



CHIEF FINANCIAL  
OFFICER

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

May 22, 2017

Mr. Matt Feyrer  
Site Manager  
6705 Vallecitos Road  
GE Vallecitos Nuclear Center - Building 102  
Sunol, CA 94586-8524

SUBJECT: REQUEST FOR RECLASSIFICATION OF ANNUAL FEE CATEGORY FOR THE  
GENERAL ELECTRIC VALLECITOS NUCLEAR CENTER

Dear Mr. Feyrer:

The U.S. Nuclear Regulatory Commission (NRC) is responding to GE Hitachi's (GEH's) letter dated March 25, 2014, (Agencywide Documents Access and Management System [ADAMS] Accession Number ML14085A128), requesting a reclassification of the annual fee for the GEH Vallecitos Nuclear Center (VNC). In its letter, GEH requested reclassification of the annual fee for the VNC from the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR), Paragraph 171.16(d)(1)(A)(2)(c), "*Others, including hot cell facilities,*" to 10 CFR 170.31(1)(D), "*All other special nuclear material licenses, except licenses authorizing special nuclear material in sealed or unsealed form in combination that would constitute a critical mass, as defined in § 70.4 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.*"

In its March 25, 2014, letter, GEH further stated that it had resubmitted its renewal application for Special Nuclear Material (SNM) license 960 (SNM-960, Docket Number 07000754). In the application, GEH proposed to downgrade SNM possession limits at the VNC site and to restrict licensed activities to possess and store SNM in a fixed location. GEH also stated that the license renewal request would limit additional SNM quantities in use to less than a critical mass as defined in 10 CFR 70.4.

By letter dated June 4, 2014, (ADAMS Accession Number ML14142A156), the NRC acknowledged receipt of GEH's March 25, 2014 letter, and responded that its technical staff was conducting a comprehensive review of the request. Further GEH would be notified of the NRC's decision on the reclassification request at a later date upon completion of the renewal application review. This letter follows-up on that review and provides the NRC staff final determination regarding the request.

The NRC staff has completed its review of the information provided in GEH's March 25, 2014, letter and the current annual fees assessed for SNM-960 for the VNC. The NRC staff also reviewed the information in Sections 1.2.3 and 1.2.4 of GEH's revised license renewal application dated February 16, 2016, (ADAMS Accession Number ML16057A713), which discuss GEH's proposed possession limits and authorized activities, respectively. The outcome of this review is discussed below.

## DISCUSSION

The NRC is mandated by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, to collect approximately ninety (90) percent of its budget authority from applicants and licensees. To comply with this mandate, the NRC allocates budgetary resources to each fee class and it must recover the cost of these resources each year through fees for service and annual fees. For the Fuel Facilities Business Line, the budgetary resources are distributed across the fee class using an effort factor matrix. All NRC major fuel cycle facilities are currently included in this matrix, including the VNC. Facilities requiring more regulatory effort are charged a higher percentage of the cost than facilities requiring less regulatory effort. Of the fuel cycle facilities included in this matrix, the VNC has historically required a small regulatory effort compared to other fuel facilities (about 3 percent of the total effort for facilities included in the matrix). Based on the calculated regulatory effort for the VNC, the NRC assigned a Program Code describing the activities currently authorized at the site under the SNM-960 materials license (i.e., Program Code 21133 [see Appendix G of NUREG-1556, Volume 20]), which is associated with the 10 CFR 171.16 fee category (d)(1)(A)(2)(c), "Others, including hot cell operations." This category currently assigns a fee of \$770,000.00.

In considering GEH's March 25, 2014, request to reclassify the annual fee for the VNC, the NRC staff evaluated both the information in GEH's letter and its February 16, 2016, license renewal application. The NRC staff reviewed the information in the license renewal application regarding the possession limits and authorized activities. This information is discussed in Sections 1.2.3 and 1.2.4, respectively, of GEH's license renewal application. The NRC staff noted that GEH's new proposed possession limits are significantly reduced, when compared to the current possession limits, and that GEH's proposed authorized activities have been reduced to the following: (1) possession and storage of the material listed in Section 1.2.3 at the Hill Side Storage Facility and (2) possession and use of limited quantities (350g) of SNM for laboratory analysis and engineering studies within the metallurgy, chemistry, and ceramics laboratory facilities (i.e., building 103) at the site. In addition, in its license renewal application, GEH stated that the principal activities at the Radioactive Materials Laboratory (RML - building 102A), which contains the hot cells, mostly involve work on byproduct materials under a State of California license. Furthermore, GEH stated that there is the potential for small quantities of irradiated fuel to be infrequently handled for engineering evaluation purposes under the SNM-960 materials license. This information has also been confirmed during NRC staff visits to the site and during other routine interactions between the licensee and the NRC staff.

Based on this information, the NRC staff determined that these changes in the activities currently conducted at the site would represent a change in the licensee's current primary activities at the VNC. Additionally, the NRC staff determined that, if the license renewal application is approved, the VNC should no longer be considered a major fuel cycle facility and should be removed from the fuel facility effort factor matrix. Instead, the VNC should be reclassified as a "greater than critical mass" facility (similar to universities and other commercial operations). The NRC staff also determined that the reduced scope of activities at the VNC are better described under Program Code 22155, "SNM greater than critical mass for commercial products and other non-fuel-cycle activities," which is associated with annual fee category 1F in 10 CFR 171.16. This category currently assigns a fee of \$6,800.00.

