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## PUBLIC SUBMISSION

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**Docket:** NRC-2018-0142  
Backfitting, Forward Fitting, and Issue Finality Guidance

**Comment On:** NRC-2018-0142-0001  
Backfitting, Forward Fitting, and Issue Finality Guidance

**Document:** NRC-2018-0142-DRAFT-0010  
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### Submitter Information

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### General Comment

See attached.

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### Attachments

rkm comments -NUREG 1409

On March 23, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued for public comment draft NUREG-1409, "Backfitting Guidelines", Revision 1. Pursuant to 85 FR 29358, I am submitting the following comments on Draft NUREG-1409, "Backfitting Guidelines", Revision 1 (NRC-2018-0142).

Currently, **there are no clear definitions provided in NRC regulations or in any legally binding regulatory documents** concerning the definition of key terms such as "**licensing basis**" and "**staff positions**" used when backfit or forward fit actions are taken by the NRC in accordance with 10 CFR 50.109. **To use the backfit or forward fit process correctly and in accordance with 10 CFR 50.109 for nuclear power reactors, one has to have a clear understanding of these terms to perform a formal, systematic review to ensure that it has properly defined and justified the proposed backfit or forward fit action. Otherwise, both the NRC and the licensees will have various interpretations and ultimately result in an action contrary to protecting the health and safety of the public.**

Commented [KA1]: RM-01

1. The NUREG states in page 5-10 that "The NRC defines "current licensing basis" in 10 CFR 54.3, "Definitions." This definition is only applicable for use in the license renewal process and should not be used when determining the licensing basis for backfitting or forward fitting purposes." **Although this definition is provided in the context of aging management evaluations for license renewal, I don't see why the same definition and attributes could not be used under Part 50 context for establishing the licensing basis for the current operating nuclear power plants under Part 50 requirements.** The NUREG refers to LIC 100 in page 1-2 as "The Office of Nuclear Reactor Regulation (NRR) Office Instruction LIC-100, "Control of Licensing Bases for Operating Reactors," dated January 7, 2004, states that the licensing basis for a nuclear power reactor consists of three categories of information: (1) obligations (also referred to as regulatory requirements), which include regulations, orders, and the license; (2) mandated licensing basis documents (e.g., the updated final safety analysis report, quality assurance program); and (3) regulatory commitments."

Commented [KA2]: RM-02

In addition, I noted that NRC states in Inspection Manual Chapter 0326 - Operability Determinations & Functionality Assessments For Conditions Adverse to Quality," Section 03.01, Current Licensing Basis, that "The CLB is the set of NRC requirements applicable to a specific plant, plus a licensee's docketed and currently effective written commitments for ensuring compliance with, and operation within, applicable NRC requirements and the plant-specific design basis, including all modifications and additions to such commitments over the life of the facility operating license.

The set of NRC requirements applicable to a specific plant CLB include but are not limited to:

- a. NRC regulations in 10 CFR Parts 2, 19, 20, 21, 26, 30, 40, 50, 51, 52, 54, 55, 70, 72, 73, and 100 and appendices thereto.
- b. Commission orders.
- c. License conditions.
- d. Exemptions.
- e. Technical specifications.

f. Plant-specific design basis information defined in 10 CFR 50.2 and documented in the most recent UFSAR (as required by 10 CFR 50.71).

g. Licensee commitments remaining in effect that were made in docketed licensing correspondence (such as licensee responses to NRC bulletins, Licensee Event Reports, generic letters, and enforcement actions).

h. Licensee commitments documented in NRC safety evaluations,"

Therefore, the NRC must add a definition for "licensing basis" either in 10 CFR 50.2 or 10 CFR 50.109 or in any legally binding NRC document.

Commented [KA3]: RM-01

2. The NUREG states in page 1-6 that "Generic staff positions may be contained in documents such as regulatory guides, standard review plans, NUREGs, interim staff guidance, branch technical positions, and NRC endorsed-industry topical reports. However, these generic staff positions do not apply to individual licensees until or unless the licensee incorporates them into its licensing basis as a means for meeting or complying with a governing requirement, the NRC imposes generic positions on specific licensees through orders or rulemakings, or the NRC approves licensing actions involving the generic positions."

