

June 19, 2012

Mr. Anthony R. Pietrangelo
Senior Vice President and
Chief Nuclear Officer
Nuclear Energy Institute
1776 I Street N.W., Suite 400
Washington, DC 20006-3708

Dear Mr. Pietrangelo,

This letter responds to your November 14, 2011, correspondence, "Nuclear Energy Institute Comments in Support of Southern Company Backfit Appeal" (Agencywide Document Access and Management System (ADAMS) Accession No. ML11319A049). In consideration of the Southern Nuclear Operating Company (SNC) appeal, I forwarded the issue to an independent Backfit Appeal Panel that reviewed the facts surrounding the subject matter. The Panel completed its review, and I have considered, and agree with their findings. Enclosed is my response to SNC, which provides additional detail on the staff's position that a backfit exception is appropriate to address the degraded voltage scenario issue at the Hatch Nuclear Plant (HNP).

Your letter supported SNC's technical reasons for the appropriateness of the HNP's degraded voltage scheme and claimed that the regulations do not expressly prohibit manual actions. I believe the letter to the licensee addresses those points. You further state that the staff's application of the backfit rule's compliance exception "would cover virtually every situation," and "swallows the backfit rule whole." You also indicate the staff's use of the compliance exception in this case is inconsistent with the agency's "Principles of Good Regulation." Finally, you refer to recent guidance to the staff from the Commission on the cumulative effects of the agency's regulatory activities as further support for your request "that the staff perform a cost-justified substantial increase analysis" in accordance with the backfit rule.

The Panel carefully considered the concerns SNC raised, as supplemented by your letter, about the use of the compliance exception in the backfit rule. Although your characterization of the use of the compliance exception raises concerns that it will be used to overturn prior staff analyses due to subsequent changes in viewpoints, that is not the case here. Your characterization does not recognize the underlying factual details involved in the prior plant-specific position that the staff is now changing. Your characterization recognizes that the staff performed a detailed analysis to support its approval of the 1995 license amendment, but it does not recognize that both the licensee and the staff did not correctly identify all of the applicable regulations and did not properly consider the amendment application under the exemption criteria of Title 10 of the *Code of Federal Regulations* (10 CFR) 50.12, "Specific Exemptions." Despite its detailed analysis to support granting the 1995 license amendment, the staff's approval was an error that resulted in noncompliance with the NRC regulations. It is also significant to note that the NRC's use of the backfit compliance exception historically has been reserved for appropriate situations; the history of its use does not support your assertion that the

compliance exception will “swallow the backfit rule whole.” Based on the mistakes identified in relation to the Hatch appeal, the staff does not consider the compliance exception to be expanded due to this situation. In your letter, you reference the NRC’s activities to address the Cumulative Effects of Regulation (CER). As noted in SECY-11-0032, “Consideration of the Cumulative Effects of Regulation in the Rulemaking Process,” dated March 2, 2011 (ADAMS Accession No. ML110190027), “once the NRC has determined that the new or amended requirements meet the backfit requirements for imposition on licensees, mitigation of CER concerns associated with new rule requirements will be accomplished, if appropriate to do so, by providing licensees more time to implement new or amended requirements. In other words, CER mitigation will not be achieved through a reduction or elimination of requirements that the Commission judges to be appropriate for imposition on licensees.” As such, the activities surrounding the degraded voltage scenario issue at HNP are not in conflict with the NRC’s CER principles.

In summary, although the NRC made an error in approving the use of manual actions through the 1995 license amendment addressing the HNP degraded voltage scenario, the agency considers the application of the backfit rule, and the compliance exception, appropriate in this situation.

Sincerely,

/RA by Michael R. Johnson for/

R. W. Borchardt
Executive Director
for Operations

Enclosure:
As stated

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