

April 25, 2002

MEMORANDUM TO: John A. Zwolinski, Director
Division of Licensing and Project Management
Office of Nuclear Reactor Regulation

FROM: Farouk Eltawila, Director **/RA/**
Division of Systems Analysis and Regulatory Effectiveness
Office of Nuclear Regulatory Research

SUBJECT: PLANT-SPECIFIC BACKFIT AUDIT REPORT

An Office of Nuclear Regulatory Research (RES) audit report on plant-specific backfit is attached. This report takes into consideration comments received from the Office of Nuclear Reactor Regulation (NRR), Office of the General Counsel, and the Regional Offices. As discussed with the Nuclear Energy Institute (NEI) at previous public meetings, a copy of this report will also be made publicly available at this time so that other stakeholders have an opportunity to provide their comments.

We are issuing this report to provide NRR and the public with the opportunity to comment on the NEI issues and on the RES findings contained in the audit report. Comments, if any, will then be included with RES's audit report (for example, as an attachment) in the audit close-out package. If you intend to provide NRR comments for inclusion in the report, it would be appreciated if they could be provided by June 3, 2002.

The auditors assessed the agency's implementation of the plant-specific backfitting process. This process is described in NUREG-1409, "Backfitting Guidelines," July 1990, and implemented by various office procedures or instructions. As described in NUREG-1409, new generic positions in documents, such as generic letters, bulletins, and regulatory guides, as well as plant-specific positions, are to be considered and justified as backfits before they are issued; even though, as a legal matter, the backfit rule does not strictly apply until the point at which a backfit is required by, for example, a rule or an order.

Overall, the audit team found that the plant-specific backfit process has performed its intended function. The process has brought order, discipline, and predictability to agency activities. Plant-specific backfits were considered, in nearly all cases, to be properly justified and suitably defined. The auditors acknowledge the merit of the examples and concerns raised by the NEI. However, given the vast number of interactions and communications with licensees, the very small number of backfit appeals, and the very small number of identified cases where agency backfit guidance may not have been fully implemented, the auditors conclude that the plant-specific backfit process is effective in performing its intended function.

Attachment: As stated

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