



CHIEF FINANCIAL
OFFICER

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

September 2, 2021

Mr. Ross Moore
Director of Regulatory Affairs
Oklo Inc.
230 E Caribbean Dr.
Sunnyvale, CA 94089

Dear Mr. Moore:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated June 17, 2021 (Agencywide Documents Access and Management System Accession No. ML21168A377), requesting a fee exemption under Title 10 of the *Code of Federal Regulations* (10 CFR) 170.11(b) to cover activities associated with the review and approval of two topical reports regarding a maximum credible accident methodology and a performance-based licensing methodology.

The NRC has established regulations for the granting of fee exemptions under 10 CFR 170.11, "Exemptions." An interested person may apply for an exemption under 10 CFR 170.11 in accordance with 10 CFR 170.5, "Communications." The NRC staff reviewed your fee exemption request under 10 CFR 170.11(b), as cited in your letter. The NRC staff also 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.

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."

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.

After review, the NRC staff has determined that your fee exemption request does not meet the criteria for an exemption pursuant to 10 CFR 170.11(b) (the public interest exemption). Under the Nuclear Energy Innovation and Modernization Act (NEIMA), the NRC is required to recover through fees, to the maximum extent practicable, approximately 100 percent of its annual budget authority, less the budget authority for excluded activities. Under NEIMA, the NRC must also use its Independent Offices Appropriation Act, 1952, authority first to collect 10 CFR Part 170 service fees for NRC work that provides specific benefits to identifiable recipients, such as licensing activities, inspections, and special projects. The review of the Oklo Inc. (Oklo) Aurora combined license application (COLA) is a fee-billable activity. The Oklo topical reports were submitted in response to the staff's review of the Oklo COLA. The staff's effort to review the Oklo COLA is for the commercial benefit of Oklo, Inc, and does not include activities that will benefit the public at large. Therefore, granting a fee exemption would not be in the public interest and does not meet the requirements in 10 CFR 170.11(b).

The request also does not meet the criteria in 10 CFR 170.11(a)(1)(ii). A fee exemption may be granted under 10 CFR 170.11(a)(1)(ii) for special projects the NRC plans to use to assist in generic regulatory improvements or efforts (e.g., rules, regulatory guides, regulations, policy statements, generic letters, or bulletins). Your letter states that "the purpose of the submitted topical reports is, in part, to outline the novel methodologies employed by Oklo in its safety analysis for the Aurora reactor, as well as demonstrate for understanding these alternative licensing basis approaches, as requested by the NRC staff, and not yet fully considered in the development of the rule language for Part 53."

The NRC staff is currently in the process of developing a new optional, technology-inclusive, risk-informed, and performance-based regulatory framework for advanced reactors (10 CFR Part 53) as required by NEIMA. As part of this effort, the NRC staff has been releasing preliminary proposed rule language and associated key guidance and is receiving a diverse set of feedback from a wide variety of stakeholders. As the staff developed the preliminary proposed 10 CFR Part 53 rule language, the staff was aware of and considered Oklo's proposed maximum credible accident and performance-based licensing approach as described in the March 11, 2020, COLA for the Oklo Aurora, and subsequent responses to requests for additional information (RAIs). The staff asked attendees at public meetings to provide examples of alternate approaches to help the staff better understand some of the feedback it had received regarding allowing alternate approaches rather than being required to use a probabilistic risk assessment in a lead role in the development of the design basis. During the meetings, attendees shared example approaches that were used in the NuScale small modular reactor design certification application, the Oklo Aurora COLA, and the International Atomic Energy Agency Safety Standards Series No. SSR-2/1 (Rev. 1), "Safety of Nuclear Power Plants: Design." This information allowed the NRC staff to better understand the oral and written feedback received on the 10 CFR Part 53 preliminary rule language. This was helpful for the staff to gain a better understanding of possible alternative approaches, but the NRC staff did not solicit a request for topical reports or other submittals on alternative approaches for formal NRC review during these meetings or any time afterward. The topical reports submitted by Oklo on July 2, 2021, do not contain significant new information beyond that already considered in the

staff's 10 CFR Part 53 development efforts. Without significant additional information that may assist with 10 CFR Part 53 development, and in the absence of a formal request by the NRC staff for topical reports or other submittals to aid development of Part 53, the fee exemption request for the topical reports does not meet the requirements in 10 CFR 170.11(a)(1)(ii).

Based on the staff's review of your fee exemption request under 10 CFR 170.11(a) and 10 CFR 170.11(b), I am denying your request to grant Oklo a fee exemption to cover activities associated with reviewing and approving Oklo Topical Reports Oklo-2021-R19-NP, Rev. 2, "Maximum Credible Accident Methodology," and Oklo-2021-R20-NP, Rev. 0, "Performance-Based Licensing Methodology."

If you have any technical questions regarding this matter, please contact Mr. William Kennedy at 301-415-2313. Please contact Ms. Jo Jacobs, of my staff, at 301-415-8388, for any fee-related questions.

Sincerely,

Ben Ficks
Acting Chief Financial Officer

SUBJECT: RESPONSE TO FEE EXEMPTION REQUEST FOR REVIEW AND APPROVAL OF OKLO TOPICAL REPORTS REGARDING MAXIMUM CREDIBLE ACCIDENT AND PERFORMANCE-BASED LICENSING METHODOLOGIES, DATED: September 2, 2021

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