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

CHIEF FINANCIAL
OFFICER

January 28, 2019

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 December 18, 2018, requesting a fee waiver under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(a)(1)(iii)(A) for NRC review and endorsement of Nuclear Energy Institute (NEI) Technical Report 18-11, "Maintaining 10 CFR Part 95 Facility Clearances for Voluntary Program Participants," dated November 2018.

Initially, I note that the exemption provisions under 10 CFR 170.11 were revised by the fiscal year 2016 Fee Rule[1]. Specifically, the NRC removed paragraph (a)(1)(iii), which is the regulation you cited as the basis for requesting a fee waiver. This change was effective August 23, 2016. Therefore, 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).*
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> *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,[2] and the Chief Financial Officer will grant or deny such requests in writing.*

Your letter states that NEI 18-11 "is intended to provide guidance that may be used to maintain an NRC issued facility clearance (FCL) for licensees that have voluntarily established a security program in accordance with 10 CFR Part 95." According to the report, NEI 18-11 "is intended to provide a clear and uniform approach to addressing certain administrative requirements

[1] Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016 (81 Fed. Reg. 41, 171, 41, 186 (June 24, 2016)).
[2] 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."

associated with maintaining an FCL" and "ensure that the facility's Part 95 security program continues to protect national security information." If endorsed by the NRC, NEI 18-11 "may be used by facilities in the voluntary security program, including nuclear power plants, certain fuel cycle facilities and NEI."

The NRC staff concludes that NRC review of NEI 18-11, "Maintaining 10 CFR Part 95 Facility Clearances for Voluntary Program Participants," for final NRC endorsement meets the criteria under 10 CFR 170.11(a)(1)(ii); therefore, the fee waiver request is approved. Consistent with your December 18, 2018 letter, the NRC will make NEI 18-11 guidance available to all applicable licensees if endorsed.

If you have any technical questions regarding this matter, please contact Mr. Darryl Parsons at 301-415-7751. Please contact Mr. Billy 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 GROSS RESPONSE TO FEE WAIVER NEI 18-11,
DATED: January 28, 2019

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