



CHIEF FINANCIAL  
OFFICER

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

January 29, 2018

Mr. William R. Gross  
Director, Incident Preparedness  
Nuclear Energy Institute  
1201 F Street, NW, Suite 1100  
Washington, DC 20004

Dear Mr. Gross:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated January 2, 2018, requesting a fee waiver under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(a)(1)(ii) for NRC review and endorsement of an updated Section 21, "Compensatory Measures," of Nuclear Energy Institute (NEI) 03-12, "Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Plan]."

The NRC has established regulations for the granting of fee exemptions under 10 CFR 170.11, "Exemptions," which may be applied for in accordance with 10 CFR 170.5, "Communications." The NRC staff has reviewed your request based on the following regulations, 10 CFR 170.11(a)(1)(ii) and 10 CFR 170.11(a)(13):

*10 CFR 170.11(a) No application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for: (1) A special project that is a request/report submitted to the NRC— . . . (ii) When the NRC, at the time the request/report is submitted, plans to use the information in response to an NRC request from the Office Director level or above to resolve an identified safety, safeguards, or environmental issue, or to assist the NRC in generic regulatory improvements or efforts (e.g. rules, regulatory guides, regulations, policy statements, generic letters, or bulletins).*

*10 CFR 170.11(a)(13) All fee exemption requests must be submitted in writing to the Chief Financial Officer in accordance with § 170.5,<sup>1</sup> and the Chief Financial Officer will grant or deny such requests in writing.*

In SRM-SECY-16-0073, dated October 5, 2016, the Commission directed the staff as follows:

In implementing the NRC's regulatory program, either in developing new regulations, inspecting licensee compliance with regulations, or executing the FOF program, the staff should be mindful that the concept of "high assurance" of adequate protection found in our security regulations is equivalent to "reasonable assurance" when it comes to determining what level of regulation is appropriate.

<sup>1</sup>10 CFR 170.5 provides that "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 NRC should not be applying a “zero risk” mentality to security any more than we should be doing so with respect to safety. The staff should operate under this paradigm and eliminate ambiguity on this point in its guidance documents or other internal directives, instructions, or training materials, to the extent such ambiguity exists.

In the case of this submittal, the NEI has requested that the NRC endorse methodologies that can be used by industry to risk-inform the development and implementation of compensatory measures in response to the failure or degradation of physical protection program equipment, systems, or components.

The Office of Nuclear Security and Incident Response staff has determined that the request for NRC review and potential endorsement of the updated Section 21, “Compensatory Measures,” of NEI 03-12 satisfies the criterion contained in 10 CFR 170.11(a)(1)(ii) for improvement to NRC regulatory guidance. The requested action will benefit the NRC in its effort to clarify the regulatory framework supporting the use of the terms “high assurance” found in our security regulations and “reasonable assurance” found in our safety regulations. By reviewing and potentially endorsing the proposed approach to risk-inform compensatory measures, the staff will be actively implementing Commission direction in SRM-SECY-16-0073 to not apply a “zero risk” mentality to security and, where possible, to eliminate ambiguity in its guidance documents to the extent such ambiguity exists.

Therefore, the NRC staff concludes that the review of an updated Section 21, “Compensatory Measures,” of NEI 03-12, “Template for the Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, [and Independent Spent Fuel Storage Installation Security Plan],” for NRC review and endorsement fulfills the criteria required by 10 CFR 170.11(a)(1)(ii) and 10 CFR 170.11(a)(13); consequently, the fee waiver request is approved. If you have any technical questions regarding this matter, please contact Ms. Alison Rivera at (301) 287-3750. Please contact Mr. William Blaney, of my staff, at (301) 415-5092 for any fee-related questions.

Sincerely,

*/RA/*

Maureen E. Wylie  
Chief Financial Officer

SUBJECT: LETTER TO WILLIAM R. GROSS, NEI IN RESPONSE TO A FEE WAIVER DATED JANUARY 2, 2018. (NEI 03-12, SECTION 21); RESPONSE LETTER DATED January 29, 2018

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