD EDWARDS: I assume they would,
11 yes.

12 MR. MARAGLIA: That's not under this
13 particular manual chapter.

14 Jim, would you want -- that's how I
15 interpret the question.

16 MR. SNIEZEK: 0514 is plant-specific back-
17 fit. There is no formalized NRC process to make a
18 generic backfit claim.

19 However, that type of claim would be to
20 the proposing Office Director. In other words, in
21 NRR, if they're doing actions that you think is
22 generic or you get wind of their proposing, address
23 that to Harold Denton and send me a copy.

24 MR. DONALD EDWARDS: Okay.

1 MR. COURTNEY SMYTH: Courtney Smyth,
2 GPU Nuclear. One of the earlier slides had an item
3 on 50.55(a) which I believe is the in-service
4 testing requirement. That has, you know, what can
5 be characterized as an automatic backfit provision
6 in it.

7 In the past we've gone in and we've
8 received staff approval for an alternate means of
9 conducting testing that didn't require installation
10 of equipment, bypass lines and the like.

11 Assuming that the particular provision
12 of the code that we were taking exception to at
13 that time has not changed and we're simply going
14 back in to revisit the issue for the next ten-year
15 period, would a change in staff position to now
16 require that bypass line be a backfit?

17 MR. COX: If it was outside of what the
18 regulations wanted or what the regulations called
19 for, it may well be a backfit.

20 MR. COURTNEY SMYTH: The regulations,
21 they require you to do everything as "practical."
22 Practical is, you know, in whatever the reviewer
23 thinks you ought to do, I guess.

24 MR. COX: Then if there was a prior staff

1 interpretation of what that meant, that would be
2 the basis or that could be a basis and then something
3 changed from that would be a backfit.

4 MR. MARAGLIA: It would seem to me that
5 you would have to apply the rule. Now the fact
6 that you had had a previous exemption or exception
7 from that rule, one would have to look back at the
8 basis for that exception.

9 If they made that exception for the life
10 of the plant, then that would be the staff position
11 for the life of the plant. However, if they've
12 given the exception for some limited period of
13 time or for this in-service test program, the fact
14 that they would not grant that exception for the
15 next period would not in my view be -- I think you
16 would have to look at the specifics in that; but it
17 seems to me you start from the rule and go from
18 that point, what is the applicable rule at the time
19 that the inspection program is being looked at.

20 MR. COURTNEY SMYTH: Essentially, if I
21 understand you correctly, then you have to go back
22 and cut a new deal on the item, previous relief
23 that you had, assuming that the requirements of the
24 code in that particular area are no different, you

1 would have to go back and revisit the issue with
2 the new reviewer, if I understand you correctly.

3 MR. MARAGLIA: Depends on the term of
4 what the exception was. If it was for the life
5 of the plant --

6 MR. COURTNEY SMYTH: Typically you have
7 a 10-year program approved and it's for the 10-year
8 program. It's not for the life of the plant.

9 MR. MARAGLIA: What we're saying, if
10 the rules changed and that's kind of a regulatory
11 backfit that's built into the rule itself, the
12 next time you come in, the point of departure is
13 the rule.

14 Bill, would you -- is that --

15 MR. OLMSTEAD: Normally -- I know what
16 you're talking about -- I would not term that a
17 built-in backfit. That was intentionally put in
18 to update the inspections.

19 If you need an exemption from the rule and
20 don't get an exemption for the life of the facility,
21 obviously you have to reprocess the exemption.

22 MR. COX: We have another question.

23 MR. PATRICK WARD: Pat Ward, Bechtel Power
24 Corp. Does NRC management have something in mind,

1 i.e., a criteria that allows them to determine
2 what's needed to assure no undue risk?

3 MR. COX: I'll just make a comment on
4 that.

5 As Jim mentioned earlier, the plant starts
6 when it's licensed with an acceptable risk. That's
7 why it's licensed. That is the basis. There is
8 not a quantitative threshold for that. There is
9 existing today no quantitative criteria to specify
10 that threshold.

11 MR. SNIEZEK: That was a substantial
12 increase -- the question was no undue risk. No
13 undue risk is a judgment of the responsible office
14 director that says, "Below this point I no longer
15 have reasonable assurance public health and safety
16 would be adequately protected."

17 Bill, is there anything else from the
18 legal standpoint that you want to add?

19 MR. OLMSTEAD: No, except to point out
20 that obviously within the regulations there are
21 multiple factors that go into the undue risk finding
22 the Commission must make for the industry at large
23 across the nation. Any given facility may be at a
24 different point on that continuum or spectrum. That's

1 why for purposes of backfit, we use the licensing
2 basis baseline as an indicator of what that is for
3 that particular facility.

4 MR. PATRICK WARD: Thank you.

5 MR. JOSEPH COONEY: Cooney again from
6 Philadelphia Electric. The word "others" still is
7 a little bit of concern to me.

8 Is there -- this may be a question more
9 correctly addressed to the counsel. Is it the
10 intention of the rule to preclude during the
11 decision-making process or in the appeal process
12 to keep the discussion to the licensee and the
13 condition or is it the intention to allow others
14 to become involved?

15 MR. SNIEZEK: I'll refer that to Counsel,
16 but let me answer.

17 The intent of the rule is to provide a
18 management process for the NRC staff. Under the
19 rule itself we would not have to consult with the
20 licensee. In implementing the rule, we believe
21 there are points where it is necessary to consult
22 with the licensee. We may find it necessary to
23 consult with many other parties to get the answers
24 we need to assure ourselves when we do our analysis,

1 we have the right answers.

2 So it does not preclude our communication
3 with anyone. I will not state today who we will
4 limit our discussions to and who we will not talk
5 to.

6 Bill.

7 MR. OLMSTEAD: The slides that others
8 make claim a backfit, I believe is what it said --
9 and that clearly is true, "others" being anybody who
10 wishes to claim it.

11 Now, it can be claimed in a variety of
12 places. Under our rules it would have to follow
13 one of the procedures. The only person that the
14 agency is clearly identifying as having a process
15 by which to interact with the staff review is the
16 particular utility in plant-specific backfit. But
17 any person could use, for instance, 2.206 to request
18 action on behalf of the individual office director.
19 If there's a licensing proceeding in progress, any
20 person, industry group, intervenor group, could
21 come in to the licensing proceeding and attempt to
22 challenge the application of the backfit rule in
23 a particular place. I don't think it's a serious
24 concern because I don't see too many people being

MR. JOSEPH COONEY: I'd agree to that.

If that --

(No response)

MR. SNIEZEK: We're running a little bit behind schedule. Instead of taking an hour and 15 minutes, let's take an hour and seven minutes for lunch. Let's resume at 1:30. We'll resume at 1:30.

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AFTERNOON SESSION

(Returned from luncheon recess at 1:35 p.m., and the proceedings resumed as follows:)

MR. EDWARDS: As outlined in the agenda, this afternoon there are two sessions. The first one is an industry perspective of implementation procedures for the backfit rule and then a question and answer period.

The industry representatives are very pleased to be at this workshop and to share in this effort, more particularly pleased to be here at King of Prussia. Thank you very much. We like to check the construction progress there at 76. Easy trip in from the airport. Get on 202 north, make a left on 363 and you're right there.

When I got to Norristown I said, "Hey, where is the Sheraton Valley Forge?"

And he said, "Oh, gee, there's complicated instructions." He said, "Go to Denny's and there's a Howard Johnson's and you go past" . . . He said, "Why do you want to go there?"

I said, "I'm going to an NRC Workshop."

He said, "Oh. You go to the adult bookstore and take a right."

1 MR. MURLEY: We'll have to get you down
2 here for some more enforcement.

3 MR. EDWARDS: So much for that.

4 This morning the NRC described to you
5 the procedures for implementation and the fact
6 that -- the backfit rule. This afternoon we'll
7 talk about recommendations to licensees.

8 You've been given a handout out in front
9 that's a copy of the guideline for evaluation of
10 backfits. This booklet is just as the title
11 suggests, a guideline to licensees to enable them
12 to implement a backfit management within the organ-
13 ization. This guideline will be explained this
14 afternoon by Mr. Gene Kurtz, who is Director of
15 Nuclear Engineering at Duquesne Power & Light.

16 After that I'm going to offer you some
17 suggestions about your own program for backfitting
18 management within your utility. My name is Don
19 Edwards. I'm with Yankee Atomic Electric Company.

20 Mr. Nick Reynolds, who is a partner in
21 Bishop, Liberman, Cook, Purcell & Reynolds in
22 Washington, D.C., is going to discuss a very
23 important emerging issue called prudence. I think
he's going to point out the importance of a

1 backfitting management program to you in that area.

2 Finally, Mr. Jim Tourtellotte, an attorney
3 and private consultant from Washington, will tie
4 together these topics from an industry perspective.
5 Currently Jim is deeply involved in the prudency
6 at Beaver Valley.

7 Since we are going into a question and
8 answer period after the presentation, also on our
9 panel, Sandy Hartman, also an associate in Liberman,
10 who will be participating in the questions and
11 answers.

12 While I'm on questions and answers, Jim
13 pointed out there are microphones. Please announce
14 your name when you ask a question so the court
15 reporter can get your name.

16 There are cards, if you like to write
17 out a question.

18 There's a high SIFL risk for us on the
19 panel. SIFL, that's self-inflicted frontal labotomy.
20 It happens when you finally drop off, smash your
21 head on the table.

22 Those of us in the industry, if you want
23 to ask us a question, we'll be more than happy to
24 try to participate here. I realize most of the

1 information is from the gentleman on my left.

2 In your packet is a summary of an NESP
3 report, provides good background on emphasizing
4 the need for careful review of backfits from the
5 standpoint of worker dose involved. That's something
6 you might want to look into.

7 At this point I would like to turn it
8 over to Gene to talk about the guidelines.

9 MR. KURTZ: Good afternoon. I'm Gene
10 Kurtz, Duquesne; spent most of my backfitting
11 history on Beaver Valley, too.

12 Essentially what I have to present is
13 the guideline. The guideline was prepared by the
14 AIF, members of the EEI, Nuclear Utility Backfitting
15 and Reform Group.

