

February 7, 2008

Rick Libra, Chairman  
BWR Vessel and Internals Project  
Exelon  
Electric Power Research Institute  
3420 Hillview Avenue  
Palo Alto, CA 94304-1395

SUBJECT: RESPONSE TO THE ELECTRIC POWER RESEARCH INSTITUTE (EPRI)  
REQUEST FOR NUCLEAR REGULATORY COMMISSION (NRC) STAFF  
REVIEW OF THE GUIDELINES FOR EXEMPTION FROM NRC REVIEW FEES  
FOR BOILING WATER REACTOR VESSELS AND INTERNALS PROJECT  
(BWRVIP) SUBMITTALS

Dear Mr. Libra:

By letter dated October 22, 2007, the EPRI provided a historical perspective on the relationship between the BWRVIP and NRC staff activities and requested that "BWRVIP submittals continue to be exempt from NRC review fees." The regulations providing the authority to exempt certain activities from NRC review fees are contained in Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11. These regulations provide for exemption from fees for a "special project that is a request/report submitted to the NRC" under three situations (10 CFR 170.11(a)(1)). The BWRVIP activities do not meet the definition of the first two situations addressed by 10 CFR 170.11(a)(1)(i) and (ii). Therefore, in order to qualify for exemption from fees, these "special projects" must meet all three conditions identified in 10 CFR 170.11(a)(1)(iii)(A) for activities conducted "as a means of exchanging information between industry organizations and the NRC for the specific purpose of supporting the NRC's generic regulatory improvements or efforts."

The first of these conditions for exemption of "special projects" from NRC review fees states that a fee exemption only applies when:

It has been demonstrated that the report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g., rules, regulations, guides, and policy statements).

The BWRVIP activities were initiated in response to the increasing awareness of degradation issues with respect to BWR vessels and internals. The BWRVIP activities supported the NRC's development of generic guidance and regulations addressing the need to ensure safe operation of nuclear power plants while managing degradation of BWR vessels and internals. Although the past statements from the NRC staff cited in your letter, which articulate the value of the BWRVIP submittals, are not sufficient in themselves to address this first condition for exemption of fees, they do help validate the assessment that these submittals are helpful in "supporting generic regulatory improvements or efforts." In addition, as mentioned in your letter, the BWRVIP submittals have "worked well to address the evolving issues ..." related to degradation of BWR internal components not previously subject to NRC regulation "... in an effective and efficient manner that has minimized NRC ... resources." It will be important in the future, however, to coordinate closely with the NRC staff to ensure that it has been demonstrated that

each new report/request has been submitted to the NRC specifically for the purpose of supporting NRC's development of generic guidance and regulations (e.g. rules, regulations, guides, and policy statements).

The second of these conditions for exemption of "special projects" from NRC review fees states that a fee exemption only applies when:

The NRC, at the time the document is submitted, plans to use it for one of the purposes given in paragraph (a)(1)(iii)(A)(1) of this section. In this case, the exemption applies even if ultimately the NRC does not use the document as planned.

Past evidence suggests that BWRVIP submittals have met this condition as well. For example, NUREG/CR-6677, "Evaluation of Risk Associated with Intergranular Stress Corrosion Cracking in Boiling Water Reactor Internals," makes numerous citations of BWRVIP submittals and the work represented in these submittals is relied upon by NUREG/CR-6677 in order to support its conclusions. NUREG-1801, "Generic Aging Lessons Learned (GALL) Report," identifies aging management programs (AMPs), which were determined to be acceptable programs to manage the aging effects of systems, structures and components in the scope of license renewal, as required by 10 CFR Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants." "If an LRA [License Renewal Application] references the GALL Report as the approach used to manage aging effect(s), the NRC staff will use the GALL Report as a basis for the LRA assessment consistent with guidance specified in the SRP-LR [NUREG-1800, "Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants"]." Future BWRVIP submittals may continue to be used by the NRC for one of the purposes given in paragraph (a)(1)(iii)(A)(1) of 10 CFR 170.11. However, as each new submittal may address a new and different subject and purpose, the BWRVIP should coordinate closely with the NRC staff to ensure that these requirements are met on a case-by-case basis at the time a document is submitted and, thus, ensure that this second condition continues to be addressed in future submittals.

The third and final of these conditions for exemption of "special projects" from NRC review fees states that a fee exemption only applies when:

The fee exemption is requested in writing to the Chief Financial Officer [CFO] in accordance with 10 CFR 170.5, and the Chief Financial Officer grants this request in writing.

In order to address this condition, your letter of October 22, 2007, includes a commitment to submit a "review fee exemption in writing to the NRC Chief Financial Officer" for each future BWRVIP submittal. This request should provide the NRC CFO with the information necessary in order to render a judgment on each request. In particular, each request should address the first two conditions of 10 CFR 170.11(a)(1)(iii)(A) discussed above.

In summary, past BWRVIP submittals have met the criteria for "special projects" that may be exempt from NRC review fees as defined by 10 CFR 170.11(a)(1)(iii)(A) and such submittals in the future may do so as well. However, we reiterate the current and future importance of close coordination between the BWRVIP and NRC staff to ensure that the conditions described in 10 CFR 170.11(a)(1)(iii)(A) are met.

R. Libra

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If you have any further questions regarding this matter, please contact Jon Thompson at (301) 415-1119 or [jht2@nrc.gov](mailto:jht2@nrc.gov).

Sincerely,

***/RA MCase for/***

Ho K. Nieh, Deputy Director  
Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation

Project No. 704

cc: See next page

R. Libra

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BWRVIP

Project No. 704

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