

October 23, 2001

Mr. Richard A. Bernier, Chairman  
Combustion Engineering Owners Group  
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 February 9, 2001, letter requesting a waiver of fees under 10 CFR 170.21, Footnote 4 (hereinafter referred to as Footnote 4) for the review of the CE Owners Group (CEOG) Topical Reports CE NPSD-994, -995, and -996, "Joint Application Reports for Safety Injection Tank (SIT), Low Pressure Safety Injection (LPSI), and Emergency Diesel Generator, (EDG) Allowed Outage Time (AOT) Extensions." Your letter states that the topical reports were submitted to the NRC to assist in generic development of regulatory guidance and for the purpose of supporting generic regulatory improvements or efforts, and therefore meet the criteria for waiver of NRC review fees set forth in Footnote 4. For the reasons stated below, your request for a waiver under Footnote 4 is denied. However, for the reasons also stated below, I have determined that a partial exemption under 10 CFR 170.11(b)(1) is appropriate for that portion of the review effort that can be documented as assisting the NRC in formulating Probabilistic Risk Assessment (PRA) policy.

The subject topical reports were submitted to the Nuclear Regulatory Commission (NRC) for review and approval by CEOG's July 10, 1995, letter, which stated:

The C-E Owners Group requests that the NRC generically review the enclosed reports and issue the associated SERs to support adjustment of the allowable outage times. In a collaborative effort with this submittal from the CEOG, seven individual licensees are providing Facility License Amendments for the specific AOT changes. The CEOG requests a common and coordinated review of both the Facility License Amendments submitted by CEOG members and the Joint Application Reports. The CEOG believes that a coordinated review will allow efficient use of NRC resources, minimize review time, and allow a priority review of these group applications.

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

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."<sup>1</sup>

Your letter provides the following information to support your request: 1) CE NPSD-994, -995, and -996 formulated first-of-a-kind risk-informed bases for extending the allowable outage time of safety injection tanks, low-pressure safety injection system components and emergency diesel generators; 2) you understand that the processes and results documented in CE NPSD -994, -995, and -996 have been instrumental in assisting the NRC in formulating Probabilistic Risk Assessment (PRA) Policy Statements, Regulatory Guides (RG), and Standard Review Plans (SRP) associated with risk-informed applications; 3) the configuration risk management program developed in support of these tasks has formed the basis for integrating risk-informed tools with the risk-informed maintenance rule promulgated in 10 CFR 50.65(a)(4); and 4) the process improvements reduced NRC resource requirements and provide a risk-informed basis for RGs 1.174 and 1.177, the Maintenance Rule, and revisions to Chapter 19 of the SRP.

The NRC staff provided a November 30, 1995, memorandum from Shirley Ann Jackson, who was the Chairman at that time, stating that she believed that improvements were needed in NRC's review and utilization of PRA and the regulatory framework for digital instrumentation and control technology. Former Chairman Jackson's main objective was to ensure that the NRC had in place a well-defined and stable regulatory process to ensure adequate protection of the public health and safety as the Agency addressed challenges being presented by changes in the nuclear industry. She recognized that the nuclear industry was proceeding at a fairly fast pace in developing and using PRA without clear guidance from the NRC on the subject of standards or acceptable methodology. The former Chairman intended that in the event that the PRAs were used as part of the basis for the industry to request changes to the regulatory process, the NRC would be ready to address the acceptability of the PRAs for such change.

Former Chairman Jackson directed the staff to develop an SRP for use by the NRC staff in conducting reviews of industry-generated individual plant examinations (IPEs), individual plant examination of externally initiated events (IPEEEs) and PRAs for use in regulatory decision making. An overall goal of two years was established to complete this task and the staff provided the action plan and timetable within thirty days.

The January 3, 1996, memorandum to Chairman Jackson provided the staff's action plan and established milestones for accelerating the development of regulatory guidance documents for utilizing PRA in reactor-related activities. The staff had under review at that time the CE Owners

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<sup>1</sup>This 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.

Group submittal of Joint Application Reports containing the results of risk-informed applications for the improvement of technical specification allowable outage times (AOT). A February 28, 1997, memorandum from Samuel J. Collins, Director of the Office of Nuclear Reactor Regulation (NRR) to Ronald M. Scroggins, Deputy Chief Financial Officer/Controller at the time, supported the CEOG's request of November 1, 1996, to waive the portion of the review of the Joint Application Reports that the staff used to accomplish the priority set by the Chairman in November 1995. The NRC staff agreed that the review and approval of these reports assisted them in formulating regulatory guides and standard review plans for risk-informed applications.

Our re-analysis of the events that followed the Chairman's November 1995 request, the staff's January 1996 response, and NRR's February 1997 memorandum, lead to the following conclusion: the time the staff spent reviewing the Joint Application Reports between January 3, 1996, and February 28, 1997, was used to support generic regulatory improvements. Although the Joint Application Reports were not submitted for the purpose of supporting NRC's generic regulatory improvements, I have determined that a partial waiver of the Part 170 fee requirement is appropriate. This exemption is authorized by law and is granted in accordance with 10 CFR 170.11(b)(1).

I have determined that the fees paid by the CEOG during the time frame of approximately January 3, 1996, and February 28, 1997, will be refunded. The time frame is set due to the fact that in the February memorandum the Director of NRR documents that a generic TAC for risk-informed technical specifications was established and the NRR reviewers and contractors were advised how to appropriately charge their time so that all future fees would be assessed appropriately. No longer would the time the staff and contractors spent on generic efforts be charged to TAC M92981 associated with the review of the CEOG's Joint Application Reports.

Enclosed is a list of the invoices that were issued during the review of the CEOG's Joint Application Reports showing the contract costs, the number of hours charged by the staff and the hourly rate that was in effect. In approximately thirty days from the date of this letter the CEOG will receive a refund of \$177,868. This is the amount that was billed during the time frame of approximately January 3, 1996, and February 28, 1997.

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

Enclosure: As stated

Group submittal of Joint Application Reports containing the results of risk-informed applications for the improvement of technical specification allowable outage times (AOT). A February 28, 1997, memorandum from Samuel J. Collins, Director of the Office of Nuclear Reactor Regulation (NRR) to Ronald M. Scroggins, Deputy Chief Financial Officer/Controller at the time, supported the CEOG's request of November 1, 1996, to waive the portion of the review of the Joint Application Reports that the staff used to accomplish the priority set by the Chairman in November 1995. The NRC staff agreed that the review and approval of these reports assisted them in formulating regulatory guides and standard review plans for risk-informed applications.

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I have determined that the fees paid by the CEOG during the time frame of approximately January 3, 1996, and February 28, 1997, will be refunded. The time frame is set due to the fact that in the February memorandum the Director of NRR documents that a generic TAC for risk-informed technical specifications was established and the NRR reviewers and contractors were advised how to appropriately charge their time so that all future fees would be assessed appropriately. No longer would the time the staff and contractors spent on generic efforts be charged to TAC M92981 associated with the review of the CEOG's Joint Application Reports.

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Jesse L. Funches  
Chief Financial Officer

Enclosure: As stated

Document: G\daf-1-051.CEOG\_partial\_waiver.wpd

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