

September 17, 2001

Mr. Richard A. Bernier, Chairman
CE Owners Group
Mail Stop 7868
Arizona Public Service Company
Palo Verde Nuclear Generating Station
P.O. Box 52034
Phoenix, AZ 85072-2034

Dear Mr. Bernier:

I am responding to your January 12, 2001, letter requesting a waiver of fees under 10 CFR Part 170.21, Footnote 4 (hereinafter referred to as Footnote 4) for the review of the CE Owners Group (CEOG) Topical Report CE NPSD-1186, "Technical Justification for Risk Informed Modification to Selected Required Action End States for CEOG PWRs." For the reasons stated below, your request for a waiver is denied.

Your letter provides the following information to support your request: (1) CE NPSD-1186 was developed using the joint application cross-comparison process pioneered by the CEOG to support risk informed decisions and provides a technical basis for changing the safe mode end state for 29 Technical Specifications from Mode 5 (Cold Shutdown) to Mode 4 (Hot Shutdown); (2) the CEOG has worked closely with the NRC's Technical Specification (TS) and Probabilistic Risk Assessment (PRA) branches during the review of CE NPSD-1186; (3) based on discussions with the staff, it is your understanding that the processes and results documented will be instrumental in assisting NRC in formulating PRA policy statements, regulatory guides, or standard review plans associated with risk-informed applications; (4) there is significant generic benefit to both the industry and the NRC to complete the review, reach agreement through resolving issues, and to issue a safety evaluation on this report; (5) with NRC approval, this report and safety evaluation can be referenced by the CEOG members in their licensee applications, thereby resulting in significant savings to the NRC in review time and averted work; and (6) the process improvements described clearly reduce NRC resource requirements.

The subject topical report was submitted to the Nuclear Regulatory Commission (NRC) for review and approval by CEOG's April 28, 2000, letter, which stated:

The report is being submitted for review and approval as part of a collaborative effort of participating Combustion Engineering Owners Group members. The safety evaluation prepared by the NRC should specifically identify the acceptability of the results to the plants referenced in CE NPSD-1186 and should identify any additional information required to be provided when the plant specific license amendment requests are submitted to the NRC for approval.

The NRC should address technical questions related to CE NPSD-1186 to the Chairman of the C-E Owners Group. Invoices for review fees should also be directed to the Chairman

R. A. Bernier

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As you are aware, Footnote 4 states that fees will not be assessed for requests/reports submitted to the NRC ... "(b) 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 (c) as a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts."¹

Your January 12, 2001, letter does not provide any information that demonstrates that the subject topical report was submitted for the purpose of supporting NRC's generic regulatory improvements or efforts as required to meet the fee waiver criteria of Footnote 4. Fees assessed under 10 CFR 170 are intended to recover the costs to the NRC for providing identifiable services to applicants and holders of NRC licenses. It is clear from your April 28, 2000, letter, that the topical report was submitted and reviewed for the primary purpose of providing an approval to CEOG so that the report could be used by CEOG and its members in the future. Therefore, NRC's review of the topical report provides an identifiable service to CEOG, and the costs of that service should be borne by CEOG, as you acknowledged in your April 28, 2000, letter. The fact that topical reports may later be used by the NRC as well as industry for purposes other than those for which the reports were submitted is not a basis for waiving the Part 170 review fees in accordance with Footnote 4. Many topical reports reviewed and approved by the NRC are subject to Part 170 fees even though they are used later by both the industry and the NRC for other purposes.

Based on the foregoing, I have determined that Topical Report CE NPSD-1186 does not meet the fee waiver criteria of Footnote 4 to 10 CFR 170.21. Accordingly, your request for an exemption from the 10 CFR 170 fees is denied.

If you have any questions, please contact Ellen Poteat of my staff at 301-415-6392.

Sincerely,

R/A

Jesse L. Funches
Chief Financial Officer

¹This reflects the modification to this criterion in the final FY 2001 fee rule (66 FR 342452). The NRC modified this criterion to clarify that the intent of the fee waiver provisions, consistent with the statements of consideration for the FY 1994 rule (59 FR 36895), is that the requests/reports must be submitted for the purpose of supporting NRC's generic regulatory improvements or efforts for the fees to be waived.

As you are aware, Footnote 4 states that fees will not be assessed for requests/reports submitted to the NRC ... "(b) 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 (c) as a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts."¹

Your January 12, 2001, letter does not provide any information that demonstrates that the subject topical report was submitted for the purpose of supporting NRC's generic regulatory improvements or efforts as required to meet the fee waiver criteria of Footnote 4. Fees assessed under 10 CFR 170 are intended to recover the costs to the NRC for providing identifiable services to applicants and holders of NRC licenses. It is clear from your April 28, 2000, letter, that the topical report was submitted and reviewed for the primary purpose of providing an approval to CEOG so that the report could be used by CEOG and its members in the future. Therefore, NRC's review of the topical report provides an identifiable service to CEOG, and the costs of that service should be borne by CEOG, as you acknowledged in your April 28, 2000, letter. The fact that topical reports may later be used by the NRC as well as industry for purposes other than those for which the reports were submitted is not a basis for waiving the Part 170 review fees in accordance with Footnote 4. Many topical reports reviewed and approved by the NRC are subject to Part 170 fees even though they are used later by both the industry and the NRC for other purposes.

Based on the foregoing, I have determined that Topical Report CE NPSD-1186 does not meet the fee waiver criteria of Footnote 4 to 10 CFR 170.21. Accordingly, your request for an exemption from the 10 CFR 170 fees is denied.

If you have any questions, please contact Ellen Poteat of my staff at 301-415-6392.

Sincerely,

Jesse L. Funches
Chief Financial Officer

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¹This reflects the modification to this criterion in the final FY 2001 fee rule (66 FR 342452). The NRC modified this criterion to clarify that the intent of the fee waiver provisions, consistent with the statements of consideration for the FY 1994 rule (59 FR 36895), is that the requests/reports must be submitted for the purpose of supporting NRC's generic regulatory improvements or efforts for the fees to be waived.