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February 28, 1997

U.S. Nuclear Regulatory Commission
Rules Review and Directives Branch
Mail Stop T-6D-69
Washington, D.C. 20555-0001

**RE: Comments on Proposed Generic Communication; Effectiveness of Ultrasonic Testing Systems In Inservice Inspection Programs, 61 Federal Register 69,120 (December 31, 1996)**

ATTN: Chief, Rules Review and Directives Branch

On December 31, 1996, the Nuclear Regulatory Commission (NRC) issued the above-captioned proposed generic communication for public comment. Provided below are the comments of the Nuclear Utility Backfitting and Reform Group (NUBARG).[1] These comments concern the backfitting implications of the proposed generic communication. We support NEI's broader comments on the proposed Generic Letter.

Regulations for the conduct of inservice inspection of certain components and systems in nuclear power plants are given in 10 CFR §50.55a, "Codes and Standards." Section 50.55a incorporates by reference[2] Section III and Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (the Code). The latest edition of Section III and Section XI of the Code incorporated by reference in paragraph (b) of §50.55a is the 1989 Edition. The Code is a set of prescriptive rules for conducting a variety of activities to ensure the integrity of pressure-retaining components and systems. Sections of the Code include requirements for the qualification of nondestructive examiners and the rules for performing ultrasonic testing.

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[1] NUBARG is a consortium of 16 utilities formed in the early 1980s, which participated actively in the development of the NRC's backfitting rule (10 C.F.R. §50.109) in 1985, and which has closely monitored the NRC's application of the rule since that time.

[2] The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register and the material, like any other properly issued regulation, has the force of law. *See* 5 U.S.C. § 552(a).

Accordingly, licensees subject to these regulations must comply with the ASME Code requirements for examiners and testing unless they have NRC approval of alternatives to these requirements or relief from those requirements that are impractical.

Proposed Generic Communication "Effectiveness of Ultrasonic Testing Systems in Inservice Inspection Programs," was published in the *Federal Register* on December 31, 1996 (*see* 61 *Federal Register* 69120 - 69124). One purpose of the proposed Generic Letter would be to inform addressees of certain issues related to the effectiveness of ultrasonic examinations of reactor vessels and piping for reliably detecting and sizing flaws. The backfit discussion section of the proposed Generic Letter indicates that it is an information request to determine if licensees are taking appropriate action to qualify future ultrasonic testing examinations. It states further that "[t]o the extent that the actions requested in this letter may result in corrective actions taken by addressees that are considered backfits, the backfits are justified under the compliance exception of the backfit rule, i.e., 10 CFR 50.109(a)(4)(i)."

In promulgating the backfitting rule, the NRC stated that "[t]he compliance exception is intended to address situations in which the licensee has failed to meet known and established standards of the Commission because of omission or mistake of fact. It should be noted that new or modified interpretations of what constitutes compliance would not fall within the exception and would require a backfit analysis and application of the standard."[3] The backfit discussion in the proposed Generic Letter fails to identify the specific requirements licensees are failing to meet for conducting ultrasonic testing; accordingly, use of the compliance exception is completely unjustified.

NUBARG believes that the proposed Generic Letter represents a new staff position on what constitutes compliance with the regulations, and as such, a backfitting analysis must be performed in accordance with paragraph (a)(3) of Section 50.109. The proposed Generic Letter would request that licensees submit information to justify certain aspects of existing inservice inspection programs that are implemented according to the requirements of Section 50.55a, and by reference, the ASME Code. The proposed Generic Letter references 10 CFR 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," as the basis for a compliance exception to the backfit provisions of 10 CFR §50.109. Specifically, Criterion XVI, "Corrective Action," and Criterion II, "Quality Assurance Program," are referenced in the proposed Generic Letter. Based on referencing these criteria of Appendix B, the proposed Generic Letter implies that nondestructive examiners are not proficient, that ultrasonic testing systems are unreliable, and that licensees could fail to identify flaws that require corrective action unless

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[3] 50 *Federal Register* 38103, September 20, 1985.

Appendix VIII[4] techniques are used.