16 It's very interesting to go over the
17 contents of the slide -- of the guideline. Notice
18 that it's called a guideline. It's not a requirement.
19 The guideline contains a discussion of the final
20 rule.

21 Now, we purposely put the discussion of
22 the final rule in an easy-read format. In other
23 words, it's not legalese, so that anyone can sit
24 down and go through it quite easily.

1 The next part consists of a backfitting
2 checklist. Throughout the process that Beaver
3 Valley was involved with, one of the key points
4 in having a good backfitting management system is
5 knowing when you have one. This backfitting check-
6 list will provide you some questions that you can
7 ask concerning a particular situation to see if in
8 fact you do have a backfit. One of the worst things
9 you can do is essentially be calling wolf with the
10 staff and saying "I think you have a backfit" and
11 going back through a learning process and finding
12 out that you do or you don't or whatever. This
13 should provide you some feedback on whether you do
14 have one or not.

15 The other bullet there addresses the
16 flow chart or the flow diagrams of the staff's
17 procedure.

18 Now, essentially the staff procedure, if
19 one is to read it, would to some individuals appear
20 complex, which is really not unusual. Every organi-
21 zation has a different style-preparing procedure.
22 Every organization understands them in a certain
23 fashion.

24 What we've attempted to do is somehow

1 lay out the flow chart for you to understand the
2 process. The key is the process happens after a
3 backfit is identified. So if you have one, the
4 process is rather simple. In other words, it
5 goes to appeal to this group or have a meeting with
6 that director or that level. Just identifies to
7 what group or . . . level that you present your
8 appeal to.

9 Next we have three appendices. The
10 discussion of the final rule I'm not going to go
11 over because that was covered by -- this morning.
12 And essentially, again, it's an easy-made format.
13 So you should go through it.

14 The key part or one of the key indicators
15 of getting the backfit or knowledge whether you have
16 one is utilizing the 50.54(f), the request for
17 additional information. Again, that should be
18 addressed in your checklist somewhat to see if it's
19 information beyond your licensing basis.

20 Again, that's the backfitting checklist
21 that we have in there. It identifies the applic-
22 ability of the backfitting rule to a particular
23 plant to see if it matches you. It goes over a
24 backfitting analysis and then addresses the

1 information request to see if you do come under
2 the backfit rule itself.

3 Essentially it's a series of questions.
4 We didn't put any acceptance criteria similar to
5 if you have three yeses and four noes, that doesn't
6 mean a backfit; but essentially you have to eval-
7 uate that for each situation to see if it does
8 meet the acceptance criteria of a backfit itself.

9 The key point here is -- one of the key
10 changes to the new rule that's very important is
11 that a backfit is also a change to organization and
12 procedures. That wasn't in the original backfit
13 rule. That's a very key change in the new rule
14 itself. It's something that you should be aware
15 of, particularly in these days -- those of you with
16 tight operations and maintenance budgets.

17 Again, the flow diagrams just merely
18 identify the process. They are there to simplify
19 it for you.

20 If you have any -- at the last seminar
21 there was pointed out that the flow diagram could
22 be improved in one area to make it a little clearer.
23 We are making a change in that. We'll give that
24 to all the AIF members. If you have any comments

1 on this or if you see in implementing the guideline
2 you do see a change in the guideline, when you
3 develop your own personal procedures, please get
4 back to Tom Tipton so we can have all that infor-
5 mation passed out to the AIF members.

6 The key part to the appendices here, we
7 have the final backfit rule total, which is the
8 same thing that was discussed this morning; but
9 in the examples of backfit situations, there are
10 two case studies. One is written up for CP and one
11 is written up for an OL. I recommend you spend
12 time reading those case studies and those examples
13 carefully because a little more detail than the
14 examples put out by Mr. Cox this morning. You
15 might want to take a look at those.

16 Again, the purpose of the backfitting is
17 to provide some backfitting system itself; and the
18 rule is to provide some management process to provide
19 a rational basis for a decision. One of the reasons
20 for doing this is due to the increased costs on
21 nuclear power plants. Again, instead of just serving
22 the one master of the NRC with safety, we also have
23 to show that what we're doing is definitely in the
24 best interests of our rate payers. With the

1 prudency audits coming up, which will be discussed
2 by Mr. Reynolds, this process itself will document
3 the true need for a change, whatever. The back-
4 fitting rule and the process is not intended to
5 not have any changes or improvements on any plant.
6 The purpose is to provide some rational basis and
7 to document exactly what it is you're doing and
8 why it is you're doing it and when you have to do
9 it.

10 What I would like to point out is we
11 had a question this morning from some gentleman, I
12 think from Stone and Webster over there, where he
13 stated that he was coming up to the fact that the
14 procedure identifies the fact that the staff will
15 identify backfits. It's extremely unlikely that
16 the staff is going to identify a backfit on your
17 plant. The reason is it's not because the staff
18 is out to rat at you or any of the other phrases.
19 The reason is the staff has a different mission
20 than what your mission is. And the staff or in-
21 spector may not be aware of your licensing basis.
22 You are the ones who have to know your licensing
23 basis, and you are the ones who have to know what
24 your commitments are. It's up to you when a

1 reviewer or an inspector comes in to point out
2 that you believe this is in conflict with 10 CFR
3 50.109 in one fashion or another.

4 Yes, you can use the informal means to
5 call up and find out how it works or if it is in
6 fact a backfit. However, there's nothing wrong
7 with submitting the letter that says, "Is this in
8 fact a backfit?"

9 At least what we find in the Beaver Valley
10 case, the management of the NRC, particularly a lot
11 of the gentlemen you see here today, encouraged us
12 to proceed with our effort. The reason is they
13 truly believe in having a working system. There's
14 nothing wrong with using the system because our
15 bottom goal overall is essentially to have safe
16 nuclear power in the United States.

17 Are there any questions? If not, I'd like
18 to turn it over to Don Edwards.

19 MR. EDWARDS: Thank you, Gene.

20 We're going to a little bit of the ethereal
21 part of our program this afternoon. I'm going to
22 talk about a backfit management program, but I am
23 not going to give you specifics. I'm going to
24 discuss the attributes of the program. I'm going to

1 try to answer two questions. The first question
2 is: Why have a backfit management program at all?

3 If you -- the most obvious answer is the
4 program will help you implement the backfit rule
5 and certainly can provide management control over
6 changes if it's implemented properly.

7 And in a few minutes you're going to
8 hear about a backfit management program will
9 probably be almost necessary if you're going to
10 deal with prudence in any systematic fashion. But
11 first and foremost a structured backfit management
12 program is going to enable you to focus on the
13 real issues of safety.

14 You can identify true safety concerns
15 and you want to be sure that any plant change is
16 in fact an improvement in safety. So you want to
17 determine if a potential backfit has a meaning in
18 terms of safety, and you want to know how it relates
19 to your licensing basis to get into the context
20 of the regulatory process, and you want to be sure
21 that changes you're thinking about don't conflict
22 because you don't want to impact the intent of
23 previous changes, and you want to be consistent
24 with your licensing basis.

1 Prudency is going to be discussed fully
2 in the next few minutes. I would just like to
3 point out that we're all aware of increased so-
4 called second-guessing by the rate commissions.
5 That's bound to increase. And a backfit management
6 program is intended in part to provide you a means
7 to demonstrate the correctness of your backfit
8 decision. You want to document the facts that were
9 available at the time that the decision was made,
10 either to install a backfit on your plant or to
11 agree to a backfit. You want to be able to
12 demonstrate that the decision was warranted. You
13 want to show the action was in fact a required
14 response, and you want to show that the requirement
15 was a legitimate requirement under the backfit
16 rule.

17 Management control is in the final analysis
18 the result of good information; and information
19 that you have about changes that are in progress,
20 committed to or planned, that is accurate can
21 allow management to make informed actions, the
22 opportunity to integrate changes and the opportunity
23 to compare the bases that you have for the changes
24 you intend to make.

1 A little obvious, you want to implement
2 the rule. It may seem stupid, but the old rule
3 didn't work very well because nobody used it. We
4 don't want to regress to the previous state where
5 we seemed to have a lot of undisciplined approach
6 to the backfitting decisions and confusion over
7 requirements.

8 You heard this morning that NRC has
9 a central system with standard procedures, consistent
10 interpretation. For the last decade the main com-
11 plaint I've heard from the industry is that apparen-
12 tly there's a lot of NRCs, and they always make an
13 inadequate evaluation of whatever change they want
14 to impose. Your system can monitor their implemen-
15 tation of their program and your program to monitor
16 consistency internal to your own organization.
17 You can evaluate your own analyses and see what
18 your approach has been.

19 So what is this program? Again I'm
20 going to talk about attributes.

21 Management commitment to a program is
22 absolutely necessary. Active participation by
23 management, the visible participation in enforcement
24 by management requires a full understanding of the

1 program by all employees and a standard procedure
2 for implementing your program, because failure to
3 implement it at one level will fail the program.

4 It's most effective if all modifications
5 are treated under the same systematic process so
6 that you have a uniform standard of acceptance of
7 a change you intend to make on a facility regardless
8 of the source. It allows you an internal consistence
9 between groups, between the plant and home office,
10 a means of communication. It gives you a sound
11 position for interaction with the NRC where there
12 is dialogue necessary; and the discussion of a
13 potential backfit can be based upon the safety and
14 improvement associated with it, the impact on
15 plant complexity, the impact benefit that you see
16 in terms of dollars but also in terms of radiation
17 exposure.

18 Again, I would point out the NESP study
19 that highlights the impact on worker dose over the
20 five-year sample period. 100,000 person rems in
21 five years is a major consideration.

22 So I'm talking about a systematic process
23 that allows the knowledge of the possible sources
24 of a backfit -- someone said this morning there were

1 87. I don't know if there's that many, but there
2 are a number of unique and different ways for
3 changes and requirements to be presented; and NRC
4 is trying to get a handle on those and regulate that
5 internally. You want to have a knowledge of that
6 potential and aid in that management control effort.
7 You're going to have to have a knowledge of the
8 licensing basis of your plant before dealing with
9 the imposition of a backfit.

