



CHIEF FINANCIAL
OFFICER

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

December 10, 2018

Mr. Joseph E. Pollock
Vice President, Nuclear Generation
Nuclear Energy Institute
1201 F Street NW, Suite 1100
Washington, DC 20004

Dear Mr. Pollock:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated August 21, 2018 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML18234A038), which disputes \$55,895.39 in licensing fees the NRC assessed the Nuclear Energy Institute (NEI) in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 170.51 "Right to review and appeal of prescribed fees" and 10 CFR 15.31 "Disputed Debts." You believe that it does not appear that 10 CFR Part 170 authorizes the NRC to assess the fees that are identified on invoice LFB 18-5202. Specifically, you mention that 10 CFR Part 170.2 "Scope," does not appear to extend to NEI. In addition, you believe that the NRC fails to meet the basic fairness requirement imposed by 31 U.S.C. 9701(b). You are also requesting that the NRC extend the interest waiver period while the review takes place in accordance with 10 CFR 15.37(j).

The NRC has established regulations for reviewing a disputed debt under 10 CFR 15.31 "Disputed debts," for which licensees may apply in accordance with 10 CFR 170.5¹, "Communications." The NRC has reviewed your request pursuant to the regulations at 10 CFR 170.2(m), 10 CFR 170.3, and 10 CFR 170.12(d):

10 CFR 170.2(m) Applying for or has applied for since March 23, 1978, review of an item under the category of special projects in this chapter that the Commission completes or makes whether or not in conjunction with a license application on file or that may be filed.

10 CFR 170.3 Definitions provides that "Special projects means specific services provided by the Commission for which fees are not otherwise specified in this chapter. This includes, but is not limited to, contested hearings on licensing actions directly related to U.S. Government national security initiatives (as determined by the NRC), topical report reviews, early site reviews, waste solidification activities, activities related to the tracking and monitoring of shipment of classified matter, services provided to certify licensee, vendor, or other private industry personnel as instructors for 10 CFR part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of

¹ 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."

uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. Special projects does not include activities otherwise exempt from fees under this part. It also does not include those contested hearings for which a fee exemption is granted in §170.11(a)(2), including those related to individual plant security modifications”.

10 CFR 170.12(d) Special project fees provides that (1) All special projects performed by the Commission, unless otherwise exempt from fees or for which fees are otherwise specified in this part, will be assessed fees to recover the full cost of the service provided. Special projects means specific services provided by the Commission, including but not limited to—

- (i) Topical reports;*
- (ii) Financial assurance submittals that do not require a license amendment;*
- (iii) Responses to Confirmatory Action Letters;*
- (iv) Uranium recovery licensees' land-use survey reports;*
- (v) 10 CFR 50.71 final safety analysis reports;*
- (vi) Contested hearings on licensing actions directly involving U.S Government national security initiatives, as determined by the NRC; and*
- (vii) Responses to Touhy requests that require the NRC staff to expend more than 50 hours of official time. Fees for Touhy requests will be billed at the appropriate hourly rate established in §170.20.*

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the special project is completed. Each bill will identify the special project, including any documents submitted for review or the specific contested hearing, and the related costs. The fees are payable upon notification by the Commission.

The NRC staff reviewed 10 CFR Part 170.2 “Scope,” and agree with NEI that Paragraphs (a)-(g), (h), (i), (k), (l), (n)-(s), (u), and (t) do not apply to NEI. However, NRC staff disagrees with NEI with regards to Paragraph (m) because in this instance, NEI was applying for review of a special project. Special projects are defined in 10 CFR 170.3, in part, as “*specific services provided by the Commission for which fees are not otherwise specified.*” As further explained by 10 CFR 170.12(d), special projects are “*specific services provided by the Commission, including but not limited to...*” and continues that “*the NRC intends to bill each applicant or licensee at quarterly intervals until the special project is completed.*”

Oversight of the Composite Adversary Force (CAF) is considered a special project because while NEI provides this service to NEI members to support NRC conducted force-on-force inspections, the NRC must verify that the CAF meets the appropriate performance requirements and mitigation of conflicts of interest. Without the NRC validation, the CAF would not be used during the NRC conducted force-on-force inspections. The NRC staff had previously concluded that activities on invoice LFB 18-5202 for CAF Oversight were not fee billable under 10 CFR Part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended” because the CAF was used to assist the NRC in generic regulatory efforts for the force-on-force inspection process of all operating power reactors. While the CAF was used at all operating reactors, the fee exemption at 10 CFR 170.11(a)(ii) was applicable. The NRC staff, however, revisited this matter and ultimately concluded that since the CAF is no longer used at all operating power reactors, the 10 CFR 170.11(a)(ii) exemption no longer applies. Therefore, the work must be billed directly to NEI under 10 CFR Part 170 (direct fee-billable work) because the costs relate to a specific service provided by the Commission.

Notably, Part 170 implements the Independent Offices Appropriations Act (IOAA) (31 U.S.C. § 9701). That Act authorizes federal agencies to bill “persons” when those agencies provide a “service or thing of value.” As NEI notes, the IOAA requires that these fees be both “fair” and based on the costs to the Government. Here, it would not be fair to recover through annual fees NRC costs that were derived from reviewing a specific NEI request—fairness dictates that if the NRC is performing a special project by reviewing NEI’s request, then NEI should pay for the NRC’s work.

Therefore, I deny your requests dated August 21, 2018, disputing the licensing fees assessed by the NRC; requesting a full waiver of these charges, and on all future charges related to the NRC staff’s review of CAF Oversight.

If payment of the fees in one lump sum represents an undue financial burden, you may request a payment plan for the invoices. As per 10 CFR 15.35(b), “Payments,” a debtor may arrange an installment plan with the NRC for payment of fees if the debtor is unable to pay the invoice in one lump sum. Please note that currently all installment agreements require the payment of interest at 1 percent annually and an administrative charge of \$7.00 per period.

If you have any questions regarding this matter, please contact Mr. William Blaney, of my staff, at (301) 415-5092.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

SUBJECT: DENIAL OF FEE EXEMPTION REQUEST FOR CHARGES INCURRED IN REVIEW OF A SPECIAL PROJECT RELATED TO NEI, Dated December 10, 2018

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CFO-0009

OFFICE	OCFO/DPB/BOB2	NSIR/DSO	NSIR/DSO	OGC	OCFO/DOC
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DATE	11/21/2018	11/26/2018	11/26/2018	11/21/2018	11/27/2018
OFFICE	OCFO/DOC	OCFO/DPB/LFPT	OCFO/DPB	OCFO/DPB	DCFO
NAME	CFredericks	MKaplan*	RAIwein	SMCoffin	BFicks
DATE	11/27/2018	11/29/18	11/30/18	12/6/18	
OFFICE	CFO				
NAME	MEWylie				
DATE	12/10/18				

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