In its March 25, 2014, letter, GEH stated that continued assessment of the annual fee pursuant to 10 CFR 171.16, category (d)(1)(A)(2)(c), "Others, including hot cell facilities," represents a significantly disproportionate allocation of costs to GEH and that it has not performed any post

irradiation exams on SNM in the VNC hot cells since 2008. The NRC, however, assesses applicable fees based on the activities authorized under the license and not on the activities *currently being performed* at a licensed facility. Since GEH's current SNM-960 license authorizes activities consistent with 10 CFR 171.16(1)(A)(2)(c), the NRC staff has determined that the current annual fee is appropriately assessed for VNC. However, as stated earlier, if GEH's license renewal application is approved, with the subsequent significant reduction of possession limits and more restricted authorized activities, the NRC staff will then reassess the appropriate program code for VNC to determine the annual fee category that would apply once the changes are approved and the renewed license is issued. Until then, GEH's fees will continue to be assessed based on the full scope of the activities authorized under its current license.

In its March 25, 2014, letter, GEH also stated that the NRC staff support for the SNM-960 license has been minimal, with one to two regional inspections per year. Please note, however, that the NRC is mandated by OBRA-90 to collect approximately ninety (90) percent of its budget authority from applicants and licensees. The NRC's collection of fees for the VNC is consistent with its fee schedules, regardless of the number of inspections per year.

Finally, GEH can expect a reduced annual fee if actions are taken to downgrade or terminate its license. In accordance with 10 CFR 171.17(a)(2), if GEH files a termination request, the annual fee for materials licenses with annual fees of \$100,000 or greater for a single fee category for the current fiscal year will be prorated based on the number of days remaining in the fiscal year when a termination request or a request for a possession-only license is received by the NRC, provided the licensee permanently ceased licensed activities during the specified period. Also, if actions are taken by GEH to downgrade its license, the annual fee for a materials license with an annual fee of \$100,000 or greater for a single fee category for the current fiscal year, that is subject to fees under this part and downgraded on or after October 1 of a fiscal year, is automatically prorated by the agency on the basis of the number of days remaining in the fiscal year when the application for downgrade is received and approved by the NRC.

## CONCLUSION

Based on the information provided by GEH in its license renewal application, the NRC staff concludes that the scope of GEH's proposed authorized activities and possession limits are significantly reduced when compared to the current authorized activities and possession limits. Therefore, the NRC staff concludes that, at the time materials license SNM-960 is renewed, the VNC should be removed from the major fuel cycle facilities fee matrix and assigned program code 22155, "SNM greater than critical mass for commercial products and other non-fuel-cycle activities," which is associated with annual fee category 1F in 10 CFR 171.16. The NRC staff concludes that this program code better describes the reduced scope and primary activities proposed for the site in GEH's license renewal application. Under this new program code, however, fees associated with licensing actions for the VNC will continue to be reimbursable at full cost pursuant to 10 CFR 170.31, "Schedule of Materials Fees," category 1F. In addition, since annual fees are assessed based on the activities *authorized* under the license and not on the scope of the activities being conducted at the site, the NRC reclassification of the VNC's annual fee, as recommended by the NRC staff, should only become effective at the time the renewed license authorizing GEH's new proposed activities is issued. Additionally, because GEH has not shown that the budget allocation supporting licensed activities is unfair or inequitable, the NRC will continue to bill GEH for these services, as mandated by OBRA-90 and the regulations in 10 CFR Part 170.

M. Feyrer

- 4 -

In accordance with 10 CFR 2.390 in the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records System component of the NRC's ADAMS. ADAMS is accessible from the NRC Web site at: <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

If you have any questions specific to the status of the NRC staff's review of the VNC's license renewal application, please contact Mr. Osiris Siurano-Perez in the Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle, Safety, Safeguards, and Environmental Review. Mr. Siurano-Perez can be reached at (301) 415-7827 or via e-mail at: [Osiris.Siurano-Perez@nrc.gov](mailto:Osiris.Siurano-Perez@nrc.gov). If you have questions regarding fee classification matters, please contact Ms. Michele Kaplan of my staff. Ms. Kaplan can be reached by phone at (301) 415-5256 or via e-mail at: [Michele.Kaplan@nrc.gov](mailto:Michele.Kaplan@nrc.gov).

Sincerely,

*/RA/*

Maureen E. Wylie  
Chief Financial Officer

Docket No. 07000754  
License No. SNM-960

cc: Scott P. Murray, GE-Hitachi

SUBJECT: REQUEST FOR RECLASSIFICATION OF ANNUAL FEE CATEGORY AND  
 REVISED LICENSE RENEWAL APPLICATION FOR VALLECITOS NUCLEAR CENTER,  
 DATED May 22, 2017

**ADAMS Accession No.: ML15117A388**

**\* via e-mail**

<b>OFFICE</b>	NMSS/FCSE/ECB: PM	NMSS/FCSE: LA	NMSS/PMDA: TL	CFO/DPB	FCSE/ECB: BC
<b>NAME</b>	OSiurano-Perez	AWalker-Smith	JRand	WBlaney *	MDiaz
<b>DATE</b>	03/02/17	03/16/17	03/28/17	05/12/17	03/24/17
<b>OFFICE</b>	OCFO/DPB	NMSS/FCSE: DD	Tech Ed	OGC	NMSS/OD
<b>NAME</b>	MKaplan *	BSmith	WMoore	MClark	MDapas
<b>DATE</b>	05/15/17	4/26/17	4/28/17	04/18/17	5/05/17
<b>OFFICE</b>	OCFO/DPB	OCFO/DPB	DCFO	CFO	
<b>NAME</b>	RAllwein	BFicks	MCMuessle	MEWylie	
<b>DATE</b>	05/15/17	05/15/17	05/22/17	05/22/17	

**OFFICIAL RECORD COPY**