10 It was also pointed out that the major
11 problem is knowing that you are in a backfit
12 situation. That ability needs to be developed.

13 You want to validate the backfit, ensure
14 that the safety issue you're dealing with is clear;
15 and the next bullet is you want to assure the
16 backfit package is complete. You want to review
17 the analysis. Not so much you want to attack the
18 staff, but you want to be sure the analysis and
19 standard you apply to your own changes are also
20 applied in this case.

21 You want to identify areas of possible
22 disagreement and be able to found these on factual
23 issues, and you want to be able to provide your
24 management with the opportunity to make a decision

1 on whether or not to appeal. Now, management may
2 decide to do something else; but they need to have
3 that information.

4 So I want to talk about the appeal
5 process. The perception of the old 50.109 is that
6 it kicks in only when a violent dispute is apparent;
7 and no licensee wants to be a bad guy, so let's
8 not do that. As I understand it, the new 109 is
9 a recognition that we are dealing with a complex
10 situation where the facts can appear different
11 to honest people sincerely interested in the issue
12 but having a different perspective. We're supposed
13 to be working to get these differences out in the
14 open and resolve them. The effort is focused at
15 the maximum benefit and safety reliability for
16 the plant. That's the emphasis of your program.
17 That's the emphasis of your NRC's program. We
18 know there's two kinds of appeals: whether or not
19 the backfit rule applies at all and whether or not
20 the backfit is justified. That's been gone into
21 before.

22 So when you develop an appeal, you want
23 to present cogent arguments based on legitimate
24 issues. You want to work for resolution of

1 differences and establish common ground; and you
2 want something that will enable you to monitor
3 the appeal process to track the appeal through the
4 system. So you have an information component there.

5 Finally, if there is a change involved,
6 you want to be able to justify all the tasks that
7 are on your plan for implementation, whether it's
8 a living schedule or an internal plan or whatever
9 it is from the same basis you want to be able to
10 prioritize those, schedule them, track the progress
11 and you want to be able to report. So your program
12 has got to be comprehensive. It's got to be com-
13 prehensive from another aspect, too; and that will
14 depend again on the characteristics of the utility's
15 own management system. But you want to be able to
16 use information available about what's going on
17 in similar plants in other utilities. You want to
18 evaluate NRC treatment of the issue before. You
19 want to look for opportunities to move to generic
20 action as opposed to plant-specific action.

21 Along those lines, an initiative has been
22 created by NUBARG to establish fact fit coordinators.
23 These are designated individuals within utilities
24 maintained on the list by AIF primarily so that they

1 have an information network to be able to talk
2 with one another.

3 The last attribute I've implied all along
4 is that the backfit management program has got to
5 be individual to your own management system. That's
6 why you're not getting a cookbook here. You're
7 merely getting some ideas about attributes.

8 You want to control resources. You want
9 to have a good interface with NRC. You want to
10 have rational decisions.

11 The organization will have to implement it
12 overall at many levels with many pieces of information.

13 So without having told you at all what you
14 ought to do or how you ought to do it, I think I've
15 given you a hint as to what you might want to do to
16 adjust your management system.

17 With that I'll turn it over to Nick.

18 MR. REYNOLDS: Our industry has long com-
19 plained about the shifting sands of NRC regulation.
20 Some requirements we all know have been imposed
21 and then changed by the NRC and then changed again.
22 Following TMI the situation grew even worse. The
23 regulatory process hemorrhaged, in my view; and a
24 long list of new requirements was presented to

1 licensees. The complaints grew louder, not because
2 new requirements were imposed, but because the
3 process of developing the new requirements was
4 perceived by the industry as having become uncon-
5 trollable.

6 The greatest incentive for licensees and
7 the NRC to satisfy the backfitting rule is reactor
8 safety; but there's another incentive, and that
9 incentive is the economic side of the calculation.
10 The backfitting rule is the result. In my view,
11 at least in large measure of the concerns that were
12 expressed by industry over the years about the
13 method and management approach that the NRC used
14 to impose new requirements.

15 This agency listened to those concerns.
16 The agency evaluated the concerns and it concluded
17 that management controls internal to the agency
18 were needed. It concluded that these controls were
19 needed to ensure that facility modifications im-
20 posed by the NRC would in fact do the job they were
21 expected to do without any unintended side effects
22 and that the modifications were truly necessary.

23 The economic incentive for you and the
24 audience to learn this rule and apply it vigorously

1 is one provided by your economic regulators and
2 your boards of directors which are all holding utility
3 managers accountable now as never been for a prudent
4 operation and maintenance of your facilities.

5 So I'm going to shift the emphasis that
6 we've heard so far today away from the safety side
7 and talk about the economic side.

8 Both the Atomic Energy Act and the Supreme
9 Court tell us that state public service commissions
10 for the Federal Regulatory Energy Commission where
11 it has jurisdiction have full authority to investi-
12 gate the prudence of costs associated with nuclear
13 backfits. In the past these rate-making bodies
14 generally have allowed recovery of costs incurred
15 by licensees to satisfy NRC requirements on the basis
16 of statements that we spent the money and made the
17 fix because the NRC required us to do it. They
18 rarely probed behind those representations. And
19 the costs allowed in the past have been direct
20 costs of engineering and construction as well as
21 indirect costs for replacement of power.

22 A quick review of history of economic
23 decisions over the last several years indicates
24 that this trend is changing. In my view, it will

1 not be enough in the future for an NRC licensee
2 to recite to its rate commission that it made the
3 change and incurred the cost because the NRC
4 required it to do that. I believe that utilities
5 in the future will have to demonstrate that they
6 went about the task of satisfying NRC regulations
7 in the most cost-effective way possible. In effect,
8 you must demonstrate your prudence in the way you
9 conducted your business.

10 During my discussion I will focus on
11 three points: First, the rate-making treatment
12 of backfitting costs. There are cases which demon-
13 strate an increasing willingness on the part of
14 economic regulators to second-guess both the manner
15 in which the utility seeks to resolve an issue with
16 the NRC that could result from a facility modifi-
17 cation and the manner in which the modification
18 is executed if it's necessary.

19 I will then identify some implications
20 that the backfitting rule may have on the economic
21 regulations of power reactors; and then I will
22 suggest some basic principles that licensees may
23 want to follow to protect themselves should they
24 have to justify the prudence of a significant backfit.

1 Most of us here in the industry are
2 familiar with the rate-making treatment of backfitting
3 costs. There have been a number of past decisions
4 in this arena, many of which until recently have
5 reflected, in my view, reasonable treatment by the
6 economic regulator.

7 I recall in 1980 a decision by a public
8 utility commission involving the costs of licensee
9 reanalysis and rework on seismic stress design in
10 light of new information. Some plants were forced
11 to shut down to conduct piping clarifications and
12 anchorage inspections. One public utility commission
13 allowed a utility to recover \$62 million in replace-
14 ment power costs incurred because of these efforts,
15 because the Commission found no imprudency in the
16 original design and no imprudency in the failure to
17 appreciate the need to strengthen pipe supports
18 because the plant at the time satisfied NRC seismic
19 criteria.

20 There was another case in 1980 that allowed
21 full recovery of \$20 million in replacement costs
22 based on the same basic issues.

23 Economic regulators are scrutinizing with
particular care construction costs associated with

1 power reactors, and this scrutiny extends to
2 cost^s occurred for backfitting projects beyond those
3 costs incurred during initial construction.

4 So it isn't just a matter that's of concern
5 to those who don't have plants finished and operating.
6 It's of equal concern to every plant that's operating.

7 Recently one state commission excluded
8 from a utility's rate base \$1.4 billion of the
9 total construction cost of a power reactor. Part
10 of this disallowance was attributable to what the
11 commission, the rate commission, called the licen-
12 see's failure -- and I quote -- "to pursue prompt
13 resolution of regulatory issues that significantly
14 affected the plant's cost and schedule."

15 These issues involved various NRC backfits
16 that arose during the construction of the project.
17 It's a familiar story. You've all been through it.

18 In 1972 the staff imposed new requirements
19 for analyzing high energy line breaks outside con-
20 tainment. Because this had the potential of re-
21 quiring substantial redesign work and costly back-
22 fitting, the Public Utility Commission found that
23 the utility should have pressed for an earlier ruling
24 from the NRC on pipe break requirements for the
25

1 plant. The PUC found the utility did not do that.
2 It, therefore, disallowed redesign and rework
3 costs that ultimately became necessary to satisfy
4 the pipe break requirements.

5 Other disallowances in this case pertain
6 to costs resulting from the NRC's adoption of
7 new ASME piping code requirements during construction,
8 the NRC's issuance of new separation guidelines
9 for electrical cable separation and the NRC's
10 issuance in 1972 of new guidelines for seismic
11 design on the cable tray supports. Shifting sands.

12 In another case just a few weeks ago a
13 state PUC ruled that a utility deserved about 40
14 percent of a \$194 million rate increase that it
15 sought relating to construction of a reactor. The
16 utility, according to the PUC, had unreasonably
17 and without explanation incurred cost increases
18 as a result of changes in NRC requirements and had
19 inefficiently and imprudently managed its project.

20 The parade of horrors is becoming longer,
21 and I will not dwell on that parade with more
22 examples. The point is that there is a trend here
23 that's clear. At least in the near future economic
24 regulators will more closely scrutinize plant costs,
25

and it may not suffice now to offer as a justification for backfitting costs the conclusion that the NRC made you do it.

Given this trend in economic regulations, the backfitting rule raises some important rate-making questions. If a utility accepts a staff-imposed backfit without assuring that the backfitting procedure is followed, an economic regulator may question whether the utility did all it could do to minimize the cost of the backfit. The economic regulator could find that management acted imprudently in spending money for the backfit without scrutinizing the staff's technical basis for pressing its exceptions vigorously enough.

