

**JOSEPH E. POLLOCK**  
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August 21, 2018

Ms. Maureen Wylie, Chief Financial Officer  
Accounts Receivable/Payable Branch (T9E-10)  
Office of the Chief Financial Officer  
U.S. Nuclear Regulatory Commission  
11545 Rockville Pike  
Rockville, MD 20852-2738

**RE: Docket 99902028**

Dear Ms. Wylie:

On August 14, 2018, the Nuclear Energy Institute<sup>1</sup> received a Part 170 invoice numbered LFB 18-5202 (Docket 99902028) ("Invoice LFB 18-5202").<sup>2</sup> The purpose of this letter is to notify the Office of the Chief Financial Officer that NEI disputes the fees described in Invoice LFB 18-5202 and is exercising its right to review and appeal of the prescribed fees, pursuant to 10 C.F.R. §§ 170.51 and 15.31. Further, we request that the NRC extend the interest waiver period pending a final determination of the existence or amount of the debt pursuant to 10 C.F.R. § 15.37(j).

Invoice LFB 18-5202, which was postmarked July 26, 2019, requests remittance of \$55,895.39. The invoice indicates that it should consist of six (6) total pages, but the envelope postmarked on July 26, 2018 only contained pages 1 and 2 of the invoice.<sup>3</sup> If there are additional pages associated with Invoice LFB 18-5202, we respectfully request that the NRC provide those pages as soon as possible.

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- <sup>1</sup> The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.
- <sup>2</sup> Invoice LFB 18-5202 was addressed to "NEI INTERACTIONS (Washington, DC)" and was directed to the attention of "Vic Fregonese." To our knowledge, there is no entity known as "NEI INTERACTIONS" and Mr. Fregonese is no longer associated with NEI. All future invoices related to the Composite Adversary Force should be addressed to the Nuclear Energy Institute, and be directed to the attention of Mr. Anthony Clore.
- <sup>3</sup> In addition to pages 1 and 2 of Invoice LFB 18-5202, NEI also received a form entitled "U.S. Nuclear Regulatory Commission (NRC) License, Annual, and Inspection Fee Notice – Terms and Conditions," and NRC Form 531 "Request for Taxpayer Identification Number."

Although the invoice does not describe the services provided by the NRC in detail, it appears that the fees are being assessed for over 200 hours of "Mock Adversary Force Observation" conducted by three different individuals during April and May of 2018. Specifically, we understand that the activities described on the invoice involved observation of the process used to select Composite Adversary Force (CAF) team members.

NEI has been coordinating the selection and management of the CAF on behalf of its members for well over a decade.<sup>4</sup> Up to this point, NEI has never been invoiced for Part 170 fees associated with implementation of the CAF selection process, despite the fact that the NRC has observed the process in the past. There have been no recent, material changes to the criteria used to select CAF team members that should have prompted the need for additional NRC observation, or changes to the NRC's fee assessment practices. Further, NEI is not an NRC licensee or an applicant for an NRC license, has not "applied for . . . review of an item under the category of special projects," and does not otherwise appear to meet the definition of a "person" covered by 10 C.F.R. Part 170 in this context.<sup>5</sup> Specifically, Section 170.1 "Purpose" states:

The regulations in this part set out fees charged for *licensing services, inspection services, and special projects* rendered by the Nuclear Regulatory Commission as authorized under title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701(a)).

(emphasis added). Section 170.2 "Scope" goes on to identify the "person[s]" to whom the regulations in Part 170 apply. None of the twenty (20) lettered paragraphs in that section appear to extend the applicability of Part 170 to NEI, or implementation of the CAF selection process, which has been in place for over a decade.

- Paragraphs (a)-(g), (k), (l), (n)-(s) of Section 170.2 identify applicants for or holders of NRC licenses, and applicants for specifically enumerated NRC approvals and reviews. As stated above, NEI is not the holder of or applicant for an NRC license, nor is NEI seeking any of the approvals specifically listed in these paragraphs.
- Paragraph (u) identifies persons that submit requests for NRC records or testimony (*i.e.*, "Touhy requests"). The CAF activities referenced in Invoice LFB 18-5202 do not involve a request for NRC records or testimony.
- Paragraph (t) identifies persons that own or operate unlicensed sites that are undergoing decommissioning under NRC oversight. NEI does not own or operate such a site.

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<sup>4</sup> NEI has contracted with G4S Secure Solutions (USA), Inc. to administer and manage the CAF.

<sup>5</sup> See 10 C.F.R. § 170.2.

- Paragraph (h) identifies persons required to have examinations and tests performed to qualify or requalify individuals as Part 55 reactor operators. The CAF activities referenced in Invoice LFB 18-5202 do not involve the qualification or requalification of reactor operators.
- Paragraph (i) identifies persons required to have routine or non-routine safety and safeguards inspection *of activities licensed pursuant to the requirements of this chapter*. NEI is not an NRC licensee, and the CAF activities referenced in Invoice LFB 18-5202 are not licensed pursuant to Chapter I of Title 10 of the Code of Federal Regulations.
- Paragraph (m) identifies persons who are applying or have applied for review of an item under the category of "special projects." To our knowledge, NEI has not, and is not, applying for review of implementation of the CAF selection process as a "special project," as that term is defined in Section 170.3.<sup>6</sup>

Thus, it does not appear that 10 C.F.R. Part 170 authorizes the NRC to assess the fees that are identified on Invoice LFB 18-5202.

Finally, as mentioned above, NEI has been coordinating implementation of the CAF selection process through its contractor for more than ten years and the NRC has not assessed NEI Part 170 fees to cover "observation" of implementation of the selection process. In July 2018, the NRC staff informally notified NEI that the agency was considering assessing fees for observation of the CAF selection process. The staff, however, did not indicate that the agency was considering applying this change in position retroactively to NRC activities conducted in April and May 2018, and the NRC never confirmed its intention to change position on this issue in writing.

Even if Part 170 provides the NRC with a basis to assess the fee identified in Invoice LFB 18-5202, assessing a fee of over \$55,000.00 for ongoing activities that had not previously been subject to a fee assessment, without prior notice and with no explanation, is inconsistent with 31 U.S.C. 9701(b), which requires such charges to be fair. Any reasonable construct of the fairness demanded by 31 U.S.C. 9702(b) would require prior notice of a change in agency position that will result in tens of thousands of dollars in fees being assessed for observation of an ongoing activity, for which no fee was previously charged.

Given the discussion provided above, we believe that the fee assessed in Invoice LFB 18-5202 is not authorized by 10 C.F.R. Part 170 and fails to meet the basic fairness requirement imposed by 31 U.S.C. 9702(b). In addition, we request that the thirty-day clock for payment of interest not begin to run until a complete invoice is provided to NEI, and that NRC waive collection of interest on the debt described in Invoice LFB 18-5202 during the period that this dispute is under investigation by the NRC, pursuant to 10 C.F.R. § 15.37(j).

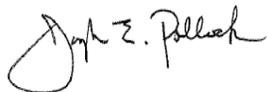
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<sup>6</sup> Paragraph (j) of Section 170.2 is reserved.

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If you have any questions or wish to discuss this matter further please contact Mr. Anthony Clore (202-739-8025, [ajc@nei.org](mailto:ajc@nei.org)).

Sincerely,

A handwritten signature in black ink that reads "Joseph E. Pollock". The signature is written in a cursive style with a large initial "J" and "P".

Joseph E. Pollock

cc: Ms. Marissa G. Bailey, NSIR/DSO