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October 27, 1983

Mr. Samuel J. Chilk  
Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Chief, Docketing and  
Service Branch

Comments of the Utility Safety Classification  
Group on the ANPR for the Backfitting Rulemaking  
(48 Fed. Reg. 44217)

Dear Mr. Chilk:

The Commission published in the Federal Register an advance notice of proposed rulemaking (ANPR) on the revision of the backfitting process for nuclear reactors, 48 Fed. Reg. 44217 (September 28, 1983). This rulemaking would establish requirements for the long-term management of the NRC's process for imposing new regulatory requirements for power reactors. The notice invited interested persons to submit written comments and suggestions by October 28, 1983. This letter will provide the comments, in response to the ANPR, of the Utility Safety Classification Group.

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Although various members of the Utility Group will submit additional comments on this ANPR either individually or as members of other organizations interested in the backfitting rulemaking, these comments are intended to focus on the relationship between the safety classification issue and the backfitting rulemaking. In particular, the safety classification issue provides a useful example to consider in developing an appropriate definition for "backfitting." Other pertinent examples, such as the administrative requirements contained in NUREG-0737, also demonstrate the need for the broad definition of backfitting suggested in this letter. These other examples will not be addressed by the Utility Group but should be considered in the rulemaking.

#### Utility Safety Classification Group

The Group is composed of 38 electric utility companies that have among them over seventy nuclear reactors currently in operation or under construction. A list of the Utility Group's members is attached.

The Utility Group's interest, and indeed its purpose of existence, is the issue of the NRC Staff's efforts to change certain definitions used in systems classification. The regulatory terms "safety related" and "important to safety" have been used synonymously by industry and the NRC over many years of plant design, construction, licensing and operation.

Construction permits and operating licenses have been issued based on licensee commitments to and NRC acceptance of the synonymous use of these terms. The Utility Group believes that recent NRC Staff actions signal a sharp departure from this long-standing definition of the term "important to safety" to cover a much broader and undefined set of plant structures, systems and components than is covered by the term "safety related." The Utility Group's concerns have been set out in detail in a letter from its counsel to William J. Dircks dated August 26, 1983.

The impetus for the NRC Staff's efforts to expand the definition of "important to safety" seems to be a desire to expand some measure of design and quality regulation beyond "safety related" equipment. It is important to note that while variations exist in the details of practice, industry as a whole has generally applied design and quality standards to non-safety related structures, systems and components in a manner commensurate with the functions of such items in the overall safety and operation of the plant. The Utility Group is confident that these measures do adequately ensure that non-safety related equipment will perform its intended function.

Despite the existing measures applied to non-safety related structures, systems and components, redefining "important to safety" without proper review will have far-reaching, pervasive consequences for licensing and general regulation of nuclear plants, particularly for operating plants. Specifically, given the extensive use of the term "important to safety" in the Commission's regulations and Staff regulatory guides, NUREG documents and other licensing documents, as well as licensee submittals, the result of this sharp departure from the long-standing definition of this term would be a largely unexamined and perhaps unintended expansion of the scope of the above documents. Consequently, the Group is intensely interested in Commission efforts to control the imposition of new regulatory requirements.

The Relationship of the Safety Classification  
Issue to the Backfitting Rulemaking

Question 1.a of the ANPR asks, in essence, whether backfitting management measures should apply to proposed hardware changes or whether the term should be more broadly defined to encompass other activities associated with a nuclear power plant. The Utility Group urges the Commission to define "backfitting" to encompass any change in a regulatory requirement or its implementation which results in any change in the design, construction, testing or operation of a nuclear power



plant for which a construction permit or operating license has been issued. A narrower definition of "backfitting" would only partially accomplish the rulemaking's goal of injecting rational management into the process of imposing new regulatory requirements.