In addition, if the backfit causes an outage to be expended, the utility may be criticized for inefficient outage management.

However, it may not be enough simply to assure that the backfitting process is followed. The utility may also have to press the NRC to decide areas of disagreement promptly in order to avoid a situation in which the utility is forced to incur costs for modifications that later have to be reworked.

1 In one of the examples I referred to,
2 the utility took exception to some of the cable
3 separation criteria and regulatory guide 1.75 but
4 proceeded at its risk to make changes on the basis
5 of its -- their exceptions. Eventually the NRC
6 approved 90 percent of the installations, but the
7 remaining 10 percent required substantial rework.
8 The Public Service Commission disallowed the cost
9 associated with the rework.

10 As a result of the increasingly aggressive
11 economic regulation of our industry and the develop-
12 ment of this backfitting rule and the process that
13 is inherent in that rule, I believe that our
14 industry, and in particular power reactor licensees,
15 should follow a number of principles for evaluating
16 backfits in terms of the sensitivities of the regu-
17 lator. These principles are simple, but I think
18 they're important.

19 First, before incurring costs in connection
20 with the backfit, the utility should satisfy itself
21 that a sound technical basis exists for the backfit.
22 This means working together with the NRC staff to
23 understand the technical basis for the staff's
24 proposal; and if the utility is not satisfied that

1 that basis is adequate, to challenge the necessity
2 for the backfit pursuant to the conditions of the
3 rule; or if the utility concludes that the backfit
4 is warranted, understands fully the technical
5 basis for what is required and how the safety
6 improvement can be achieved at the lowest cost.

7 Second, if the utility is satisfied as
8 to the technical need for the backfit, it should
9 schedule the necessary work to minimize downtime.
10 This will entail at a minimum obtaining all neces-
11 sary regulatory approvals on a timely basis and
12 taking advantage of plant outages to do the work.

13 Third, if the utility takes exception
14 to all or part of a backfit, it should present its
15 exceptions to the NRC in a timely, well-reasoned,
16 well-documented fashion. Thereafter the utility
17 should seek prompt resolution of the issue. In
18 appropriate cases the decision should be appealed
19 to the staff.

20 Last, the utility should document each
21 step of its decision-making process. For example,
22 if the utility concludes that a backfit is technical-
23 ly justified, this justification should be developed
24 internally at the time the decision is made to

1 proceed with the backfit.

2 Similarly, if you elect to protect a
3 backfit, your technical justification for the
4 contest should be developed from the outset in
5 order to minimize delay in the regulatory process
6 set forth in the rule; and also if the utility
7 does not receive prompt resolution by the staff,
8 it should by all means advise staff management in
9 writing that prompt resolution has not been forth-
10 coming.

11 Now, I do not mean to imply or leave
12 you with the impression that the filing of an
13 appeal under this rule will be the litmus test
14 of the economic regulator for a utility prudence.
15 What I do mean to suggest is that as a result of
16 the backfitting procedures, utilities' complaints
17 about changing conflicting NRC requirements may
18 not carry as much weight in rate proceedings.

19 I also believe that economic regulators
20 will increasingly expect power reactor licensees
21 to consider the needs for proposed backfit and
22 to develop management techniques for assuring
23 that proposed backfits are properly evaluated and
24 that backfits found necessary are implemented

1 quickly and efficiently. An important part of
2 that is getting the regulator's approval on what
3 you propose to do promptly.

4 For all of these reasons I think that the
5 backfitting rule is a significant tool of prudent
6 management that may be avoided by our industry
7 only at our peril. Stripped of the verbiage "What
8 does all of this mean," it means that you, as power
9 reactor licensees, must -- not should, not may --
10 must develop an efficient and vigilant process to
11 recognize backfits for your facilities, to determine
12 whether the backfits are necessary; and if so,
13 proceed with efficient implementation; and if not,
14 to invoke the procedures in the backfitting rule
15 within NRC staff.

16 And why must licensees do this? Well,
17 first, it is your obligation under the law to do so.

18 The backfitting rule is not an obstacle
19 to safety improvements. It is, rather, a road map
20 for the NRC and the industry to follow to assure
21 that plant modifications are necessary and justified.
22 Neither the staff nor the industry may ignore the
23 rule, because it is a binding requirement. Just
24 as NRC staffers who refuse or neglect to follow the

1 rule be held accountable by staff management, so
2 licensees who refuse or neglect to follow the road
3 map will be held accountable by those concerned
4 with the efficient management of your facility, be
5 they your public utility Commission or your board
6 of directors or both.

7 Thank you.

8 MR. TOURTELLOTTE: My name is Jim Tourtel-
9 lotte, and I . . . wanted to, before I started, I
10 wanted to point out that a number of people up here
11 have had a considerable amount of input from both
12 sides, the NRC staff and the industry, over the
13 life of trying to get the backfit rule into place.

14 I know that Frank Maraglia over here
15 served with me on the regulatory reform task force
16 and helped sort out the rule that developed.

17 And Jim here, Jim Sniezek and Tom Cox
18 both worked on the manual chapter for many, many
19 months; worked very closely with Dick Stella to try
20 and come up with a workable plan for the backfit
21 rule.

22 Nick Reynolds was on the NUBARG utility
23 group that was after the . . . the rule to get the
24 rule in place.

1 And Don Edwards was on the AIF subcommittee
2 on backfitting.

3 Sandy Hartman was Nick's assistant.

4 And Gene Kurtz with Duquesne Light is
5 one of the few managers in the utility business
6 that ever used the rule under the generic letter
7 8408 and actually did so to the tune of saving his
8 company \$200 million.

9 In the light of what Nick just said,
10 that there are economic consequences of the backfit
11 rule, taken together with what Gene did at Duquesne,
12 it seems to me there is a clear need for under-
13 standing the backfit rule in putting something into
14 place.

15 Now, before I begin any -- or go any
16 further, I was told that in order to get the
17 attention of engineers, I should have a couple of
18 slides. So I have two, and I wanted to show those
19 to you.

20 The first, of course, demonstrates that
21 the world of backfitting is a stormy situation and
22 it affects many areas of regulation.

23 The second slide -- a little more
24 serious -- says that backfitting equals discipline.

1 Indeed, that is the case. Backfitting is a disci-
2 plinary process. We've heard a great deal with
3 that today. I give you great credit for being able
4 to endure all of these speeches on backfitting.
5 I've been giving speeches on backfitting for about
6 four years, and I found about the end of the second
7 year I had to also distribute NoDoze to assure my
8 audience was with me all the time.

9 I have learned from that process, however.
10 I've decided I'm taping these sessions today and
11 I'm going to sell the tapes as a part of stress
12 management relaxation tapes because if anybody can't
13 get to sleep listening to this stuff, they're
14 probably ready for heavy drugs, anyway.

15 One of the things that impressed me --
16 one of the reasons I wanted to introduce the people
17 on both sides is to let you know that these aren't
18 people who just read the rule when the rule came
19 out and suddenly they come up here and spouting out
20 words. These are people who have been involved
21 in the rule from the very beginning, and they are
22 people who have worked from different positions
23 and coming from different places on the etiological
24 map have eventually worked this thing out and have

1 eventually worked the thing out and have reached
2 agreement that the rule is here, the rule is here
3 to stay and the rule needs to be put into effect.

4 I listened to both sides, and I hear a
5 lot of common words. There are words that are
6 spoken by the NRC about the fact that there is
7 room for honest disagreement and that there should
8 be no retribution. I hear words from the industry
9 that there must be a free exchange of views, which
10 is saying the same thing.

11 I hear the industry saying that the
12 backfitting process is a management tool, and I'm
13 hearing Jim Sniezek say that this is a disciplined
14 management process that we're talking about.

15 I hear Tom Cox talking about the
16 responsibilities of the staff to identify backfits
17 and the responsibilities of the industry to do their
18 part in bringing backfits to the attention of the
19 NRC.

20 I hear Gene Kurtz talking about the fact
21 that recognition and identification of backfits is
22 a key to making the rule work.

23 And I hear Nick Reynolds talking about
24 the economic need for backfit management and talking

1 about prudence, which, in the final analysis, is
2 a process whereby rate makers judge the validity
3 of any management decision on the basis of the
4 facts and circumstances existing at the time that
5 the decision was made or if a decision wasn't
6 made, a decision should have been made in certain
7 facts and circumstances.

8 So we're talking about management tools.
9 We're talking about identification of backfits.
10 We're talking about exchange of views and honest
11 disagreements. It seems like everybody is coming
12 together to say that we have to do all these things
13 to make the rule work. And, indeed, that is true.

14 There are responsibilities and there are
15 responsibilities on both sides. The staff has the
16 responsibility to identify a backfit, but don't
17 count on the staff identifying a backfit because
18 they may be coming from a different place than the
19 industry is. And if they don't identify the backfit,
20 you have to identify it for them and you have to
21 identify it for yourself.

22 The licensee, therefore, has a responsibility
23 to claim and to support a claim of a backfit where
24 the staff has failed to do so. The staff has a

1 responsibility to review that claim. The licensee
2 has a responsibility to pursue it in face of the
3 review by the staff, and the NRC has a respon-
4 sibility to give a fair and decent hearing to the
5 industry in the process. But the licensee has a
6 responsibility to pursue that process.

7 All of this can only work if there are
8 mutual recognition of their responsibilities and
9 the respective needs of both the NRC and the industry
10 The NRC has a responsibility of protecting the
11 public health and safety. Utilities share that
12 responsibility, but they also have a responsibility
13 of providing power to the public at the lowest rate
14 possible and in a reliable manner. And that kind
15 of need must be recognized by the NRC staff in
16 its dealings with the industry. There must be
17 mutual respect. There must be mutual understanding.
18 There must be a mutual discipline in both the
19 industry and the NRC in implementing the rule;
20 and most of all, there has to be a mutual trust.

21 What it really boils down to, it seems
22 to me, is that today we've heard a lot from both
23 sides that says yes, the rule is there and yes,
24 the rule can work; but the ball right now is for

1 the most part in the court of the industry.

