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June 17, 2014

Ms. Mary Muessle
Acting Chief Financial Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Resubmittal of Request for Fee Waiver for NRC Review of Technical Updates to EPRI Motor Operated Valve Performance Prediction Methodology Software

Project Number: 689

Dear Ms. Muessle:

On March 10, 2014, the Nuclear Energy Institute (NEI) submitted to the U.S. Nuclear Regulatory Commission (NRC) a report by the Electric Power Research Institute (EPRI) entitled, "Summary of Technical Updates to EPRI MOV PPM Software Versions 3.4 and 3.5." NEI requested that the NRC review and prepare a supplemental safety evaluation for EPRI's updated motor-operated valve (MOV) performance prediction methodology. Pursuant to 10 CFR § 170.11(a)(1)(iii), NEI also requested an exemption from NRC fees for this review. In a letter dated May 7, 2014, the NRC denied this fee waiver request upon finding the primary beneficiary of this review is the industry, contrary to 10 CFR § 170.11(a)(1)(iii)(B). Based on the following additional information, NEI requests that the NRC reconsider its earlier determination and grant the requested fee exemption.

In accordance with 10 CFR § 170.11(a)(1)(iii), the NRC does not collect fees for a special project that is a review or report submitted to the NRC as a means of exchanging information between industry organizations and the NRC. To receive this fee exemption, 10 CFR § 170.11(a)(1)(iii)(B) requires:

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 would be the primary beneficiary from its review and preparation of a supplemental safety evaluation for EPRI's updated MOV performance prediction methodology.¹ EPRI's MOV methodology directly supports NRC efforts to address Generic Letter 89-10, "Safety-Related Motor-Operated Valve Testing and Surveillance" (June 28, 1989). In Generic Letter 89-10, the NRC encouraged licensees "to consider the need for industry-sponsored MOV test programs" and emphasized this "should be viewed by all concerned as a long-term ongoing program."² In response to the NRC's request in Generic Letter 89-10, EPRI developed and has continued to update its MOV performance prediction methodology.

The NRC's earlier safety evaluations reviewing EPRI's MOV performance prediction methodology recognize this ongoing program provides the NRC with significant benefits. For example, the NRC has found EPRI's research in this area "significantly improves the understanding of MOV behavior and the ability to predict MOV performance," and that "[t]he NRC staff considers the EPRI program to provide significant information for the improvement of the design, setup, and testing of MOVs used in nuclear power plants."³

As a recognition of the significant benefits the NRC receives from the EPRI's MOV performance prediction methodology, the NRC has granted fee exemptions pursuant to 10 CFR § 170.11(a)(1)(iii) for its prior reviews of EPRI MOV methodology updates. For example, the NRC granted a fee exemption in response to NEI's 2004 request for the NRC to review EPRI MOV methodology updates, finding these "submittals support NRC's generic regulatory improvement program in accordance with 10 CFR 170.11(a)(1)(iii). Specifically, these submittals will allow preparation of a fourth Supplement to the NRC Safety Evaluation on the EPRI MOV Performance Prediction Program Topical Report."⁴ Likewise, in response to a 2006 request by NEI for the NRC to review other EPRI MOV methodology updates, the NRC granted another fee exemption, stating "the fee branch has waived the Section 170.11 of Title 10 of the Code of Federal Regulations fees associated with this TR review."⁵

¹ Because the NRC found NEI satisfied the requirements in 10 CFR § 170.11(a)(1)(iii)(A) and (C), this letter focuses on the exemption requirement in 10 CFR § 170.11(a)(1)(iii)(B).

² Generic Letter 89-10, "Safety-Related Motor-Operated Valve Testing and Surveillance" at 3 (June 28, 1989).

³ Letter from A. Thadani, NRC, to T. Tipton, NEI, Electric Power Research Institute (EPRI) Topical Report TR-103237, "EPRI MOV Performance Prediction Program" (Revision 1) (Mar. 15, 1996), Enclosure, Safety Evaluation by the Office of Nuclear Reactor Regulation of Electric Power Research Institute Topical Report TR-103237 "EPRI Motor-operated Valve Performance Prediction Program" at 3-4; *see also id.* at 36 ("The research conducted by EPRI significantly improves the understanding of MOV behavior and the ability to predict MOV performance.").

⁴ Letter from J. Funches, NRC, to A. Marion, NEI (Sept. 2, 2004) (ML042460445).

