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Mr. Joseph A. Murphy
Chairman, Committee to Review Generic Requirements
U.S. Nuclear Regulatory Commission
Mail Stop 4 A9
Washington, D.C. 20555-0001

Re: Role of Committee to Review Generic Requirements

Dear Mr. Murphy:

During the panel discussion on the role of the Committee to Review Generic Requirements (CRGR) at the recent NEI Licensing Information Forum, we offered certain suggestions on how the role of CRGR could be enhanced in a way that will help promote the NRC's four performance goals. We wanted to take this opportunity to follow up on our suggestions more formally on behalf of the Nuclear Regulatory Services Group (NRSRG), to whom we serve as counsel. The NRSRG is a consortium of seven power reactor licensees, which together own or operate 32 of the operating plants in the United States. These licensees have been actively involved over the years with the application of the NRC's backfitting rule, 10 C.F.R. § 50.109, and with the critical role played by CRGR in ensuring that proposed new generic requirements satisfy the standards of the rule.

Suggested Enhancements to CRGR Function

As we noted at the NEI Licensing Information Forum, two specific changes could be made that would enhance CRGR's function consistent with the NRC's four performance goals.

1. Open CRGR Meetings to Participation by Licensees and the Public

Historically, CRGR meetings have been closed on the grounds that CRGR is an internal Staff review body. Because CRGR meetings are closed, licensees and the public do not usually

receive timely information on issues identified by CRGR concerning proposed new generic requirements, and the Committee does not receive input directly from licensees who will be most affected by the proposed requirement. As a result, the CRGR process is not always transparent. Furthermore, the ability of licensees and the public to provide input to CRGR would help the Committee in accomplishing one of its central purposes – i.e., assessing the *cost impact* of new generic requirements and ensuring that the implementation *schedule* is realistic and coordinated with other ongoing requirements.

Opening CRGR meetings would quite clearly further the NRC's four performance goals. Public confidence would be enhanced by making the CRGR process more transparent. Licensees and the public would also have a better opportunity to provide meaningful input directly to CRGR on the need for and impact of proposed new requirements. This would help the NRC avoid unnecessary regulatory burden and ensure that proposed new generic requirements are efficient and effective, while maintaining safety.

2. Provide a Greater Role for CRGR on Plant-specific Backfits

Because of its central role in enforcing the backfitting rule for generic backfits, CRGR and its staff have developed considerable expertise on the application of the backfitting rule in practice. In recognition of this expertise, NRC management has occasionally relied on CRGR to provide expert assistance on backfitting appeals. At the NEI Licensing Information Forum, we suggested that when a licensee or the Staff identifies a *potential* backfitting issue, CRGR could be requested to advise NRC line management on whether the issue involves a new Staff position and, if so, how it should be handled consistent with Section 50.109.

For example, during an NRC inspection, if an issue arose that the licensee considered a potential backfit, it could so inform the inspection Staff, which in turn could seek advice from CRGR on the backfitting issue. Similarly, as discussed below, when findings are made as part of the new Reactor Oversight Process that go beyond compliance with the plant's current licensing basis, CRGR could be consulted to ensure that any regulatory action is consistent with Section 50.109. Such involvement of CRGR in plant-specific backfitting issues would provide a quicker and easier way for NRC management to address potential backfitting issues without the need for a formal written backfitting claim or appeal, a process that can take up considerable licensee and Staff resources.

As part of an expanded role, CRGR could periodically audit plant-specific documents (e.g., Inspection Reports, Requests for Additional Information, and Technical Interface Assistance documents) to identify any backfitting implications. Based on its findings, CRGR could then provide feedback to line management and the Staff on any potential new Staff positions that may have been imposed, inadvertently or otherwise, and use its findings in training provided to the Staff on the backfitting process.

Again, this reform would further the NRC's performance goals. By ensuring that Staff positions imposed on individual plants are properly justified and consistent with the standards of

Section 50.109, safety will be maintained, unnecessary regulatory burden will be avoided, and regulation will remain efficient and effective. Public confidence will also be enhanced by providing a more systematic method for overseeing the application of the Commission's backfitting policy in plant-specific cases. Although the NRC has initiated significant reforms in the past few years, many licensees still report that they experience problems with "regulation by inspection" and the imposition of new Staff positions during plant-specific reviews. Accordingly, greater CRGR involvement in the plant-specific backfitting process would be beneficial. In view of the reduction in the number of generic communications and other generic requirements in recent years, it would seem that this expansion of CRGR's role could be accomplished within current resource constraints.

Role of the Backfitting Rule in Risk-informed Regulation

A more fundamental issue we addressed during our presentation at the NEI Licensing Information Forum was the challenge that risk-informed regulation will present from a backfitting perspective. Under the revised Reactor Oversight Process, compliance with the plant's licensing basis is only part of the analysis of findings. Risk evaluations of findings that do not constitute violations may give rise to additional safety concerns on the Staff's part. In our view, the backfitting rule provides the appropriate standards by which to assess the need to include elimination of such findings in the plant's corrective action program or the need for any other regulatory action in response to the findings.

Under Section 50.109(a)(3), the NRC must perform a systematic and documented analysis to determine whether proposed backfits would result in a "substantial" increase in overall safety and be cost-justified. Under the revised Reactor Oversight Process, for a proposed regulatory action in response to a risk-significant finding that does not constitute a violation, the backfitting rule can be applied in assessing whether the action is properly justified. Matters of adequate protection and compliance would still be handled under the exceptions to the backfitting rule in 10 C.F.R. § 50.109(a)(4). For proposed regulatory actions under other circumstances, the standards of the backfitting rule should apply in determining whether any proposed regulatory action would represent a cost-justified substantial safety enhancement.¹

The application of the backfitting rule in a risk-informed regime is entirely consistent with the NRC's four performance goals. In fact, those goals would be enhanced by a backfitting analysis of proposed regulatory actions based on risk significance. The analysis of a "substantial safety enhancement" directly shows whether safety is maintained. The cost-benefit analysis required by the backfitting rule would also reveal whether proposed regulatory action is efficient and effective or whether it creates an unnecessary regulatory burden. Finally, the use of the objective standards of Section 50.109 to assess proposed changes would enhance public confidence by providing discipline in the regulatory process, thereby promoting stability and

¹ To the extent that the NRC requires a licensee to include in its corrective action program a finding that is not a violation and has not been subjected to a backfitting analysis, such an NRC requirement could constitute a violation of the backfitting rule.

predictability as the NRC moves to a risk-informed regulatory regime where compliance with prescriptive requirements is not the final end point.

Thus, the backfitting rule provides an important tool for the NRC to use in addressing proposed regulatory change in a risk-informed era. CRGR should have a central role in ensuring that the backfitting rule is properly and consistently applied under risk-informed regulation.

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We appreciate the opportunity to present these comments. Should you have any questions or like further information, please do not hesitate to contact us.

Sincerely,



Daniel F. Stenger
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Counsel to the Nuclear Regulatory
Services Group

cc: Chairman Richard A. Meserve
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