2 The question that I would ask to you is:
3 Do you really believe it? Do you really believe
4 it when the NRC tells you that there will not be
5 any retribution, that they do not want any retri-
6 bution? Do you really believe it when they say
7 that they are interested in entertaining honest
8 disagreements? Do you really believe it when they
9 say that the informal process is a good process;
10 let's set up a line of communications and work
11 these problems out without having the formal
12 process?

13 If you really believe that and you do
14 something about it, then the rule will work. If
15 you don't believe it in the first place, you're
16 not going to do anything about it. The rule
17 will never work, and you will probably answer to
18 somebody somewhere perhaps in a prudency hearing.

19 The fact is that the industry itself
20 has to look at its own culture and the way that
21 it's dealt with backfits in the past.

22 Some of you may recall that I wrote a
23 report about a year ago that went to Congress about
24 backfitting. One of the things I talked about in

1 there was a regulatory culture that had grown up
2 around backfitting. And I said some things that
3 weren't totally kind to my colleagues at the NRC.

4 But I will say to you as well there is
5 an industry culture; and some of the things that
6 can be said about that industry culture are not
7 particularly kind, either. But that culture has
8 to be changed or the rule still will not work.
9 There is part of that industry culture that says,
10 "We don't contest anything that the NRC requests.
11 We just do whatever they say because if we don't
12 do what they say, we're going to have hell to
13 pay when the inspector comes around the next time."

14 Well, you've been told that that's not
15 going to be the case, and you have got to believe
16 it. If you don't believe it, the rule is not
17 going to work.

18 There's been a tendency on the part of
19 the industries to accept the finding that -- by
20 the staff that there is not a backfit here. Today
21 we heard a lot a discussion about whether that was
22 a backfit in a certain case or there wasn't a back-
23 fit in a certain case. I listened with great
24 interest because it seems to me that in spite of

these discussions in the abstract, it's going to get down to the case-by-case basis of whether there is or there isn't a backfit.

But let me tell you something that happened recently. I'm not talking about two years ago or a year and a half ago when I was investigating this thing and getting things together. I'm talking about in the past few months after the rule. And the utility that I had advised actually had a basis for backfit, although I did not -- I want to make it clear that I did not represent them and my information was provided to them on a gratis basis, and it's worth every penny they paid for it -- but taking that little information without any further consultation, they decided they would take this backfit to the staff. This was a backfit which had been won two other times. And they took it to the staff and they asked the staff about it, and the staff looked at it and they looked at them square in the eye and they said, "There isn't any backfit there."

They said, "Oh, thank you very much," closed the books and left.

You can't do that anymore. That is not

1 a part of the culture that you want to retain.
2 You've got to change that attitude. You've got
3 to take a hard look. You've got to take a discipli-
4 nered look. You've got to have a strategy for
5 backfitting. That is very, very key. You've got
6 to create within your own companies a strategy
7 for backfitting, and you have to create a structure
8 for backfitting.

9 I know that NUBARG asked recently for
10 representatives to have a designated person on the
11 staff of an industry to be a backfit representative.
12 That's important. It's a good start, but don't
13 think that that in and of itself is going to solve
14 the problem for the industry. That one fellow is
15 going to have to have a whole lot of help, par-
16 ticularly from the managers above, because if the
17 managers don't support him, you will never have a
18 backfit program. So you've got to have a strategy
19 and you have got to have a structure.

20 Remember this: The rule is not self-
21 executed. It won't just go out there and do it for
22 you. This is not a rule against backfitting. It
23 is a rule that establishes a disciplined process
24 for determining when a backfit can be imposed and

1 when it cannot be imposed.

2 Remember that Tom Cox said that backfitting
3 is expected. We are still going to have backfits,
4 and the question isn't whether we have them or not.
5 The question is whether they're imposed in accor-
6 dance with the rule or not. You cannot rely on
7 the staff to tell you that there is a backfit,
8 and you're going to have to establish a process
9 within your own companies to assure that you can
10 identify and you can bring to the attention of
11 the NRC those backfits which are going to cost you
12 money and work them out in as rational a way as
13 you can with the NRC.

14 Failing to do that, the rule is virtually
15 of no use at all. As some of you may recall, 50.109,
16 which was on the books since 1970 and which was
17 never used by the industry, will be no better or
18 no worse than the new rule if you don't take some
19 definitive action this time to assure that the
20 process is properly established and executed.

21 In closing, I'd like to reiterate once
22 more that the belief of each person in this room,
23 the belief of the managers of the company in the
24 backfit rule is really at the heart of making the

1 rule work.

2 The other thing after the belief in what
3 is being said here today is to actually do some-
4 thing about it. To do something about it you
5 have to establish your own internal discipline
6 process to match that of the NRC's.

7 MR. SNIEZEK: Okay. I'd like to compli-
8 ment the industry speakers on making up the time
9 the NRC lost in its schedule.

10 At this time any questions to the
11 industry speakers I'd like to hold for the question
12 and answer period. We'll take a short break now
13 and reconvene at 10 minutes to 3:00. And if you
14 have any questions you want to write out, go ahead
15 and write them out and turn them in to the recep-
16 tion desk, and we'll handle the written questions
17 plus the oral questions.

18 (A short recess was taken at 2:35 p.m.)

19 - - -

20 (The proceedings resumed at 2:50 p.m.)

21 MR. SNIEZEK: A question has been raised
22 about what if you want copies of the transcript.
23 John McOscar, who is in the back of the room or
24 outside, Administrative Officer for Region I, has

1 the name, address and phone number of the company
2 if you're interested in a transcript and get the
3 information from him. I assume you can get it
4 from the young lady here, also.

5 First questions that we're going to
6 address are those that were written, and then we'll
7 get into questions from the floor.

8 The first one is for Tom Murley. "What
9 is the status of the Region I procedure for plant-
10 specific backfits and when and how will these be
11 made available to Region I licensees?"

12 MR. MURLEY: We have an interim procedure
13 that's in place right now that is based on the May
14 1985 version of the manual chapter; but we also
15 have a revision that's now based on the rule, new
16 manual chapter. That's back in headquarters being
17 reviewed right now.

18 My guess is it should be out in a matter
19 of weeks. What I'll do is have it sent to every
20 licensee in Region I so you can see what our own
21 internal procedures are.

22 MR. SNIEZEK: And I'll make the commitment
23 here that the headquarters office procedures will
24 go into the PDR. So they will be available, also,

1 so you'll know exactly what the processes will be.

2 This one is addressed to the industry
3 panel. I'll let them decide who wants to answer
4 it.

5 "And how do we" -- that's the utilities --
6 "how do the utilities remove the label on the back-
7 fit rule that characterizes it as preventing back-
8 fits?"

9 And the second part of the question is:
10 "Can you give any suggestions how a utility can
11 prevent itself from prematurely calling an issue
12 a backfit?"

13 MR. KURTZ: On the first aspect, I can
14 only speak from experience here at Beaver Valley,
15 Unit 2, we filed 17 backfits under generic letter
16 8408; and on it one issue that we did call a back-
17 fit.

18 And essentially the thought process one
19 must go through internally, which we -- which
20 the guideline attempts to do is determine if it
21 in fact is needed for safety in your plant. In
22 other words, you know your plant better than any-
23 body else. Do you think it performs the safety
24 function and benefits your plant overall.

1 Now, that doesn't mean that you're all-
2 smart and all-knowing. There could be a possibil-
3 ity that the NRC has some new technology or new
4 perception or new information. So they might
5 also find a need for safety that you're not aware
6 of. And we did have one case where that did happen.
7 We did file something as a backfit and it really
8 was a backfit. It clearly was a backfit.

9 However, using the process that's similar
10 to what Dr. Murley described earlier, we sat down
11 with the -- I don't remember what level it was,
12 an AD or a director or even a branch chief. It
13 escapes me right now. It doesn't matter -- and
14 this management official stated that he believed
15 that this was needed for safety and the reason
16 it was promoted by the NRC is they had received
17 information from the vendor.

18 Here it was something we weren't aware
19 of. We contacted the vendor, and the vendor
20 truly stated that he recommended that that was
21 needed to make that equipment reliable -- more
22 reliable and it was in fact needed for safety.

23 With that bit of information of the vendor,
24 we withdrew the backfit and installed that change

1 in Beaver Valley.

2 So the backfit process is there as a
3 system to identify what in fact is needed and whether
4 you do need it. One of the reasons you need to
5 do that, if you have a change that you're not --
6 that you're confused about, an inspector says do
7 something, is that sooner or later you're going
8 to make a modification to your plant for one reason
9 or another. If you happen to be doing it in a
10 portion of a plant, a change that you committed to
11 that you didn't really know why you did it but you
12 did it because to please an inspector or reviewer,
13 or so forth, now you must do a 50.59 evaluation on
14 that portion of your plant, one of the things says,
15 are you reducing the margin of safety? If you
16 didn't know what safety function performed, how are
17 you going to know whether you're changing the
18 safety?

19 So the backfit process identifies the
20 safety function for you so you know clearly what
21 it's going to do. Now you know what's in your
22 plant.

23 Can you repeat the second part of the
24 question, please?

1 MR. REYNOLDS: That was the second part.

2 MR. SNIEZEK: "How do we," the utility,
3 "remove the label of the backfit rule that it
4 characterizes it as preventing backfits?"

5 MR. REYNOLDS: I haven't heard there is
6 such a label. If anyone has read the rule and
7 understands it, I don't know how they could suggest
8 that it prevents backfits unless they're attempting
9 to mislead.

10 The rule establishes a management process
11 which hopefully will lead to backfits that are
12 more thoroughly thought through and will enhance
13 safety. I don't think there's anything industry
14 can do to change a label that's inappropriately put
15 on the rule.

16 MR. EDWARDS: Question from the audience

17 MR. CRAIG VEPREK: Craig Veprek, PSE&G.
18 It seems to me one of the things people are looking
19 for, they want to make a determination of backfit;
20 and also Don Edwards mentioned about reviewing
21 previous backfit, plant-unique backfit analysis.

