



NRC RIC Session W13

Backfitting: Maintaining the Momentum

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 **U.S. NRC**
United States Nuclear Regulatory Commission
Protecting People and the Environment
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We have the NRC's Attention!

Improved Regulatory Frameworks for Rule Application

- Good focus on backfitting by the highest levels of NRC leadership.
 - More apparent focus on matters involving risk-significant regulatory/public health and safety instead of proving right/wrong should be applauded.
 - Revised (and improved) regulatory guidance.
 - MD 8.4.
 - Staff training modules.
 - Clarified CRGR roles and responsibilities.
 - Increased OGC awareness of potential regulatory implementation gaps.
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Areas Warranting Continuing Regulator Attention

- Preventing improved regulatory focus from becoming the “flavor of the month”.
 - Ensuring transparency of NRC management’s oversight of the inspection process’ interface with the backfit rule.
 - Monitoring HQ, inspector, and Region personnel to minimize regression to old ways of applying the rule.
 - Focusing on agency-wide consistency in issue approach and resolutions.
 - Protecting against inappropriate backfit ratcheting during the license amendment process.
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Industry Response Progress

- Continues to be a focus area for NEI.
 - Significantly improved working relationship between NEI, the NRC, and licensees regarding the topic.
 - Improved transparency.
 - Respect for differing perspectives.
 - Not using backfit as a basis for not doing “the right thing”.
 - Things have settled down a bit after the Exelon ruling regarding seeing a backfit around “every” noncompliance corner.
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Industry Progress: Present and Future

(Industry must also continue to raise the backfit knowledge bar)

- Licensee expertise regarding the backfit rule historically had occurred only after a licensee was faced with a significant regulatory event involving backfitting.
 - Industry knowledge of backfitting and its requirements has improved greatly and must keep pace.
 - Must maintain situational awareness by site points of contact with the NRC to prevent unintended consequences.
 - Interface between enforcement and the backfit rule may still be unclear to some licensees.
 - Grammar used in correspondence to the NRC can significantly change your backfitting posture.
 - Clarity regarding actual articulated regulatory positions versus intent, challenges backfit discussions.
 - Care should be taken to not just focus on supportive language without addressing contrary language on the same topic.
 - Be strategic: understand that an isolated commitment may significantly affect the validity of a backfit.
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Industry Progress: Present and Future

Takeaways

- Industry training:
 - Periodic training of licensee regulatory affairs/licensing organizations has continuing value.
 - Continuing attention to ensure that plant technical personnel, who are most likely to interface with NRC personnel, understand the rule and associated processes to the degree necessary.
 - Underreporting of backfit situations continues.
 - The cloudy licensing basis:
 - Remains problematic as plants age.
 - Can adversely impact the strength of a backfit claim.
 - When the licensing basis is unclear: fix it now or wait until it becomes a regulatory concern (backfitting debate may not be the best forum for correction).
 - “We have to choose our battles”:
 - While acknowledging this statement (which I am frequently told), backfitting discussions do not require that licensees and the NRC go to their respective corners and slug it out.
 - Win-win solutions without lengthy legal or regulatory “battles” are desired and are realistically possible.
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Glass half-full

- When the industry and NRC personnel on the front lines (and in HQ) can have cordial discussions on potential backfitting matters without either group feeling threatened, real progress can be claimed.
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Biography



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Thomas C. Poindexter represents nuclear energy clients in licensing, regulatory, and adjudicatory matters before the Nuclear Regulatory Commission (NRC) and the US Department of Energy (DOE). Trained as a nuclear engineer, he has served on several nuclear oversight committees for US utilities with nuclear power facilities, and currently assists nuclear power plants and material licensees in recovering from regulatory, investigation, and enforcement problems. Tom also focuses on emergent issue response, facility performance situations, and regulatory strategic planning.