In this regard, the proposed Generic Letter implies that the existing requirements of Section 50.55a may not be adequate to detect and size flaws and take corrective actions to ensure the integrity of the reactor coolant system and the emergency core cooling systems. While the proposed Generic Letter purports to be a request for information, it implies that if licensees fail to take action to improve the ultrasonic testing techniques used to conduct their inservice inspection program, they are subject to NRC enforcement actions based on the referenced criteria of Appendix B. As stated in the proposed Generic Letter:

> For addressees that fail to have or implement appropriate qualification methods for future UT examinations where subsequent inspections find previously unidentified or improperly dispositioned flaws, the staff will consider whether such circumstances (a) are the result of failing to adequately take into account the need for special controls, skills, and training needed to ensure suitable proficiency in the conduct of UT examinations contrary to the requirements of Criterion II, "Quality Assurance Program," of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing," of 10 CFR Part 50; and/or (b) represent inadequate corrective action for known inadequacies contrary to the requirements of Criterion XVI, "Corrective Action," of Appendix B, of 10 CFR Part 50.

The proposed Generic Letter thus imposes new positions for ultrasonic testing systems from later editions of the ASME Code which are not yet incorporated by reference into Section 50.55a, and which are, therefore, not yet generically approved by the NRC. If licensees meet the requirements specified in Section 50.55a and the ASME Code, and these requirements are properly implemented in plant procedures, they should not be put into the position of having to justify the adequacy of the ASME Code each time new technology is developed that improves an inspection process. Such an action is clearly more than an information request.

With respect to citing Appendix B criteria as the basis for a compliance backfit exception, full compliance with the more specific requirements of Section 50.55a should be adequate to ensure compliance with Appendix B. This position is clearly supported in NRC Inspection Manual Part 9900: 10 CFR Guidance, "10 CFR 50, Appendix B, Criterion II, Maintenance of

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[4] Appendix VIII is an appendix to Section XI of the ASME Code. It was first added in the 1989 Addenda to the Code and replaced certain requirements for the performance of ultrasonic testing. It is a performance demonstration standard and the requirements are not one-for-one replacements of the current requirements. Thus, implementation of Appendix VIII in addition to compliance with current requirements creates a mix of prescriptive and performance-based requirements that would make it impractical for licensees to attempt to meet.

Proficiency for Personnel Performing Activities Affecting Quality," where the NRC Staff Position states (emphasis added):

> ***Except as otherwise clarified by NRC regulations***, guidance, or conditions of a license for specific job descriptions or activities, licensee QA programs should have instructions comparable to the following for ensuring that all individuals who perform activities affecting the quality of the installation or operation of a nuclear power plant have maintained the required proficiency. . . .

The NRC requires the use of the more specific requirements of the ASME Code in Criterion IX, "Control of Special Processes," which says that measures are to be established to assure that nondestructive testing is controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes and standards. Licensees meet this criterion through the application of the ASME Code in accordance with Section 50.55a.

Implying that Appendix B criteria supersede or override the more specific requirements in Section 50.55a and the ASME Code appears to imply that industry consensus standards are inadequate to ensure the quality of activities conducted in accordance with the standards. If this is the case, the NRC must conduct rulemaking to specify adequate requirements in the specific regulations for an activity such as inservice inspection. The criteria specified in Appendix B are too general to provide the necessary requirements on the proficiency of nondestructive examiners and the adequacy of ultrasonic testing examinations; rather, Appendix B criteria provide general guidance for quality assurance programs as oversight of specific activities. NRC inspection of a licensee's inservice inspection program is structured to ensure that the activities are adequate to meet the requirements of Section 50.55a. For these reasons, NUBARG does not agree with the use of Appendix B criteria as a basis to invoke the compliance exception to Section 50.109.

