



CHIEF FINANCIAL  
OFFICER

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

June 2, 2020

Mark A. Richter, PH.D.  
Senior Project Manager  
Used Fuel and Decommissioning Programs  
Nuclear Energy Institute  
1201 F Street NW, Suite 1100  
Washington, DC 20004

Dear Dr. Richter:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated April 1, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20092K695), requesting a fee exemption under Section 170.11(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR) for NRC activities conducted in response to the Nuclear Energy Institute (NEI) White Paper, "Defining Spent Fuel Performance Margins," dated November 8, 2019 (ADAMS Accession No. ML19318D971), and NEI submittals related to the recommendations identified in this White Paper.

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."<sup>1</sup> The NRC staff has reviewed your request based on the following regulations, 10 CFR 170.11(a)(1)(ii), 10 CFR 170.11(a)(13), and 10 CFR 170.11(c):

*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, and the Chief Financial Officer will grant or deny such requests in writing.*

*10 CFR 170.11(c) For purposes of paragraph (a)(1) of this section, a request for a fee exemption must be submitted to the CFO within 90 days of the date of the NRC's receipt of the work.*

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<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."

First, the NRC staff notes that NEI submitted its April 1, 2020, fee exemption request 145 days after the NRC received the NEI White Paper, exceeding the 90-day requirement in 10 CFR 170.11(c). However, the NRC is providing a one-time exception to the 90-day requirement in 10 CFR 170.11(c) for this specific fee exemption request because the NRC's review of the NEI White Paper is unique compared to typical review activities for special projects, as defined by 10 CFR 170.11(a)(1)(ii). More specifically, the NEI White Paper identified areas of spent fuel performance margin and provided 16 broad recommendations for improving the efficiency of the dry storage licensing process but did not provide specific regulatory products for NRC review that would address the recommendations. In a letter from Ms. Andrea Kock, Director of the Division of Fuel Management, Office of Nuclear Material Safety and Safeguards, NRC, to Mr. Rodney McCullum, NEI, dated December 20, 2019, the NRC staff indicated that "[s]everal of the items outlined [in the NEI White Paper] are the subject of ongoing or planned initiatives" within the NRC and that "[a]dditional discussion is needed before the staff can offer a perspective on the specific recommendations outlined in the [NEI] white paper" (ADAMS Accession No. ML19350A033). Subsequently, the NRC conducted three public workshops to identify what specific regulatory products (e.g., topical reports, best practices guides) could be developed by industry or the NRC staff as an outgrowth of the NEI White Paper recommendations and what technical work is a necessary precursor. As further explained below, these initial workshops, which took place between mid-January 2020 and mid-April 2020, were necessary to understand the specific regulatory products that NEI was proposing and how they could assist with the NRC staff's ongoing or planned initiatives or other generic efforts, and as such, an appropriate fee exemption request could not have been expected within 90 days of the original submittal.

The NRC concluded that areas of spent fuel performance safety margin exist, and that the NRC's review of spent fuel licensing matters could be refined accordingly to focus resources on items of greatest safety significance. The recommendations identified in the white paper, if implemented, would result in generic regulatory improvements, including new industry approaches for considering margin in application contents, regulatory guidance updates that would result in more efficient reviews, and increased consistency in applications and associated reviews. The NRC will make any resulting new or revised guidance available to all applicable licensees.

The NRC notes that, when the NEI White Paper and this fee exemption request were submitted to the NRC, the specific activities to be conducted in response to the NEI White paper were not yet clearly identified. The NRC now understands that the following activities are clear outgrowths of the NEI White Paper and are in addition to work the NRC staff had already started prior to receiving the NEI White Paper:

- Review of a source term conservatism roadmap to address Recommendations III-1 and III-2;
- Participation in the Phenomena Identification and Ranking Table (PIRT) process to address Recommendations IV-1 through IV-5, the actionable definition of gross rupture and related fuel performance metrics, and the associated review of a topical report that considers industry best practices for thermal modeling;
- Updates to guidance documents (e.g., NUREG-2215) to address Recommendations V-1 and V-2 and to remove unnecessary burden and ensure consistency;

- Review of a revised approach for the treatment of fuel qualification information for dry cask storage systems Certificates of Compliance to address Recommendations VI-1 and VI-2;
- Updates to guidance documents or review of a topical report to update and enhance the approach for criticality analyses to address Recommendations VII-1 and VII-2; and
- Updates to guidance documents to reflect identification of a safety goal, definition of gross rupture, clarification of interpretation, and revisions to the performance metric for thermal limits to address Recommendation VII-3.

The NRC staff concludes that NEI's request for a fee exemption for NRC activities conducted in response to the NEI White Paper, "Defining Spent Fuel Performance Margins," dated November 8, 2019 (ADAMS Accession No. ML19318D971), meets the criteria under 10 CFR 170.11(a)(1)(ii) because the NRC plans to use the information to assist the NRC in generic regulatory improvements or efforts. The NRC is thus granting a fee exemption for the specific NRC activities identified in the bulleted list in this letter, including subsequent revisions that may be necessary to yield a final product. This fee exemption does not cover reviews or other NRC activities that could be linked to the recommendations in the NEI White Paper but are not included among the specific activities identified in the bulleted list in this letter. If NEI submits, for NRC review, additional documents beyond those listed in this letter and would like to request a fee exemption for NRC review activities associated with the additional documents, NEI must submit a new fee exemption request within 90 days of the NRC's receipt of the additional document, in accordance with 10 CFR 170.11(c).

If you have any technical questions regarding this matter, please contact Mr. Christian Araguas at 404-997-4501. Please contact Mrs. Jo Jacobs, of my staff, at 301-415-8388 for any fee-related questions.

Sincerely,

*/RA/*

Cherish K. Johnson  
Chief Financial Officer



SUBJECT: LETTER TO MARK RICHTER RESPONSE TO FEE WAIVER NEI WHITE  
 PAPER DATED: June 2, 2020

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