22 Does the NRC contemplate of having some
23 type of a program that's going to be available to
24 licensees to review previous generic and plant-

1 specific backfits, and how do they obtain that
2 information? Is it going to be on a quarterly
3 basis, or how to access it?

4 MR. SNIEZEK: Right now -- Frank, correct
5 me if I am wrong -- I believe it's a monthly report
6 that's put out on the status of backfits and their
7 resolution. That's in the PDR. Every plant-
8 specific backfit analysis is sent to the affected
9 utility. That is put in the PDR.

10 Generic backfit analysis, which is part
11 of the CRGR minutes, is placed in the PDR. So
12 that information is available.

13 MR. CRAIG VEPREK: I guess my under-
14 standing is that on plant-specific backfits, they
15 will be cataloged together under a monthly report;
16 but the generic analysis will be incorporated in
17 that rule making. It will not be tied together
18 in a monthly report.

19 MR. SNIEZEK: It will not be. It will
20 be incorporated in the rule making, that's correct.

21 Anything you want to add to that, Frank?

22 MR. MARAGLIA: No. That's correct.

23 MR. SNIEZEK: A question which I'll
24 answer is: "What is the status of the revisions to

1 procedures for controlling generic backfits in
2 accordance with the backfit rule?"

3 The CRGR charter has been modified. It
4 is before the Commission for the Commission approval.
5 We expect to receive the Commission approval in
6 about two weeks. Once we receive the approval of
7 the Commission, we will start using the revised
8 charter and place it in the public document room.

9 The second part -- second question was:
10 "Will averted on-site costs be considered as a
11 benefit in the backfit analysis"?

12 That's a good question. Today under our
13 regulatory analysis guidelines that have been in
14 existence for several years, BR-0058 NUREG, we,
15 if we have the information available, display the
16 averted on-site cost that derives as a benefit to
17 the utility upon the imposition of a backfit. How-
18 ever, we do not use them directly in decision
19 process.

20 As you recall, the Commission, when it
21 issued its draft safety goal policy, the staff was
22 not to use averted on-site costs in the benefit
23 side of the equation. The staff did recommend to
24 the Commission in the staff report that it be used.

1 At this time that issue is undecided.
2 It's before the Commission. If the Commission
3 decides to use averted on-site cost on the benefit
4 side of the equation, the staff will do so. If
5 it decides not to use it, the staff will not use
6 it. So that's in the Commission's hands right now.

7 This question is directed to Tom Cox.
8 "Can a licensee officially inquire as to the
9 existence of a backfit analysis without setting
10 in motion developing an analysis? So, how should
11 this be accomplished?"

12 MR. COX: Certainly. Just by a letter
13 or a phone call a licensee can ask the staff
14 anything at any time. I mean you're not going to
15 bring down the regulatory process on your heads
16 by inquiry, informal or formal.

17 MR. SNIEZEK: Mr. Smyth asked that
18 question. Is there any amplification that you
19 want to --

20 MR. COURTNEY SMYTH: No.

21 Just for the record, to find out from
22 Don, without, you know, sending the staff off on
23 a mission to do it, if you think there may --
24 by asking the question officially it may lead the

1 staff to believe the utility wants one as opposed
2 to knowing whether or not it wants to conduct it.

3 MR. MARAGLIA: I think the answer to
4 the previous question is helpful in that regard.

5 No. 1, there is a monthly report that
6 indicates what is in the backfit system and what
7 the status of that particular item is, so the
8 utilities, by looking at those reports, would have
9 an understanding of what's under consideration,
10 what the status is; and that information would be
11 available both on the docket in the local public
12 document room plus in Washington's media.

13 In addition, the requirement is for
14 all rule makings now to have a regulator/analysis
15 associated with rule makings on a generic basis.
16 Those are made publicly available. So that would
17 give the utilities a vehicle to understand what's
18 going on on other dockets and what kind of consi-
19 derations went into those type of analysis.

20 And surely, as Tom said, if you make
21 inquiries on those kinds of things, I don't see
22 it precipitating a concern that the particular
23 utility wants such a backfit analysis for his
24 facility.

1 MR. SNIEZEK: The next question is one
2 that I'm going to collaborate with Shelly Schwartz
3 from IE in answering and primarily because I spent
4 all but my last two years or so in the Office of
5 Inspection and Enforcement. I have a lot of
6 vested interest.

7 "What is an inspection module in the
8 context of the hierarchy of requirements?"

9 The second part of it is: "There appears
10 to be a short-circuit around the backfit controls.
11 The staff can issue an information notice and then
12 inspect against provisions of this notice. The
13 issue of the limit torque notice is an example.
14 Could you please comment on this assertion."

15 Inspection module, inspection module
16 has no place in the hierarchy of requirements.
17 An inspection module establishes zero requirements
18 for a licensee. An inspection module is the Office
19 of Inspection and Enforcement guidance to the
20 field inspectors on what they are to consider in
21 arriving at their decision, their conclusion
22 whether or not the operations at a facility are
23 being conducted safely. There may be 15 line
24 items in an inspection module. The inspector is

1 to consider those when he looks at the activity.
2 The licensee may be doing 10 of those line items,
3 may be doing five of them or may be doing 14 of
4 them. None of that enters specifically or directly
5 into whether the licensee is doing what is required
6 of him by the NRC. But it is incumbent on the
7 inspector to consider what the utility is doing
8 in light of the inspector's guidance in that module
9 in arriving at his decision whether or not the
10 plant is being operated safely or not.

11 So the utility should not have any
12 impression that what's contained in an inspection
13 module is necessary for them to do.

14 I'm not familiar with the specifics of
15 the inspection module, but the notice part of the
16 question.

17 MR. SCHWARTZ: The notice dealt with
18 the unqualified wiring in a limit torque valve
19 operator. The notice went out, and it reported
20 that there was an enforcement action -- Jim Liber-
21 man may remember the details of that enforcement
22 action -- an enforcement action with respect to
23 unqualified wiring in limit torque valve operators.
24 We were putting the licensees on notice of this

1 situation.

2 The staff was still concerned about how
3 pervasive this was in the industry and had written
4 a temporary instruction to the region to do an
5 inspection to evaluate how pervasive this was in
6 the industry. And that I believe is going on now.
7 I'm not familiar with the exact schedule of that
8 temporary instruction.

9 MR. MURLEY: I think more needs to be said
10 about that, quite frankly, because it's done --
11 I'm going to have to ask Jim and Jay for some help
12 here; but it was done against the backdrop of the
13 EQ rule, was it not, so that it was not just an
14 information notice that laid on a new requirement that
15 we went and inspected --

16 MR. SCHWARTZ: That's right. It was not
17 a new requirement. The backdrop was the EQ rule
18 where they found unqualified wiring in a limit
19 torque valve operator and we reported on that.

20 MR. MURLEY: The question, Jim, as I
21 understood it, was: Is this not a short-circuit of
22 the backfit-controlled process?

23 I think it's because it was against the
backdrop of a rule that was in existence, which is

1 why it was not a short-circuit.

2 MR. KURTZ: Dr. Murley, on -- I was
3 called by a couple licensees and even internally
4 in Duquesne on this one. And I have to agree
5 with you, that I felt that that -- that notice
6 adequately informed the industry that here was a
7 deficiency in implementing 50.49, and they were
8 just highlighting this clarification in a notice-
9 type format. In my opinion, I thought the notice
10 was totally kosher in referring to 50.49, did not
11 come under the backfit process.

12 MR. SNIEZEK: The other part of the
13 question is: "By them coming out and inspecting
14 against what was in the notice, is that short-
15 circuiting the backfit process?"

16 The answer is no.

17 MR. SCHWARTZ: No.

18 MR. SNIEZEK: Because an inspection by
19 itself is not a backfit in any way, shape or form.
20 You can inspect anything, and it is not a backfit.
21 What I may do with the results of that inspection
22 could turn into a backfit.

23 That's all we had for written questions.
24 Be pleased to entertain questions from the floor

1 at this time.

2 MR. CRAIG VEPREK: Craig Veprek, PSE&G.
3 This morning there seems to be a little confusion
4 as far as this gray area of generic issues and
5 plant-specific backfits. Obviously if a plant
6 does not -- a different vintage or different class
7 plant, he can file against the exemption 50.12 that
8 Nick mentioned.

9 Let's take a particular case where a
10 generic issue is based upon a number of parameters
11 that the NRC has enveloped and successfully bagged
12 the different plants and has come to the conclusion
13 that a safety concern exists. They pass the backfit
14 analysis and a rule is promulgated, and it was
15 stated that if -- this morning if the licensee fell
16 into that bag, into the envelope, he could not ask
17 for a plant-specific backfit.

18 If the licensee felt, though, that
19 because of the number of parameters that have to
20 be considered in the generic analysis and that if
21 he took each one of these parameters, he came out
22 on the top or had a better benefit in each one of
23 these parameters, that he truly sees that there's
24 no safety concern at his plant, what process would

1 he use, when would he use it and who would he
2 go to?

3 MR. SNIEZEK: All right. Let me refer
4 that over to Bill Olmstead to answer from ELD.

5 MR. OLMSTEAD: Well, first of all, we
6 have to say is the generic requirement being pro-
7 posed by a rule making or is the generic requirement
8 proposed to be imposed by an order or amendment of
9 your license?

10 It's my position if it's by rule making,
11 your option is to file a comment in the rule
12 making on the backfit analysis and indicate how
13 that should not be applied to you. The staff is
14 then required to respond to all comments on the
15 rule making. They will have to specifically
16 address that. But generic rule making is generic
17 rule making is generic rule making. Once the
18 rule is promulgated, you don't get any more back-
19 fit analysis.

20 However, if it's imposed by order, the
21 licensee has a perfect right to demand a specific
22 backfit analysis for his plant. If he doesn't
23 get it, he has the process of challenging the
24 order in an individual proceeding.

