

POLICY ISSUE INFORMATION

March 6, 2009

SECY-09-0038

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: PERIODIC ASSESSMENT OF THE ACTIVITIES OF THE COMMITTEE
TO REVIEW GENERIC REQUIREMENTS FROM JUNE 1, 2007,
THROUGH MAY 31, 2008

PURPOSE:

The purpose of this paper is to provide the Commission with a periodic assessment of the activities of the Committee to Review Generic Requirements (CRGR or the Committee). This paper does not address any new commitments or resource implications.

BACKGROUND:

The CRGR consists of selected senior U.S. Nuclear Regulatory Commission (NRC) managers drawn from the Offices of the General Counsel (OGC), Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards (NMSS), Nuclear Security and Incident Response (NSIR), Federal and State Materials and Environmental Management Programs (FSME), and New Reactors (NRO) as well as one of NRC's regional offices on a rotating basis (currently Region II). The CRGR reports to the Executive Director for Operations (EDO), who appoints the Committee chairperson and members. The CRGR conducts its activities in accordance with Revision 7 of the Committee's charter, dated November 7, 1999, which describes the Committee's mission, scope of activities, and operating procedures. RES provides the Committee's technical and administrative support.

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The CRGR's primary mission is to ensure that no inadvertent backfits are either imposed or implied by proposed new or revised generic requirements for NRC-licensed power reactors and nuclear materials facilities and that staff-proposed actions are appropriately justified. Such justification must be based on the backfit provisions of NRC's regulations, Commission guidance and directives, applicable legislative acts, and Executive Orders.

The Committee's primary responsibilities are to recommend to the EDO either approval or disapproval of the staff's proposed generic actions and to assist the NRC program offices in ensuring consistent implementation of the Commission's backfit regulations, directives, and guidance. The CRGR also participates in periodic meetings with NRC stakeholders as part of its responsibility for monitoring the overall effectiveness of the Agency's generic backfit management process. In addition, the CRGR periodically audits NRC's administrative controls for facility-specific backfitting to assess their effectiveness.

In response to the Commission's direction in the staff requirements memorandum (SRM) dated August 21, 1996, the CRGR proposed a process and criteria for use in periodically assessing its own activities. This proposed process and criteria were provided to the Commission in SECY-97-052, "Committee to Review Generic Requirements — Scope of Review and Periodic Review of Activities," dated February 27, 1997. The Commission subsequently approved the process and criteria in an SRM dated April 18, 1997. Accordingly, since 1997, the CRGR has annually evaluated and reported its activities to the Commission. This paper represents the Committee's 11th assessment, which addresses the period from June 1, 2007, through May 31, 2008. Toward that end, this paper discusses the Committee's activities, presents its self-assessment, and summarizes the feedback received from NRC's program offices.

DISCUSSION:

The CRGR has completed its 11th assessment, which covers the period of June 1, 2007, through May 31, 2008. This report was held in abeyance since August 2008 as a result of the Commission direction to include the December 2008 Office of the Inspector General (OIG) analyses of the CRGR function in this assessment (discussed below). During this assessment period, the CRGR reviewed 25 various generic communications. Of these communications, the CRGR formally reviewed 3 and informally reviewed 22 for potential improper or unjustified backfits.

The CRGR conducted a self-assessment to determine its effectiveness in fulfilling the key areas of responsibilities. Based on this self-assessment, the CRGR concluded that the key areas of responsibilities are being fulfilled adequately. Finally, the CRGR solicited input from the program offices, and this input did not identify any significant issues in the CRGR review process.

The CRGR also conducted its 5-year periodic review of administrative controls for plant-specific backfits and found that, in general, the staff had effective backfitting procedures and that the staff involved in backfitting had steps in place to obtain adequate training. The details of this review are discussed later in the enclosure.

In SECY-07-134, "Evaluation of the Overall Effectiveness of the Rulemaking Process Improvement Implementation Plan," the staff recommended, and the Commission approved,

that the CRGR be removed from the rulemaking process. The Commission SRM on SECY-07-0134 directed the staff to analyze the functions of the CRGR to determine whether the functions of the CRGR are appropriate including its role in the rulemaking process. Subsequently, the OIG announced it would conduct an audit of the role and functions of the CRGR with respect to the Agency backfitting process. This audit started in June 2008 and concluded in late September 2008 with a draft report issued in December 2008. The audit analyzed the role of the CRGR and its activities for the past 5 years. The enclosure discusses in detail the major findings of this audit (ADAMS Accession No. ML090330754). In its audit, the OIG found that:

The CRGR no longer functions as originally intended with respect to generic backfit reviews. Although NRC must still ensure that generic backfits are appropriately justified based on regulations and policy, the CRGR no longer performs the central role in this process. This is because the agency's processes have evolved which, in effect, resulted in other offices assuming some of the CRGR's duties. However, the agency has not developed overarching, agencywide guidance that describes its current backfit review process or reassessed what, if any, role the CRGR should play in the current process. As a result, the CRGR does not add its full intended value as originally envisioned for backfit review and stakeholders do not fully understand NRC's backfit review process, including the CRGR's role. Moreover, without reassessing and documenting its current internal backfit review process, the agency cannot be assured that it is taking consistent or appropriate action with regard to backfit reviews and is taking the necessary steps to prevent unnecessary regulatory burden on NRC licensees.

OIG recommended that the Executive Director for Operations:

- Develop, document, implement, and communicate an agencywide process for reviewing backfit issues to ensure that generic backfits are appropriately justified based on NRC regulations and policy.
- Determine what, if any, role the CRGR should perform in NRC's backfit review process, to include whether the CRGR function is still needed.

In addition to addressing the recommendations from the OIG audit report, the CRGR periodic assessments of the program and regional offices have resulted in the following actions:

- Continue working with the Office of Human Resources to develop an Agencywide Web-based training program.
- Interact with external stakeholders as training is developed to ensure a common understanding.

Plans also were in place to revise the CRGR Charter, but this activity has been held in abeyance until the final OIG audit report has been evaluated. The CRGR continues to interact with the industry through the Nuclear Energy Institute Licensees Forum and has scheduled a Backfit Workshop for the 2009 Regulatory Information Conference.

CONCLUSION:

The CRGR believes that it has successfully contributed the necessary staff and industry awareness of the applicable NRC regulations and Commission policy regarding backfits. The self-assessment and program office feedback indicate that the Committee has provided its reviews and evaluations in an efficient and effective manner, added some value to the regulatory process, and contributed to the accomplishment of the NRC's mission by identifying technical, procedural, and legal issues.

The OIG audit identified that the CRGR and the Agency have evolved in the way the backfitting process is performed. As a result of the many levels of reviews and procedures in place within the relevant program offices and the robust technical reviews including the OGC legal review, the CRGR process has evolved such that it is not functioning as originally intended. It is noteworthy that the OIG audit did not identify any major systematic failure in the CRGR review process. Nonetheless, the report does establish that a need exists for the Agency to review and assess the future role of the CRGR in the backfitting process, if any. The staff has reviewed the OIG audit report and the CRGR has been tasked to provide a plan to address the findings by June 30, 2009.

The revision of the CRGR charter is pending until after the recommendations in the OIG audit have been evaluated. The staff will continue to develop an Agencywide backfit training program and will incorporate any changes to the CRGR process when they are implemented.

/RA/

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Enclosure:
CRGR Activities and Assessment
Between June 1, 2007, and
May 31, 2008

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