



AEROTEST OPERATIONS, INC.

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June 1, 2021

Cherish K Johnson
U.S. Nuclear Regulatory Commission
Office of the Chief Financial Officer
Division of the Comptroller
Labor Administration and Fee Billing
Branch Mail Stop T9 850
Washington, DC 20555-0001

Dear Ms. Johnson,

This in response to your letter dated April 30, 2021 (ML21056A317) \$3,120,792.82 reimbursement request for activities associated with the fees that were not performed in a satisfactory manner.

I disagree with your denial of our claim for \$3,120,792.82 and your reasons for your denial. I also disagree with your statement “the NRC staff carried out Aerotest licensing and inspection activities appropriately, and the NRC appropriately billed Aerotest for these activities in accordance with NRC regulations.”

Here is why I disagree with your reasons:

- **Untimely.** Although I did not file the claim within 30 days of being billed per NRC regulations, we did file as soon as I became aware of the problems and omissions with inspection reports. Areas of operation, documentation, license, and technical Specification’s inconsistencies were identified through the reactor restart process between July 2017 and December 2018. I then did an analysis of all the inspection reports to find out when and how the inconsistency happened.
- **Improperly Assessed Fees.** The NRC regulations state that the NRC can bill for time NRC employees spend on working on a licensee’s projects. However, I am not claiming the employee did not spend time on our projects. I am questioning if this work was necessary, was performed at a sufficient level of competency, was the work done in a reasonable and fair way and did it provide value to me as stated in 31 USC 9701 “Fees and charges for Government services and things of value.”
- **NRC Oversight was Inappropriate.** As you stated, “I note that NRC inspections, for the ARRR and other facilities, are based on a sampling of facility activities, to verify compliance of the sampled items with the current license and NRC regulations. The inspections are conducted in accordance with procedures, and various items are inspected at a periodicity that is commensurate with their potential safety significance.” I can show that sampled items did not meet current regulations and/or license Tech Specs.

Some of this is documented in current inspections and violations issued by the NRC. I can even show evidence that a number of our Tech Specs, that were inspected almost every inspection, was out of compliance for most of the history of the ARRR.

Inspection reports stated “Based on the results of this inspection, no findings of significance were identified” yet the NRC increase the number of inspections over the number the regulations required. In your letter you stated, “Inspection procedures specify the periodicity (e.g., biennial for Class II research reactors) for individual routine inspection modules (i.e., inspection areas), but multiple inspections may be conducted to complete all of the modules within the specified period (additional inspections, e.g., special inspections, may also be performed as appropriate).” However, I can show using inspection reports that the same items (modules) were inspected, year after year. Inspections were generally completed in one visit of 3-4 days.

- **Aerotest General Fee Policy.**

You said “Aerotest has not shown that any such broad exemptions from NRC fees would be “in the public interest” in accordance with 10 CFR 170.11(b) or 171.11(c). 10 CFR 170.11b and 10 CFR 171.11(c) exempt only “Federal-owned and State-Owned research reactors used primarily for educational purposes.” It is not clear how NRC determined that a reactor was “used primarily for education purposes”. I believe the NRC has implemented regulations that are inconsistent with the Atomic Energy Act of 1954 by giving a blanket exception to universities without regard to ensuring their primary use is for educational purposes. The statement “Federal-owned and State-Owned research reactors used primarily for educational purposes.” begs the question how MIT’s reactor, owned by a private institution, received an exception. Also, the new NEIMA law classifies the activities of the 10 MW reactor MU-Columbia reactor for primary commercial purposes.

I had submitted a request for exemption providing an argument for supporting the exemption claim *in the public interest* (ML18163A11, and ML18808A064) the argument follows closely to AEA section 31 requirements for consideration (ML13274A489) and have satisfied many of the AEA section 31 obligations supporting the claim to be in the public interest.

In the response to the request, Maureen E While (ML18268A345) stated “10 CFR 170.11(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections. “10 CFR 171.11(c) The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this part that it determines is authorized by law or otherwise in the public interest.” She also stated “Therefore, performing activities that are in the public interest does not equate to a fee exemption being in the public interest.” So, our request was denied without further explanation.

Questions are, *what is the definition of Public Interest? Within that definition of public interest what items are deserving of the fee exemption?* I was looking through regulations 10 CFR and could not find this defined anywhere. However, I found a disturbing explanation for our denial recently found in the Federal Registry.

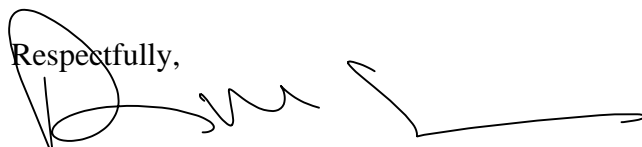
Federal Register Vol: 86 No: 33 Date: Monday, February 22, 2021 Page 10474 Column 3 states: Amend § 171.11(c), “Exemptions” The NRC proposes to revise § 171.11(c) to change the “or” in the section to “and.” This proposed change would accurately reflect that even when an exemption is “in the public interest,” the NRC cannot grant the exemption unless it is “authorized by law.” This proposed change would also harmonize § 171.11(c) with § 170.11(b), which uses “and.” This proposed change would not alter the NRC’s fee exemption policy.”

This explanation suggests “in the public interest” was never considered and requests were universally denied not on merit, but according to the Federal Registry, because it was not authorized by law. To have an NRC regulation without substance and not mentioning this policy in NRC’s denial of my request is egregious. In my request to you on June 24, 2020 (ML20188A222) I pointed out why the NEIMA Fee exemption applied to Aerotest. You replied (ML20212L793) by citing Maureen E Wylie’s June 7, 2018 (ML18268A345) response which was before the NEIMA took effect. It is not clear you performed an analysis but simply wanted to close the matter.

I plan to examine the use of all legal and legislative remedies to show that the in-fact NRC did not follow regulations or apply them consistently when they inspected Aerotest for compliance with current NRC regulations and Tech Specs. Some of those remedies include:

- Request an NRC hearing based on “10CFR 2.4 definitions *Contested proceeding* means— (1) A proceeding in which there is a controversy between the NRC staff and the applicant for a license or permit concerning the issuance of the license or permit or any of the *terms or conditions thereof*.”
- File an administrative claim under the Federal Torts Claim Act.
- Request an investigation from the House and Senate Congressional Oversight Committees

I declare under penalty of perjury that the statements made in the enclosures are correct and truthful to the best of my knowledge. Should you have any questions or require additional information regarding this submission, please contact AO President David M. Slaughter, Ph.D. at (801) 631 5919 or dmsraven@gmail.com

Respectfully,

David M Slaughter, PhD
President, Reactor Administrator, General Manager and Manager

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