



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

December 31, 2013

Mr. Tim A. Christman
Manager, Advanced Programs
GE Hitachi Nuclear Energy
6705 Vallecitos Road
Sunol, CA 94856

Dear Mr. Christman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of September 27, 2013, requesting a reclassification for General Electric (GE) Hitachi's Vallecitos Nuclear Center (VNC) current license Special Nuclear Material (SNM)-960 from 10 CFR 171.16(1)(A)(2)(c) to 10 CFR 171.16(1)(D). GE Hitachi states the latter category more appropriately categorizes VNC's current and future activities for possession and storage of SNM in a fixed location and its plans to limit additional SNM quantities to less than a critical mass as defined in 10 CFR 70.4. GE Hitachi also requests a fee exemption for Fiscal Year (FY) 2013 fees based on 10 CFR 171.11(b) and (d) and a suspension of FY 2014 fees commencing October 1, 2013, until a final decision is rendered.

Regarding GE Hitachi's request for reclassification, classification is based on the activities authorized in the license. In a letter dated June 27, 2013, from Ms. Rosemary Reeves to Mr. Anthony McFadden (ADAMS Accession No. ML13073A190), the NRC stated the revised renewal application SNM-960 for possession and storage at the Hillside Storage Facility and removal of other VNC activities, facilities, and locations did not specifically address several issues, including potential releases from the Hillside Storage Facility in compliance with 10 CFR 70.22(i). Therefore, the NRC requested that GE Hitachi submit supplemental information for further evaluation by the NRC.

Additionally, in a letter dated September 11, 2013, (ADAMS Accession No. ML13175A054), the NRC stated the decommissioning funding plan (DFP) could not be accepted to support the license renewal application and GE Hitachi must provide a revised DFP. Subsequent to these letters, GE Hitachi informed the NRC of its plans to revise the license renewal application to include not only possession and storage at the Hillside Storage Facility but also other VNC activities, facilities and locations. GE Hitachi has submitted this revision by letter dated December 13, 2013, and the staff is currently performing an acceptance review. GE Hitachi also submitted a revised evaluation of the need for a Radiological Contingency and Emergency Plan under 10 CFR 70.22(i) and an evaluation of seismic activity and subsequent accidents at the Hillside Storage Facility. Thus, as of today, the authorized activities are based on the currently held SNM-960 license and not on those requested in the license renewal application.

Regarding a fee exemption for VNC for FY 2013 and FY 2014 annual fees, the NRC has established regulations for granting of fee exemptions under 10 CFR 171.11, "Exemptions," for which licensees apply in accordance with 10 CFR 171.9, "Communications." The NRC has reviewed your request based on the following two regulations, 10 CFR 171.11(b) and (d):

- *10 CFR 171.11(b) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification or questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.*

GE Hitachi states that it's in the public interest to amend the license rather than terminate the license because GE Hitachi maintains other licenses for the same site. The NRC regulates the use of nuclear materials, such as SNM, through licensing, inspection and enforcement of its requirements. In GE Hitachi's case, the NRC requested GE Hitachi submit supplemental information to address potential releases of nuclear materials from the Hillside Storage Facility pertaining to activities under the SMN-960 license. The NRC also requested GE Hitachi submit supplemental information addressing potential seismic activity and subsequent accidents at Hillside Storage Facility (ADAMS Accession No. ML13073A190). Additionally, the NRC has requested GE Hitachi provide a revised DFP to support the renewal application (ADAMS Accession No. ML13175A054). The actions requested by the NRC are a matter of public interest to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment. Therefore, the NRC cannot grant GE Hitachi an exemption based on public interest of GE Hitachi's claims that activities will be conducted in manner conducive to the protection of public health and safety. The NRC, as a regulatory agency, has the sole responsibility to determine whether these activities are conducive to protect public health and safety through a completed reevaluation of the revised license renewal application.

Regarding the time period for filing an exemption, the NRC commends GE Hitachi for filing their fee exemption request for FY 2013 annual fees in a timely manner. However, the NRC regulations do not permit a suspension of FY 2014 fees as a means to delay payment of fees assessed under any circumstances. The regulation 10 CFR 171.11(b) states, in part:

“ . . . Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only timely payment in full ensures avoidance of interest and penalty charges.”

- *10 CFR 171.11 (d) The Commission may grant a materials licensee an exemption from the annual fee if it determines that the annual fee is not based on a fair and equitable allocation of NRC costs. The following factors must be fulfilled as determined by the Commission for an exemption to be granted:*

- *(1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees; GE Hitachi's request for a fee exemption for SMN-960 fails to provide any data demonstrating that the NRC's generic allocation of costs associated with the material license's fee category (1)(A)(2)(c), is disproportionate-either to themselves, or to the entire licensee class in this category. These generic NRC costs pertaining to material license's fee category (1)(A)(2)(c) benefit the entire licensee class; so the costs associated with these activities are fairly distributed to all licensees in this class. Because GE Hitachi's revised renewal application is still being reviewed, the NRC will continue to assess fees to GE Hitachi based on the license held and will reassess fees, if appropriate, in the event the license is downgraded upon completion of the evaluation.*

- *or (2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly or indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decisions; GE Hitachi's request fails to provide convincing evidence that NRC budgeted generic costs are not attributable to the class of licensee. NRC's budgeted generic costs are based on activities directly related to the regulation of fuel cycle facilities. As explained above, fees are based on activities relating to the regulation of the class of the license currently held.*

- *or (3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs. The GE Hitachi request fails to state any other grounds that demonstrate that the annual fee is not based on a fair and equitable allocation of NRC costs for the type of license it currently holds. GE Hitachi is assessed fees based on the license held; therefore, the NRC cannot assess fees attributable to a downgraded license until such a license is granted.*

In conclusion, GE Hitachi's acceptance of an NRC license subjects GE Hitachi to all applicable rules, regulations, and orders of the NRC now or hereafter in effect - these include licensing fees. Based on the facts stated above, the NRC has determined that GE Hitachi does not qualify for a fee exemption based on 10 CFR 171.11(b) and (d); therefore, the fee exemption request is denied.

Sincerely,

*/RA/
Mary C. Muessle for*

J. E. Dyer
Chief Financial Officer

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