NUBARG also believes that the proposed Generic Letter would circumvent the rulemaking process. Requirements of later editions of the ASME Code are imposed through incorporation by reference into Section 50.55a, which is accomplished by rulemaking. Licensees are required by Section 50.55a to update their inservice inspection programs every 120 months to later editions of the ASME Code incorporated by reference in Section 50.55a. The underlying premise of the adequacy of this process was stated in the NRC Statement of Considerations when the inservice inspection interval was changed from 40 months to 120 months:

> The interval for revising inservice inspection programs for operating plants is extended from 40 . . . months to 120 months. Such a change makes the regulation more practical to implement and saves time and effort for both the NRC and the licensee without an increased risk to the public health and safety. Extending the period for revising the program is not considered a significant relaxation of safety requirements since Section XI is a relatively mature code and new code changes

> generally deal with practical considerations of implementation or the application of new developments. New code changes do not normally modify the safety aspects of the code.[5]

The NRC has a process for imposing requirements of later editions of the ASME Code through rulemaking and accelerating the schedule for implementation prior to the periodic update required by Section 50.55a. For example, requirements of the 1989 Edition of the ASME Code related to inspection of reactor vessels in 10 CFR 50.55a(g)(6)(ii)(A) were imposed on an accelerated schedule.[6] If the NRC believes that requirements of Section 50.55a are not adequate for ultrasonic testing systems, the NRC must follow the rulemaking process, with proper incorporation by reference of Appendix VIII, for imposing new requirements that it believes are necessary.

In fact, it is ironic that a licensee cannot implement Appendix VIII without NRC approval according to the provisions of 10 CFR §50.55a. The proposed Generic Letter would appear to put licensees in an out-of-compliance position if they unilaterally adopt Appendix VIII for conducting ultrasonic examinations.[7] To meet the recommendations of the proposed Generic Letter, a licensee would have to seek NRC approval through a relief request. The proposed Generic Letter ignores the fact that licensees must comply with the requirements for ultrasonic testing currently in the ASME Code editions used by licensees for inservice inspection programs in accordance with Section 50.55a.

NUBARG believes that the untenable position in the proposed Generic Letter is also contradictory to the requirements of Public Law 104-113 which codified OMB Circular A-119 for use of industry consensus standards. Federal agencies are now required to use industry consensus standards where these standards are available unless such standards are inconsistent with applicable law or otherwise impractical.[8] By requesting licensees to respond to the proposed Generic Letter as drafted, the NRC would be asking each individual licensee to justify the adequacy of the existing industry consensus standard (ASME Code) which has been approved through the ASME standard-

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[5] *See* 44 *Federal Register* 57911, October 9, 1979.

[6] *See* 57 *Federal Register* 34666, August 6, 1992.

[7] This relates to Footnote 4 above. The proposed Generic Letter implies that paragraph IWA-2240 of Section XI of the Code would allow licensees to implement Appendix VIII without NRC prior approval. However, because Appendix VIII requirements are not one-for-one replacements for current requirements, a licensee may not be able to comply with both current requirements of §50.55a *and* Appendix VIII. The implementation of Appendix VIII would require development of completely new program requirements. Section 50.55a would seem to require NRC approval prior to such implementation.

[8] *See* 61 *Federal Register* 68312, December 27, 1996.

development process and incorporated by reference by the NRC into its regulations. Such an "information request" appears to reflect the NRC's concerns with its own process for the use of the ASME Code as established in Section 50.55a. If the NRC is concerned about the timeliness of its process for incorporation by reference of later editions of the code, or other aspects of the process, perhaps the rulemaking process should be examined for possible improvements. As the NRC begins using industry consensus standards in other regulatory areas, licensees must be able to rely on the fact that compliance with these standards, within the proper regulatory framework, inherently ensures compliance with NRC regulations, including the criteria in Appendix B.

The proposed Generic Letter should be withdrawn and the NRC should follow its rulemaking process for incorporating the later editions of the ASME Code into the appropriate regulations. The Staff must not rely on a compliance backfit exception in attempting to impose requirements that clearly represent a new Staff position. With the enhanced NRC focus on industry codes and standards, it becomes increasingly important that conformance with these standards assure an acceptable means of complying with less prescriptive regulations such as Appendix B, such that licensees are not put in a position of having to individually justify the adequacy of an industry standard (1) developed by a consensus body with the appropriate level of expertise; and (2) incorporated by reference in NRC's regulations.

Sincerely,

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and Reform Group