



**UNITED STATES**  
**NUCLEAR REGULATORY COMMISSION**  
WASHINGTON, DC 20555-0001

August 12, 2014

Mr. Christopher E. Earls  
Nuclear Energy Institute  
1201 F Street, NW, Suite 1100  
Washington, DC 20004

Dear Mr. Earls:

On behalf of the U. S. Nuclear Regulatory Commission (NRC), I am responding to the Nuclear Energy Institute's (NEI) June 17, 2014 (ML14176B177), resubmission of their March 10, 2014, fee waiver request (ML14072A043). This request was made under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(a)(1)(iii) for the Transmittal of Technical Updates to Electric Power Research Institute (EPRI) Motor Operated Valve (MOV) Performance Prediction Methodology (PPM) Software Versions 3.4 and 3.5 (Updates). The NRC responded to your initial request in a letter dated May 7, 2014 (ML14099A020).

The relevant portion of the regulation is as follows:

*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. To receive this fee exemption;*

*(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.*

*(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.*

*(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.*

Your resubmittal asserts material insufficiencies in the NRC's analysis of section (B) of the rule. Specifically, NEI argues the NRC improperly concluded that the industry was the primary beneficiary of the updates. The NRC does not contest that it receives some benefit from the industry's use of the software. The NRC works closely with the industry and the public to C. E.

ensure the safe and secure use of nuclear materials. As a result, any operational efficiency achieved by the industry will, in an incidental manner, benefit the NRC. Conversely, any improvement in NRC operations will benefit the industry at large. But the benefit received by the NRC from these updates is ancillary to the primary benefit received by the industrial users of the software. As stated in the NRC's May 7, 2014, letter; "While the Technical Updates will directly benefit the industry, they were not created at the request of the NRC, nor will the NRC directly benefit from their use." Although the NRC is mindful that it will accrue some possible benefit from the updates, we maintain that the industry is the direct and primary beneficiary because the updates were not requested by the NRC, and because these updates will not be directly utilized by the NRC.

Additionally, your letter states that the NRC's denial of NEI's request is inconsistent with past practices of this office and the waiver requests should be granted as a result. The NRC recognizes that we have granted earlier requests for waiver of similar – although not identical – work. But we stand by the current interpretation of 10 CFR 170.11(a)(1)(iii) in this case because the facts here are such that *licensees* are the primary beneficiary through their ability to continue to rely upon a uniform methodology to properly model MOV responses. However, any previous applications of the rule do not, and cannot, justify continued inflexible application of the rule in the future. Moreover, the NRC strives to interpret and apply its various regulations in a manner consistent with law and policy, and as a result, continually refines its interpretation of the regulations.

In conclusion, the NRC does not find any additional information contained in NEI's resubmission of their fee waiver request to justify a modification of the findings. As a result, NEI's resubmission of the request for waiver of fees related to the Transmittal of Technical Updates to EPRI MOV PPM Software Versions 3.4 and 3.5, is denied. If you have any technical questions regarding this matter, please contact Mr. Joseph Holonich, at (301) 415-7297. Please contact Mr. Alexander Balkin, of my staff, at (301) 415-5835 for any fee-related questions.

Sincerely,

Maureen E. Wylie  
Chief Financial Officer

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Maureen E. Wylie  
Chief Financial Officer

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Joseph Holonich

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**\*via e-mail**

**CFO-0009**

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