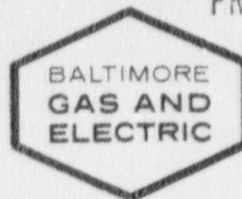


DOCKET NUMBER PR -00
PROPOSED RULE

(52 FR 34223)

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October 13, 1987

U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Docketing and Service Branch

SUBJECT: Calvert Cliffs Nuclear Power Plant
Unit Nos. 1 & 2; Docket Nos. 50-317 & 50-318
Revision of Backfitting Process for Power Reactors

Gentlemen:

The following comments are submitted by the Baltimore Gas and Electric Company in response to Federal Register Notice 52 FR 34223, dated September 10, 1987. This notice provided a proposed change to the Backfitting Section of 10 CFR Part 50.

We have reviewed the proposed revision and it appears to adequately conform Section 50.109 to the U. S. Court of Appeals (DC Circuit) decision in Union of Concerned Scientists v. NRC, Nos. 85-1757 and 86-1219, August 4, 1987. The Court concluded that the NRC may consider economic costs in determining whether to order backfits which provide safety improvements beyond the minimum needed for adequate protection of public health and safety. However, the Court was concerned that the vacated rule and Statements of Consideration did not clearly state the Commission's position regarding consideration of economic costs in imposing new or modified interpretations of what is necessary for adequate protection. The proposed revision serves to clarify the Commission's position that, in determining whether to adopt a backfit requirement, economic costs will be considered only when addressing backfits involving safety requirements beyond those needed to ensure the adequate protection of public health and safety. The Court has agreed with the Commission that, once an adequate level of safety protection has been achieved under Section 182 of the Atomic Energy Act, the Commission is authorized to consider and take economic costs into account in ordering further safety improvements.

Two changes to the proposed rule are recommended which would serve to further clarify the Backfitting Section and preserve the overall intent of the backfit rule. The first recommendation is to delete the exception in subsection 50.109(a)(4)(ii). There are two basic situations in which an exception to the backfitting rule should apply: first, where a plant falls below the existing baseline level of adequate protection and must be restored to that level; and second, where the Commission, with a rational supporting basis, finds that the existing baseline level of adequate protection must be raised. As to the first situation, the existing baseline of adequate protection is

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established by the current regulatory requirements and licensing basis applicable to the facility, applicable rules and orders of the Commission based upon which the facility was licensed, and binding licensee commitments. The second situation, in general, should only arise if significant new information comes to light or an event occurs which demonstrates that the existing baseline is no longer acceptable. Therefore, the "adequate protection" exception in subsection 50.109(a)(4)(ii) of the proposed rule appears to be redundant to subsections 50.109(a)(4)(i) and (iii).

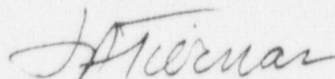
The second recommendation is to shift footnote 3, regarding documented evaluations of regulatory action, to the end of 50.109(a)(4), since these documented evaluations should apply to all exceptions. In addition, words should be added to the footnote which state that the documented evaluation shall address the appropriate factors, excluding economic costs, prescribed in subsection 50.109(c) for documenting backfit analyses.

In addition to the above changes, the exception provided in subsection 50.109(a)(4)(iii) should be clarified in the Statements of Consideration. This exception should apply only where regulatory action is necessary as a result of significant new information or the occurrence of an event which clearly demonstrates that the existing baseline standard is inadequate without the proposed modification. This follows from the presumption of safety that applies to plants that have been licensed after detailed NRC review and upon the definitive finding of safety required by the Atomic Energy Act.

In conclusion, the proposed rule, with the changes discussed above, should be adopted expeditiously. We have reviewed, and are in general accord with, the comments of the Nuclear Utility Backfitting and Reform Group.

Should you have any questions regarding this matter, we will be pleased to discuss them with you.

Very truly yours,



JAT/LSL/dlm

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