



CHIEF FINANCIAL
OFFICER

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

April 4, 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 March 13, 2019, requesting a fee waiver under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(a)(1)(ii) for NRC review of Nuclear Energy Institute (NEI) 09-05, Revision 1 "Guidance on the Protection of Unattended Openings that Intersect a Security Boundary" and associated appendices.

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 § 170.5,¹ and the Chief Financial Officer will grant or deny such requests in writing.

NEI 09-05, Revision 1, is intended to provide guidance for licensees in determining the protection of unattended openings that intersect a security boundary or area.

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."

Specifically, Revision 1, will address two-dimensional openings and three-dimensional pathways. This guidance will be used by NRC security inspectors to make a determination whether unattended openings that intersect a security boundary (such as underground pathways) are protected by a physical barrier and monitored by intrusion detection equipment or are observed by security personnel at a frequency sufficient to detect exploitation. This proposed change will also clarify for licensees unattended openings requiring physical protection described in 10 CFR 73.55, "Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage."

Additionally, this guidance will be made available upon request to all power reactor licensees at no cost. Existing guidance is currently captured in NEI 09-05, Revision 0, "Guidance on the Protection of Unattended Openings that Intersect a Security Boundary." NEI 09-05, Revision 1, is intended to provide clarification on the different types of unattended opening pathways. If endorsed by the NRC, it will be used by the staff in evaluating security baseline inspections conducted under Inspection Procedures 71130.03, "In-Plant Airborne Radioactivity Control and Mitigation;" 71130.04, "Equipment Performance, Testing, and Maintenance;" and 71130.05, "Radiation Monitoring Instrumentation."

The NRC staff concludes that NRC review of NEI 09-05, Revision 1, "Guidance on the Protection of Unattended Openings that Intersect a Security Boundary," for final NRC endorsement meets all criteria under 10 CFR 170.11(a)(1)(ii); therefore, the fee waiver request is approved.

If you have any technical questions regarding this matter, please contact Mr. Alonzo Richardson at 301-287-3653. Please contact Ms. Jo Jacobs, of my staff, at 301-415-8388 for any fee-related questions.

Sincerely,

/RA/

Maureen E. Wylie
Chief Financial Officer

SUBJECT: LETTER TO WILLIAM GROSS RESPONSE TO FEE WAIVER (NEI),
 DATED: April 4, 2019

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