

September 24, 2001

Electric Power Research Institute  
ATTN: Mr. Theodore U. Marston  
Vice President and Chief Nuclear Officer  
3412 Hillview Avenue  
Palo Alto, California 94304-1395

Dear Mr. Marston:

On behalf of the Commission, I am responding to your letter of April 18, 2001, appealing the Chief Financial Officer's previous decisions not to waive the fees for the Nuclear Regulatory Commission's (NRC) review of the RETRAN-3D safety analysis code. In your appeal you assert that the NRC has not consistently applied and appropriately interpreted the criteria for exempting applicants from 10 CFR Part 170 fees for the review of special projects. The criteria in question are contained in 10 CFR 170.21, Footnote 4 (hereafter referred to as Footnote 4), which currently states that:

Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.<sup>1</sup>

Your previous requests and the current appeal argue that Criterion 3 of Footnote 4 applies to the NRC review of the RETRAN-3D code and that, therefore, no 10 CFR Part 170 fees should be charged for the NRC review. The NRC has carefully considered your letter of April 18, 2001,

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<sup>1</sup>In the final FY 2001 fee rule (66 FR 32452), effective August 13, 2001, the NRC redesignated criteria 1., 2., and 3. as criteria (a), (b), and (c). The NRC also modified criterion (c) to clarify the intent of the fee waiver provisions, consistent with the statements of consideration for the FY 1994 rule (59 FR 36895). Modified criterion (c) reads: "As a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts."

and has concluded that the decision that the RETRAN-3D code does not meet the fee waiver criteria is appropriate and is consistent with previous decisions on fee waiver requests. Therefore, on behalf of the Commission, I am informing you that your appeal is denied.

In reaching this decision, the NRC has examined the purpose for which the report was submitted, consistent with the requirements of Footnote 4. Based on this examination, the NRC has concluded that the report was neither submitted nor reviewed as a means of exchanging information between EPRI and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts. Rather, the report was reviewed for the primary purpose of providing an approval to EPRI so that the report could be used by EPRI or other organizations in the future. This conclusion is supported by EPRI's letter of July 8, 1998, requesting NRC review of RETRAN-3D. The letter stated: "The RETRAN Maintenance Group requests NRC review of RETRAN-3D, the third generation of the RETRAN system transient thermal-hydraulic codes developed for the utility industry by the Electric Power Research Institute." (Emphasis added) The letter further stated that the "...NRC review of RETRAN-3D is needed to advance the analytical capabilities of the industry in addressing emerging safety and licensing issues." Thus, NRC's review of the report provided a special benefit to an identifiable recipient and, therefore, is billable under 10 CFR Part 170. Your appeal has not provided any information that would lead to a different NRC conclusion.

In summary, your appeal has not demonstrated that the topical report was submitted and reviewed as a means of exchanging information between the EPRI and the NRC. Nor have you demonstrated that if such an exchange did occur, the purpose was to support NRC's generic regulatory improvements or efforts. While we do not question your statements that the report may be used by the industry and the NRC, this is not a basis for waiving the review fee in accordance with criterion 3 of Footnote 4. In fact, many special projects reviewed and approved by the NRC are subject to fees even though they are used by the industry and NRC.

Your letter indicated that there were discussions between NRC and EPRI on whether EPRI would be willing to perform work that could benefit the NRC in exchange for waiving the fees associated with the review and approval of the RETRAN-3D code. Staff are not authorized to make informal agreements to adjust fees with any applicant or licensee. Rather, NRC seeks to ensure that all applicants and licensees are treated equally and in the fashion prescribed in 10 CFR Parts 170 and 171. The staff has approached the fee waiver for RETRAN-3D using this approach. Additionally, EPRI's August 16, 2000, letter to Ashok Thadani shows that EPRI itself understood that the NRC had not agreed to EPRI's proposal, for EPRI's letter states, "...there is one consideration that must be addressed before we can actually commence the technical work. NRC must make its determination on our fee waiver request...I cannot recommend funding of the work to our advisors until the fee issue is successfully resolved, knowing that they would certainly not approve the additional funding prior to NRC approving the fee waiver."