1 MR. SNIEZEK: Bill, let me add to that.

2 Once the order is issued, he is then --
3 the hearing process, unless it's an immediately-
4 effective order, which in case he has to implement.
5 So the backfit analysis would have to come before
6 the order --

7 MR. OLMSTEAD: The backfit analysis
8 is a generic analysis in this example which would
9 have justified the issuance of the order; but that
10 does not deprive the applicant of his right to be
11 heard on his protest that 50.109 has been improperly
12 applied to him. And if the staff won't listen, he
13 has a perfect right to take this staff kicking and
14 screaming wherever he wants to take them.

15 MR. REYNOLDS: As Craig defined the
16 scenario, the plant is within the envelope of the
17 rule. If that's the case, I come back to what I
18 said this morning. This rule does not provide
19 any relief for that situation. Your relief will
20 be found under 50.12 of the regulation, the
21 exemption provisions.

22 This was a concept that we originally
23 drafted in NUBARG's proposed rule that had a two-
24 step process: first, a generic evaluation in the

1 rule making, and then a plant-specific evaluation
2 as the rule applies to each plant. That was
3 rejected by the Commission. So it really has
4 focused on that question and spoken.

5 My counsel would be that you belong in
6 50.12 in that scenario.

7 MR. OLMSTEAD: Only if it's promulgated
8 by rule making.

9 MR. REYNOLDS: That was the scenario he
10 postulated.

11 MR. OLMSTEAD: He didn't specify.

12 MR. REYNOLDS: Yes. He said it's a
13 generic rule.

14 MR. SNIEZEK: We agree it's only --

15 MR. CRAIG VEPREK: I was postulating the
16 rule making.

17 MR. OLMSTEAD: Very good.

18 MR. SNIEZEK: Other questions.

19 MR. MICHAEL McCORMACK: Mike McCormack
20 with Nuclear Power Services. Is the NRC gearing
21 up to handle what appears to be an increase in its
22 work load caused by the detailed backfit analysis
23 in the appeal or exception process, remembering
24 that the utilities need prompt resolutions, as

1 stated by Nick Reynolds?

2 MR. SNIEZEK: The NRC is not gearing up.
3 In fact, we believe the work load will decrease
4 because of this rule. We believe we're not going
5 to be spinning our wheels for many years -- months
6 or years thinking about something, spending
7 resources developing proposed changes. Instead,
8 it will be a cost-benefit analysis done earlier
9 on in the game; and when we find whether it worth-
10 while to do it or not, we'll make our determination
11 to terminate or continue early on, and that should
12 save in the long term staff resources. We hope
13 that's the way it works out.

14 MR. ANTHONY ZALLNICK: I have a question
15 regarding how the NRC would manage this internally.
16 I have a scenario here, if you will bear with me.

17 Let's assume that you have a safety issue
18 that you issue a bulletin on filing procedures and
19 requiring the licensees to do something and a
20 particular reviewer has maybe five or six plants
21 he's been reviewing. He decides this is an opportuni-
22 ty to get something he's always wanted which exceeds
23 the bulletin requirements.

24 So as the applicants come in one at a time,

1 he tells them he wants something done. And the
2 one plant comes back and files the letter and
3 says, "This is a backfit." You then review it
4 and found out yes, it is a backfit and not
5 only that, but it's not a warranted backfit.

6 Now, if none of the other plants have
7 yet identified this -- they're slower or whatever --
8 do you have -- have you considered an internal
9 management mechanism for you to tell those other
10 plants that that requirement is not applicable;
11 or is it up to them to be smart enough to identify
12 that themselves?

13 And I have a second part of that question.

14 Let's assume that after --

15 MR. SNIEZEK: Let's address this part
16 first.

17 MR. ANTHONY ZALLNICK: Okay.

18 MR. SNIEZEK: I'm going to ask some other
19 people to chime in. I'm going to give it first
20 cut.

21 First of all, a bulletin, unless it's
22 requiring something that is assuring complaints
23 with the regulations or commitment or it's to
24 address a no undue risk item, is by itself a backfit;

1 and it has to go through the CRGR.

2 MR. ANTHONY ZALLNICK: I said I assumed
3 you followed procedures on that part.

4 MR. SNIEZEK: That in itself is a back-
5 fit.

6 Now, the staff instructions are when
7 they did the review, it's supposed to be against
8 the items that are contained in the bulletin.
9 As it goes through the analysis that's presented
10 to the CRGR, the CRGR probes into how deep the
11 scope and depth of the review, basically. So
12 that's decided up front.

13 If in fact a reviewer is going beyond
14 the prescribed scope and depth of review, which
15 I'm going to assume he will not do -- he or she
16 will not do because the new philosophy is you don't
17 do those things -- that it is a backfit.

18 If the first plant identifies it and it
19 is called to the NRC's attention and it is decided
20 that it is a backfit, it is incumbent upon that
21 staff management, the section chief, branch chief,
22 division director to confer with that staff member
23 and knock it off on the other five or six plants.

24 But there is not a formal process that

1 we would then feed back to the other five plants
2 that says, "Hey, you don't have to do any more,
3 because normally there is no staff written cor-
4 respondence to those plants. It's all dialogue.
5 Normally the submittal is from the licensee and
6 the licensee says, "We're doing what's in the
7 bulletin" or "We're not doing what's in the bulletin.
8 Here's the three things we're not doing but we're
9 going to do this instead."

10 Remember, a bulletin is not a requirement.
11 So . . . Anybody on the staff want to address that
12 a little bit more?

13 MR. SCHWARTZ: No. I think you've got
14 it.

15 MR. SNIEZEK: I've obscured that enough.

16 MR. SCHWARTZ: No. What you're saying
17 is the system will work through the individual
18 management chain; that when it's perceived there
19 is a backfit and the individual reviewer, for one
20 reason or another, didn't recognize that he was
21 backfitting, and then it is found out by management
22 that he was, that the appropriate action will be
23 taken at that staff level; if not, further on up.

24 MR. SNIEZEK: Second part, Tony?

1 MR. ANTHONY ZALLNICK: I think it kind
2 of covered it a little bit.

3 I would assume the reviewers would
4 obviously not, you know, deviate from directions;
5 but assuming a reviewer came back a second time
6 after this had been done and told another plant
7 he wanted something, the same thing, and they
8 wrote a letter in, what types of actions do you
9 have, what type of management recourse do you have --
10 what I'm interested in, what type of discipline
11 are you thinking about in terms of internal NRC
12 management of the process?

13 MR. SCHWARTZ: Each of us have what
14 you call performance appraisals annually, and I
15 believe that part of the performance appraisal
16 is implementing the backfit regulation appropriately.

17 MR. MARAGLIA: I would say -- yes --

18 MR. SCHWARTZ: We deal with it every day
19 to make sure those things don't happen, but they
20 can.

21 MR. MARAGLIA: It would be the same
22 thing if your company, company policy wasn't
23 followed by someone in there.

24 MR. SCHWARTZ: Sure.

1 MR. MARAGLIA: You take care of it in
2 the management process, in the appraisal process,
3 and discipline is maintained at the staff. The
4 same kinds of mechanisms to maintain we have.

5 MR. SNIEZEK: We have to make the staff
6 aware of what is expected of them. Once we do
7 that, the management expects the staff to implement.
8 Through the backfit rule, through the manual
9 chapter, through the seminars we have with the
10 staff we are attempting to make sure the staff
11 understands what is expected of them in this area;
12 and from all indications we have, the staff is
13 receiving the message.

14 MR. SCHWARTZ: Uh-huh.

15 MR. SNIEZEK: Other questions.

16 MR. JAMES BYRNE: Jim Byrne from GPU.
17 I have a question. It's -- there's a regulatory
18 staff position out there between a licensee. Being
19 good licensees, we wish to satisfy. NRC comes
20 back and after some research or something changes
21 the staff position and the licensee decides, "Look
22 you have to change your staff position. We want
23 to change our commitment towards that position"
24 and we submit a request to make a change.

1 The NRC says, "No. We want you to live
2 with before."

3 Is something in that regard a backfit
4 based on change in staff position?

5 MR. SNIEZEK: If there was a previous
6 staff position you have committed to and NRC comes
7 out with a new staff position, now you want to
8 adopt a new staff position for whatever reason
9 to make you stay with your old staff position, is
10 not a backfit because we are making you abide
11 by a previous commitment.

12 Other questions?

13 MR. OLMSTEAD: Can I add to that?
14 Any application by the utility has to be dispensed
15 with. And so I would assume that it would not
16 be arbitrarily and capriciously denied.

17 MR. RICHARD LODWICK: Rick Lodwick,
18 Vermont Yankee. You have taken the position that
19 the original NRC position has to be well defined.
20 The words I heard were "typically in writing."

21 Does the subsequent NRC position that you
22 are using to come up with the statement of "this
23 may be a backfit" have to be well defined or can
24 the allegation be raised at a pre-decisional point?

1 In the licensing process you have a
2 series of negotiations with the staff. It is
3 entirely possible that we are aware that the
4 staff is considering in a pre-decisional mode
5 some position, if they made a decision, it would
6 be a backfit. We have the ability to raise the
7 backfit issue at that time, or must we wait until
8 a decision is rendered?

9 MR. SNIEZEK: I would recommend -- yes,
10 you have the ability to raise the backfit issue
11 at any time.

12 However, if you are in the process of
13 discussions with the staff, across-the-table
14 discussions and if it is very clear to you that
15 these really are discussions, give-and-take
16 discussions, and you feel that the staff is
17 leaning towards backfitting and you think the
18 backfit would be improper because it won't increase
19 safety, I would recommend you have oral discussions
20 with the manager in the office which is where your
21 negotiations and discussions are taking place.

22 I would not urge written backfit corres-
23 pondence for claims of backfit when the staff
24 really hasn't come down yet "This is going to be

1 our position."

2 However, if it's clear to you, even
3 though the staff hasn't put anything in writing,
4 by golly, you're going to have to do this and
5 they're twisting your arms, they -- when they
6 start twisting your arm, they're backfitting
7 because they're posing it on -- even though it
8 isn't in writing.

9 MR. MARAGLIA: I think the backfit
10 rule doesn't change the appeal process that's
11 been in existence in the agency for quite some
12 time.