⁵ Letter from S. Rosenberg, NRC, to J. Riley, NEI, Acceptance for Review of "Electric Power Research Institute Motor-operated Valve Performance Prediction Methodology Software" (Nov. 14, 2006) (ML063120335). NEI recognizes the NRC clarified the language in 10 CFR § 170.11(a)(1)(iii) since granting these exemptions. Final Rule, Revision of Fee Schedules; Fee Recovery for FY 2009, 74 Fed. Reg. 27,642, 27,648, 27,659-60 (June 10, 2009). However, this clarification only "simplify[ed] § 170.11 for ease of reading" and made "no change to the NRC's fee exemption policy." *Id.* at 27,648. Notably, the "primary beneficiary" requirement was in place before the NRC granted fee exemptions for its earlier EPRI MOV methodology reviews. *See* Final Rule, Revision of Fee Schedules; Fee Recovery for FY 2002, 67 Fed. Reg. 42,612, 42,614 (June 24, 2002)

Consistent with these prior exemptions for NRC EPRI MOV methodology reviews, the NRC should grant this current exemption request because the NRC will be the primary beneficiary from its review and preparation of a supplemental safety evaluation for EPRI's latest methodology updates. The NRC's inspection program relies on licensees using EPRI's MOV methodology.⁶ The latest updates to EPRI's MOV methodology address software errors and information notices, and improve the software's accuracy and functionality. NRC review and approval will encourage licensees to continue to rely on a uniform methodology to properly model MOV responses, reducing the need for NRC staff resources associated with facility-specific reviews when the staff conducts MOV inspections at each licensed facility. As a result, NRC approval of the latest MOV methodology will make NRC staff MOV inspections more efficient and will result in cost savings for the NRC (*i.e.*, the staff will expend fewer MOV inspection-related resources).

In denying NEI's earlier fee waiver request, the NRC found "[t]he industry will directly benefit from the Technical Updates as they will be used to upgrade the existing MOV PPM software" and "[a]s a result, the industry will be better able to test MOV design pressure and flows."⁷ NEI respectfully submits these facts are not dispositive of the fee exemption question. The question posed in the NRC's regulation is not whether the NRC will be the primary user of the underlying software update. Rather, the question posed in the NRC's regulation is whether the NRC will be the "primary beneficiary of the NRC's review and approval of these documents."⁸ As discussed above, NRC review and approval of EPRI's updated MOV methodology will directly and significantly benefit the NRC by allowing the NRC to continue to efficiently rely on EPRI's MOV methodology in its inspection programs.⁹ The NRC benefits significantly by only needing to review the updated methodology once generically and not for each individual plant submittal of each MOV analysis conducted with the updated model. Unfortunately, no one is using the updated model now because it has not received NRC approval. Accordingly, because the NRC would be the primary beneficiary from its review and approval of EPRI's updated MOV methodology, the NRC should grant the requested fee waiver pursuant to 10 CFR § 170.11(a)(1)(iii).

(explaining the addition of the "primary beneficiary" criterion to 10 CFR § 170.11 does not represent as a change in NRC policy because, among other reasons, "the 'primary beneficiary' concept is solidly rooted in pertinent caselaw").

⁶ See, e.g., NRC Inspection Manual, Inspection Procedure 62708, Motor-Operated Valve Capability (Oct. 23, 2013) (ML13142A123); NRC Inspection Manual, Inspection Procedure 73758, Part 52, Functional Design and Qualification, and Preservice and Inservice Testing Programs for Pumps, Valves and Dynamic Restraints (Apr. 19, 2013) (ML12314A205).

⁷ Letter from J Dyer, NEI, to C. Earls, NEI at 2 (May 7, 2014) (ML14099A020).

⁸ 10 CFR § 170.11(a)(1)(iii)(B)

⁹ NRC's fee waiver denial letter appears to agree with this point, albeit to a limited extent, because it found EPRI's methodology "assists the NRC in the regulation of MOVs." Letter from J Dyer, NEI, to C. Earls, NEI at 1 (May 7, 2014) (ML14099A020).

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If you have any fee-related questions about this letter, please contact me. If you have any technical questions about the EPRI MOV performance prediction methodology software, please contact EPRI's Mr. John Hosler at 704-595-2720 or jhosler@epri.com.

Sincerely,

A handwritten signature in black ink that reads "Chris Earls". The signature is written in a cursive style with a long, sweeping underline.

Christopher Earls

c: Mr. Alexander Balkin, CFO/DPB/ICPB, NRC
Mr. Joseph Holonich Jr., NRR/DPR/PLPB, NRC
Mr. Michael F. Farnan, NRR/DE/EPNB, NRC
Mr. John Hosler, EPRI