Your April 18, 2001, appeal letter stated that it appears that the fee recovery regulation may not have been applied consistently, given that NRC granted other fee waivers to EPRI over the last

decade. We have reviewed the fee determinations for the reports included in your letter and conclude that the fee regulations have been applied consistently.

As you may be aware, Footnote 4 was added to the regulations and became effective on August 19, 1994. Although the fees associated with four of the documents listed in your letter were addressed prior to the effective date of Footnote 4, these decisions were consistent with the criteria the agency ultimately adopted in Footnote 4.

- **EPRI ALWR Utility Requirement Document:** This document was not subject to Part 170 fees because it was not a special project or other application, but rather an effort to upgrade the quality of applications and encourage standardization.
- **Steam Generator Tubing Inspection Data and Guidelines Documents:** Four EPRI reports submitted through the Nuclear Energy Institute (NEI) involving steam generator degradation specific management (SGDSM) were not subject to Part 170 fees because the staff did not develop safety evaluation reports on the reports to support plant specific technical specification amendments as originally intended by EPRI, and the reports were used to support rulemaking on SGDSM.
- **Severe Accident Guideline Technical Bases Reports:** These reports, which were submitted through the Nuclear Management and Resources Council, Inc. (NUMARC), were not subject to Part 170 fees because NUMARC did not request, and the NRC did not plan to issue, an approval of the reports.
- **EPRI's Final Report on Motor-Operated Valve Testing and Surveillance:** The NRC exempted the review of this report from fees pursuant to 10 CFR 170.11(b)(1.) because the report provided a generic response for the nuclear power industry to generic letter GL 89-10, Safety Related Motor Operated Valve Testing and Surveillance, and the use of EPRI's methodology would promote uniformity in the determination of valve switch setting and utility responses to the generic letter.

The bases for the waivers granted after Footnote 4 became effective are also consistent with the decision on the RETRAN-3D report, as discussed below:

- **Generic Digital I&C Guideline Documents:** A review of the record on these documents indicate that fees were waived consistent with Criterion 3 of Footnote 4, since the documents were used in Regulatory Guide 1.180.
- **Risk-Informed Inservice Inspection (ISI) Guideline Documents:** Part 170 fees were waived for these document based on Criterion 3 of Footnote 4. NRC encouraged licensees to submit pilot plant applications for demonstrating the methodologies to be used for piping segment and piping structural element selection in systems scheduled for ISI. The EPRI methodology was used by Arkansas Nuclear One (ANO), Unit 2 and the results from the review of the pilot plant application were used to develop an RI-ISI application-specific Regulatory Guide and the corresponding Standard Review Plan chapters and associated inspection procedure documents. Thus, the review of the report met Criterion 3 of Footnote 4, in that its purpose was to support NRC's regulatory improvements.

- **BWR Vessel and Internals Project (BWRVIP) Documents:** Part 170 fees were not required for these documents because they were submitted to NRC as a means of exchanging information with the NRC for the purpose of supporting generic regulatory improvements related to the evaluation of crack growth in BWR nickel base reactor pressure vessel internals. Therefore, these documents met Criterion 3 of Footnote 4.

Your letter stated that NRC agreed to waive the fees for the review of the EPRI MAAP-4 Safety Analysis Code. I understand that consideration of a fee waiver for this code may have been discussed in a December 2000 meeting between EPRI, NEI and NRC. However, the NRC has not granted a waiver of fees for NRC review of EPRI MAAP-4 Safety Analysis Code, nor has a request for a waiver been received.

The Commission affirms the decision of the Chief Financial Officer denying your requests for fee waiver on the RETRAN-3D safety analysis code review. Therefore, you will be issued a consolidated invoice during the next billing cycle for \$414,009.86. If the payment is received within 30 days from the date of the consolidated invoice, all interest will be waived. If one lump sum payment is a financial burden, you may establish an installment payment plan, which requires interest and administrative charges. If you have any questions about the invoices, please contact Ellen Poteat of the Office of the Chief Financial Officer at 301-415-6392.

Sincerely,

**/RA/**

Annette Vietti-Cook  
Secretary

Enclosure: Invoice List