

September 27, 2013

Mr. Rodney McCullum
Director, Used Fuel Programs
Nuclear Energy Institute
1201 F Street, NW, Suite 1100
Washington, DC 20004

Dear Mr. McCullum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of January 3, 2013, requesting a fee waiver under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(a)(1)(ii) and (iii) for pre-submittal draft guidance document, "NEI 12-16, Guidance for Performing Criticality Analyses of Fuel Storage at Light-Water," and future submission of this final report. Your letter was forwarded to my office by Mr. Sheldon Stuchell in the Office of Nuclear Reactor Regulation (NRR). We regret the delay in responding to your request.

The NRC has established regulations for granting fee exemptions under 10 CFR 170.11, "Exemptions," for which licensees may apply in accordance with 10 CFR 170.5, "Communications." The NRC has reviewed your request based on the following regulations, 10 CFR 170.11(a)(1)(ii) and 10 CFR 170.11(a)(1)(iii):

- *10 CFR 170.11 (a) No application fees, license fees, renewal fee, inspection fees, or special project fees shall be required for: (1) A special project that is a request/report submitted to the NRC—(ii) In response to an NRC request from the Associate Office Director level or above to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rulemaking, regulatory guide, policy statement, generic letter, or bulletin; The Nuclear Energy Institute's (NEI) letter does not state that the guidance document, "NEI 12-16," was submitted in response to a request from an Associate Office Director or above to address a specific NRC issue; therefore, "NEI 12-16," does not meet this regulation.*
- *10 CFR 170.11 (a) No application fees, license fees, renewal fee, inspection fees, or special project fees shall be required for: (1) A special project that is a request/report submitted to the NRC—(iii) As a means of exchanging information between industry organizations and the NRC. In order for the fee waiver to be granted under this paragraph it must meet three criteria:*
 - *(A) The report should be submitted for the specific purpose of supporting ongoing NRC generic regulatory improvements or efforts (e.g., rules, regulations, regulatory guides, and policy statements), and the agency, at the time the document is submitted, plans to use it for that purpose. The exemption applies even if ultimately the NRC does not use the document as planned; your letter states that "NEI 12-16," will assist the NRC in*

completing the process of updating and stabilizing the regulatory framework governing spent fuel pool criticality analyses through publication of the planned regulatory guide. The NRC believes that "NEI 12-16," fulfills the need for a guidance document as stated in the NRR Action plan concerning criticality analyses of fuel storage at light-water reactor power plants; therefore, "NEI 12-16," meets this regulation.

- *(B) The NRC must be the primary beneficiary of the NRC's review and approval of these documents. This exemption does not apply to a topical report submitted for the purpose of obtaining NRC approval for future use of the report by the industry to address licensing or safety issues, even though the NRC may realize some benefits from its review and approval of the document. The NRC is the primary beneficiary because the NRC will utilize "NEI 12-16," as a guidance document for criticality analyses of fuel storage upon validation from Oak Ridge National Laboratory and Pacific Northwest National Laboratory, internationally recognized experts on criticality. The NRC acceptance of "NEI 12-16," also represents a cost savings to the NRC of approximately \$400K in contract support and NRC staff hours that would have been required to produce such a document. The NRC concludes that NEI's submission of "NEI 12-16," to the NRC meets this regulation.*
- *(C) The fee exemption is requested in writing to the Chief Financial Officer in accordance with 10 CFR 170.5 and the Chief Financial Officer grants this request in writing. The 10 CFR 170.5 states, "All communications concerning the regulations in this part should be addressed to the NRC's Chief Financial Officer, either by mail to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; by hand delivery to the NRC's offices at 11555 Rockville Pike, Rockville, Maryland; or, where practicable, by electronic submission, for example, via Electronic Information Exchange, or CD-ROM. The NEI fee exemption request was submitted in writing; therefore, "NEI 12-16," meets this regulation.*

The NRC concludes the pre-submittal draft guidance, "NEI 12-16," and future submission of this final report meet all criteria under 10 CFR 170.11(a)(1)(iii); therefore, the fee waiver request is approved. If you have any technical questions regarding this matter, please contact Mr. Sheldon Stuchell, (301) 415-1847. Please contact Ms. Arlette Howard, of my staff, at (301) 415-1481, for any fee-related questions.

Sincerely,

/RA/

J. E. Dyer
Chief Financial Officer

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/RA/
 J. E. Dyer
 Chief Financial Officer

Adams: Yes No Initials: AH SUNSI Review: AH
 Publicly Available Non-Publicly Available Sensitive Non-Sensitive

ADAMS Accession No: **ML13261A080**

***via e-mail**

CFO-0009

OFFICE	OCFO/DPB/BOB2	OCFO/DPB/BOB2	OCFO/DPB/BOB2	OCFO/DPB	A/DCFO
NAME	AHoward/lmv1	JMattingley	NStAmour	JGolder	MMuessel
DATE	9/17/13	9/18/13	9/18/13	9/19/13	9/ /13
OFFICE	NRR	CFO			
NAME	ELeeds	JEDyer			
DATE	9/16/13	9/27/13			