13 The particular scenario that you just
14 outlined appears to me that there's ongoing dis-
15 cussions on agreement on technical resolutions
16 and you're not clear what the outcome yet is.
17 So that, you know -- I think you ought to be
18 encouraged to keep that dialogue going.

19 As Jim says, if you see the position
20 hardening and coming down, you can start appealing
21 you know. You could take the position that that
22 technical resolution appears to be unwarranted for
23 these kinds of reasons and could potentially
24 constitute a backfit. And I think that avenue

1 has been available to you even prior to the rule
2 and the manual chapter and would still be there.

3 MR. JOSEPH HEGNER: Joe Hegner, Virginia
4 Power. I've got a question for Tom Cox that has
5 some prudency implications that maybe Nick or
6 Jim Tourtellotte can help with.

7 In your definition of applicable regu-
8 latory staff positions, the third thing talks
9 about NRC staff positions generic and officially
10 approved. And I normally think of things like
11 standard review plan, branch technical position.
12 But it seems to me that there are other things
13 that effectively carry the same weight as an
14 officially-approved staff position. The best
15 example that comes to mind for me is in the fire
16 protection area.

17 About two years ago we had seminars
18 like this on trying to figure out what Appendix
19 R meant. During and after the workshops there
20 was guidance handled out with very exclusive,
21 almost predescriptive explanations of what the
22 staff was expecting, what the staff's position
23 was. There was a task force formed and I believe
24 a draft generic letter routed for comment that

1 never got issued as a generic letter. But at
2 the time that seems to be the staff's position.

3 Based on that, we evaluated our design,
4 made design changes and spent money. And I guess
5 I'm thinking of this from two points now. Was it
6 prudent for us to accept that as the staff's
7 position and make those design changes or should
8 we have waited?

9 And should the generic letter finally
10 come out, is it a change in the staff's position?
11 Let's say on a particular issue where they said
12 one thing in the draft and finally said another
13 in the final. We all recognized at the time it
14 was draft and there was a caveat I think at the
15 bottom that said, "This is draft." But it effect-
16 ively had the impact of the staff's position because
17 at the time the inspections were taking place, we
18 were under time constraints to meet the schedules
19 that were in the rule, and that seemed the prudent
20 way to go at the time.

21 Would something like that really be --
22 could I consider something like that to be the
23 staff's position?

24 MR. SNIEZEK: Let me address that for

1 starts.

2 You gave a good example. However, your
3 facts are a little wrong because that generic
4 letter was issued what? --on April 24th of this
5 year. It was just recently issued, Joe.

6 Assuming it wasn't issued, that was a
7 position that went through the staff process. It
8 went through CRGR and, as I recall, it was held
9 by the Commission. The Commission had to decide
10 on that.

11 MR. MARAGLIA: This particular generic
12 letter?

13 MR. SNIEZEK: Do you want to pick up
14 from there, Frank?

15 MR. MARAGLIA: But I think Joe's question,
16 Jim, is addressing the previous generic letter.
17 I'm trying to go back and . . . I thought there
18 was some sort of disclaimer on the use of that for
19 now. I thought when the task force was formed,
20 wasn't there some sort of information put out
21 saying that we're reexamining the guidance that
22 was discussed here and stand by for further notice?
23 Am I recalling that correctly?

24 MR. SNIEZEK: I don't recall --

1 MR. OLMSTEAD: No.

2 MR. SNIEZEK: However --

3 MR. OLMSTEAD: I think the prudence
4 question needs to be answered; but legally we were
5 attempting to keep those interpretations constant
6 between old plants and new plants. And what you
7 had is, you applied the backfit rule based on
8 establishing what your licensing baseline was.
9 Obviously licenses were being issued with Appendix
10 R interpretations incorporated in those licenses.
11 That became your licensing baseline. And I suspect
12 that would have been what was prudent to do, because
13 you obviously weren't going to hold the plant up
14 there at high interest rates while you were waiting
15 to find out when the Commission was going to
16 decide what the final interpretation was. Under
17 the backfit rule at the time you established your
18 licensing baseline, that was what you were required
19 to do to meet Appendix R. Any change from that
20 under the rule would be a change in interpretation
21 and be subject to the backfit analysis requirement
22 for your particular plant.

23 MR. JOSEPH HEGNER: Where we did something
24 in accordance with the draft generic letter because

1 this answered our particular question at the time
2 and I guess I ought to go back and read my mail --
3 if the interpretation in the generic letter that's
4 been issued now differs, can I make a case that
5 there is a change in the staff's position?

6 MR. OLMSTEAD: If it leads to a change
7 in your licensing baseline, you certainly could.
8 You could call for a backfit analysis.

9 Appendix P. for what were known as
10 near-term OLs and OLs was implemented by a license
11 conditions and tech specs. So that becomes your
12 compliance document for Appendix R, irrespective
13 of what's in the interpretations document.

14 MR. SNIEZEK: Let me just add one more
15 thought here.

16 The backfit analysis, generic backfit
17 analysis was done interpreting what had to be
18 done under Appendix R.

19 Your plant-specific proposal was accepted
20 at one time by the staff because your license was
21 issued. That is your licensing basis.

22 If someone is making you change now to
23 what's in the generic letter, although it was
24 approved generically, you could show or claim that

1 that did not apply to your plant because of the
2 special features of your plant.

3 MR. JOSEPH HEGNER: I didn't have any
4 problem what was in the draft generic letter. We
5 probably in several cases went ahead and did that.

6 My concern was -- would be that the
7 generic letter, as it's issued now, would say
8 instead of installing this, do something else.

9 MR. OLMSTEAD: I would like to get to
10 the prudence part because I think what you will
11 find what was in the draft letter was more re-
12 strictive than what the ultimate interpretation
13 was in the interpretations document.

14 The second part of your question that
15 Nick should answer is did you prudently incur
16 those expenses.

17 MR. RYENOLDS: It seemed to me we are
18 focusing on a specific set of facts when the issue
19 is more general than the facts that you specified.

20 The general answer to your question is
21 a generic letter is not binding on you; all right?
22 You have 50.49 with which you must comply. They
23 put their guidance on one way with which to comply
24 with that. You take that guidance and use it or

1 you can find another way to do it.

2 Where the hook comes in, when you have
3 a schedule to meet, a deadline in the rule, for
4 example, it's not unknown for the staff to put
5 out its final guidance until the deadline is past.
6 In that situation I would counsel you to go to the
7 staff, tell them what it is you're doing and basis
8 for what you're doing. If it's adopting their
9 draft position, say so. Document it in your files
10 so that when the prudency questions come, you have
11 the documentation there; and then after they change
12 their position, once you have spent your money, go
13 back to them and suggest to them that you shouldn't
14 change per their final requirements, and that same
15 story should prevail with the economic regulator
16 because you have a documented trail of what you
17 did and why it was reasonable at the time, par-
18 ticularly given the deadline. Now, if you have
19 no deadline, why would you rush to do anything
20 until the agency finalizes its position?

21 MR. JOSEPH HEGNER: Thank you.

22 MR. SNIEZEK: Other questions?

23 (No response)

24 MR. SNIEZEK: That tells me that everybody

1 now understands everything there is to know about
2 the backfit rule and its implementation.

3 Let me turn over to Don Edwards, then,
4 who has a few concluding remarks.

5 MR. EDWARDS: Jim and Tom, members of
6 the industry panel, we appreciate the opportunity
7 to present industry views. We appreciate your
8 attendance. We think by the large number of people
9 that are here that you agree with us this is
10 important.

11 I'd like to emphasize that this was a
12 combined workshop and that it was joint effort
13 required to put it together. There's going to
14 be joint effort required to implement the rule and
15 make it work.

16 I would urge as you go back home that
17 the warm fuzzies from the workshop, that you do
18 something besides reflect back on what we've said,
19 that you get your programs organized and you begin
20 to vigorously pursue the various aspects of this
21 rule that we've been discussing.

22 If there are questions, you need to get
23 a hold of somebody and ask about something that
24 you feel you need to resolve in development of

1 your program or another question about implemen-
2 tation, there are some contacts for you. That's
3 not in your package. I'm sorry.

4 That's it.

5 MR. SNIEZEK: As on the backfit decisions,
6 the NRC has a final say. I get a final say today,
7 also.

8 I believe the workshop has been very
9 successful in promoting the common understanding
10 of the backfit rule and the way the staff intends
11 to implement it, plus giving some advice, the
12 industry gave advice, industry representatives,
13 how in your management process. I believe ultim-
14 ately this backfit rule will enhance safety, which
15 is our common goal. The key I believe is open
16 communications at every level of the staff and
17 management.

18 As you know, we are changing our way of
19 doing business in the NRC in the backfit arena.
20 We are not going to change it overnight. It's
21 going to take time. We've talked about changing
22 the culture. That's what we're doing. We're changing
23 the culture as far as how we do business in this
24 area. We have 3600 people that we have to

1 rearrange their thought process somewhat on.

2 If you have any questions on the backfit
3 process, the process and how it is supposed to
4 proceed, feel free to call me at 301-598-66 --
5 I'm sorry. Wrong number. That's my home phone.
6 Do not feel free to call me there.

7 MR. SCHWARTZ: Ask your wife.

8 MR. SNIEZEK: 301-492-9704 or Tom Cox
9 at 301-492-4357. That's not his home phone number.

10 My concluding thought is: Remember,
11 backfit is not bad. It must be done in a disciplined
12 management process which is designed to ensure
13 continued protection of public health and safety.

14 Thank you for your participation.

15 (The workshop was concluded at 3:40 p.m.)

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REPORTER'S CERTIFICATE

I, NEITH D. ECKER, Registered Professional Reporter, do hereby certify that the workshop was reported by me in shorthand and transcribed under my personal direction and supervision, and is a true and correct transcript, to the best of my ability and understanding;

That I am not of counsel, not related to counsel or any parties hereto, and not in any way interested in the outcome of this matter.

Neith D. Ecker
NEITH D. ECKER, CP, CM

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Reporter

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