Concerning the discussion of staff positions, the NUREG should clearly articulate that the NRC staff's safety evaluations or inspection report statements are considered staff's views or opinions, but are not considered as staff positions part of a plant's licensing basis when staff prepares proposed backfit or forward fit actions.

Commented [KA4]: RM-03

Therefore, a clear definition for "staff position" must be provided similar to "licensing basis" as discussed above in 10 CFR 50.2 or 10 CFR 50.109 or in any legally binding NRC document.

Commented [KA5]: RM-01

3. Sections 2 and 3 of NUREG describe the criteria and questions to be answered when evaluating backfit and forward fit actions. To-date based on my experience, I have not seen a backfit evaluation or a backfit action that is considered acceptable to all stakeholders.

Therefore, as part of issuing this NUREG document, a sample of each forward fit and backfit evaluations as examples (all types of backfit) to illustrate and demonstrate how the NRC evaluates and document potential backfit and forward fit actions in accordance with 10 CFR 50.109 rule for power reactors.

Commented [KA6]: RM-04

4. In NUREG Section 1.4, staff states "PRA may aid the staff in quantifying the change in the overall protection of the public, but a PRA is not a singular basis for backfit or forward fit analyses or justifications. A quantitative estimate of risk is just one of the possible considerations that can support an integrated and risk-informed justification." The NUREG also states in page 2-11 under "Adequate Protection Determinations" Section that "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission" (NUREG/BR-0058) provide guidance on safety goal screening that the NRC staff could use to make a determination about adequate protection depending on the change in the CDF and the conditional containment failure probability." It should be pointed out in the NUREG as a Caution that although NUREG/BR-0058, Rev.5, ". . . regulatory initiatives involving new requirements to prevent core damage should result in a reduction of at least  $1 \times 10^{-5}$  in the estimated mean value CDF (i.e., the CDF before the proposed regulatory change should exceed the CDF after the change by at least  $1 \times 10^{-5}$ ) to support the decision to proceed with further analyses," NRC staff should not screen out potential backfit issue merely based on

risk. My review indicates that this risk threshold is too restrictive, because many of the regulations, the base CDF is in the range  $10^{-4}$  to  $10^{-5}$  and may not meet the initial risk screening for staff to impose any requirements via rulemaking/backfit processes. Hence the backfit process can never be implemented by the staff for any regulatory improvements for overall protection of the public (i.e., maintaining nuclear safety when operating experience and events reveal design bases issues). Therefore, the NRC staff should review this NUREG and NUREG/BR-0058 and provide further clarifications to meet the objective of these rules.

Commented [KA7]: RM-05

5. Section 5.5 of NUREG discusses enforcement sanctions, including orders other than "safety orders," notices of violation (NOVs) or non-cited violations (NCVs), when a licensee violates a legally binding requirement.

Recently, I noted examples of inconsistent understanding of NRC requirements and precedence among both the licensee and the NRC staff when a non-conservative plant's Technical Specifications (TS) issue is identified during an inspection. The question was whether this issue is an enforcement issue or a potential backfit issue. It should be noted that legally binding requirement is 10 CFR 50.36. Specifically, 10 CFR 50.36(c)(3), "Technical Specifications," requires that TSs include SRs, which are requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, **that facility operation will be within safety limits, and that the limiting conditions for operation will be met.** This is an enforcement issue and not a backfit issue. The NRC had issued Administrative Letter (AL) 98-10 which states "Imposing administrative controls in response to an improper or inadequate TS is considered an acceptable short-term corrective action. The staff expects that, following the imposition of administrative controls, an amendment to the TS, with appropriate justification and schedule, will be submitted in a timely fashion." Also, there are numerous precedences exist where licensees have submitted license amendment requests to correct the TS to comply with 10 CFR 50.36 requirements. This NUREG should provide sufficient clarifications concerning enforcement issues and enforcement matters that are outside the scope of backfit process.

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