In the case of safety classification, the widespread use of the term "important to safety" throughout the Commission's regulations, Staff regulatory guides, NUREG documents and other licensing documents means that any change in the definition of "important to safety" would have ramifications well beyond the imposition of new hardware requirements. Such a change could, for example, affect such activities as quality assurance programs, seismic and environmental qualification programs and training programs. Changes in these and other programs are certain to entail extensive expenditures of utility resources. Thus, at a minimum there is an impact that should be weighed against the corresponding benefits. Moreover, because utility resources are finite, changes in such programs may well result in a dilution or diversion of a utility's resources with a potential corresponding decrease in safety. Consequently, it makes sense to give the term "backfitting" a broad interpretation to ensure that all aspects of the imposition of new requirements, whether the result of new regulations or the clarification or interpretation of existing regulations, are effectively scrutinized.

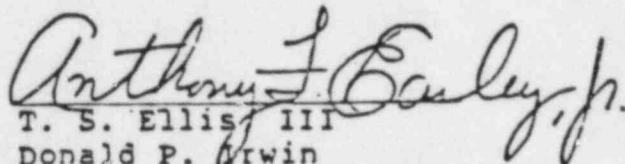
The Utility Group also urges the Commission to give a broad interpretation to what is considered a "new requirement" in any revised backfitting rule. Question 1.b. of the ANPR asks whether the Commission's interim directions to the NRC Staff provide a useful approach. These interim directions define a backfit as a proposed new staff position or a proposed change in an existing staff position. The Utility Group believes that these directions should be expanded to include instances in which the Staff "clarifies" or "reinterprets" existing staff positions or NRC regulations. The safety classification issue provides a good example of why this should be so.

The present issue was framed by a November 20, 1981 memorandum from NRR Director Harold Denton to all NRR personnel. This memorandum which has never been circulated for public comment and which argues that the category "important to safety" is broader than "safety related" (or "safety grade"), disclaims any intent to alter existing regulatory requirements. Although the Utility Group believes that the NRC Staff's effort to expand the definition of "important to safety" is an attempt to change the meaning of a regulatory term without benefit of rulemaking or other appropriate procedure, some Staff members do not agree. According to them it is merely a "clarification" of the definition of important to safety. Despite the

disclaimer and the characterization, revision of the definition of "important to safety" to make it a broader category than "safety related" could have far-reaching, pervasive consequences for the licensing and general regulation of nuclear plants. Thus, clarifications of existing staff positions or new interpretations should be included within any definition of "backfitting."

We hope these comments prove helpful. We will be happy to provide further information if you wish.

Sincerely yours,

  
T. S. Ellis, III  
Donald P. Erwin  
Anthony F. Earley, Jr.

Counsel for Utility Safety  
Classification Group

Attachment

cc: Chairman Nunzio J. Palladino  
Commissioner James K. Asselstine  
- Commissioner Frederick Bernthal  
Commissioner Victor Gilinsky  
Commissioner Thomas M. Roberts  
William J. Dircks  
Herzel H.E. Plaine, Esq.

## UTILITY SAFETY CLASSIFICATION GROUP

Arkansas Power & Light Co.  
(representing also Mississippi Power &  
Light, and Louisiana Power & Light)  
Baltimore Gas & Electric Co.  
Cincinnati Gas & Electric Co.  
Cleveland Electric Illuminating Co.  
Commonwealth Edison Co.  
Consolidated Edison Company of New York  
Consumers Power Co.  
Detroit Edison Co.  
Florida Power Corp.  
Florida Power & Light Co.  
Gulf States Utility Co.  
Illinois Power Co.  
Long Island Lighting Co.  
Nebraska Public Power District  
Niagara Mohawk Power Corp.  
Northeast Utilities Service Co.  
Northern States Power Co.  
Omaha Public Power District  
Pacific Gas & Electric Co.  
Pennsylvania Power & Light Co.  
Public Service Company of Indiana  
Public Service Company of New Hampshire  
(representing also the Yankee Atomic Electric  
Power Company, Maine Yankee Atomic Power Co.  
and Vermont Yankee Nuclear Power Co.)  
Public Service Electric & Gas Co.  
Rochester Gas & Electric Corp.  
Southern California Edison Co.  
Sacramento Municipal Utility District  
SNUPPS  
(representing Union Electric Co., Kansas Gas &  
Electric Co., Kansas City Power & Light Co.,  
and Kansas Electric Power Coop., Inc.)  
Toledo Edison Co.  
Wisconsin Electric Power Co.  
Wisconsin Public Service Corp.