



CHIEF FINANCIAL  
OFFICER

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

September 29, 2022

Cheryl A. Gayheart  
Regulatory Affairs Director  
Southern Nuclear Operating Co., Inc.  
3535 Colonnade Parkway  
Birmingham, AL 35243

SUBJECT: VOGTLE ELECTRIC GENERATING PLANT, UNITS 1 AND 2 REQUEST FOR  
FEE EXEMPTION FOR NRC REVIEW FEES FOR THE LICENSING  
AMENDMENT FOR LEAD TEST ASSEMBLIES WITH INCREASED  
ENRICHMENT

Dear Cheryl Gayheart:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated August 12, 2022 (Agencywide Documents Access and Management System Accession No. ML22224A215), requesting that review fees be exempted under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 170.11(a) for evaluation of the Vogtle Electric Generating Plant (Vogtle) requested license action (RLA) pertaining to Lead Test Assemblies (LTA).

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 170.11(d).<sup>1</sup> As requested, the NRC staff reviewed your fee exemption request under 10 CFR 170.11(a), which states as follows:

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 to assist the NRC in generic regulatory improvements or efforts (e.g., rules, regulatory guides, regulations, policy statements, generic letters, or bulletins).

In your letter, you state that the subject RLA, if approved and implemented, will support the development of operating experience and data for rulemaking activities related to LTAs (specifically objectives for producing data to qualify analytical codes and methods necessary for establishing a safety basis) in the staff requirements memorandum (SRM) to SECY-21-0109, "Rulemaking Plan on Use of Increased Enrichment of Conventional and Accident Tolerant Fuel Designs for Light Water Reactors," dated March 16, 2022 (ML22075A103). You indicate that review of the Vogtle RLA will support more efficient and effective licensing application reviews, save the NRC and industry resources for subsequent increased enriched fuel applications, provide information to support the development of generically applicable guidance for increased enriched fuel applications, and increase clarity and predictability for subsequent licensing reviews to implement increased enriched fuels.

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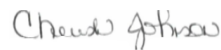
<sup>1</sup> 10 CFR 170.11(d) provides that "All fee exemption requests must be submitted in writing to the Chief Financial Officer in accordance with § 170.5, and the Chief Financial Officer will grant or deny such requests in writing." 10 CFR 170.5 addresses how communications regarding Part 170 should be addressed and submitted.

After review, I have determined that your fee exemption request does not meet the criteria for an exemption pursuant to 10 CFR 170.11(a)(1)(ii). A fee exemption may be granted under 10 CFR 170.11(a)(1)(ii) for information that 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). There is no indication that the NRC plans to use information from staff review of the RLA to assist the NRC in generic regulatory improvements or efforts related to rulemaking or licensing activities. The NRC staff working on SRM-SECY-21-0109 neither requires nor expects to receive any specific data or operating experience in developing the proposed rulemaking actions required by the SRM if the Vogtle RLA is approved and implemented. In addition, the NRC staff schedule for implementation and delivery of the SRM requirements precedes the availability of fuel performance data from the Vogtle RLA. Furthermore, your letter did not explain how the review of the Vogtle RLA will improve the efficiency and effectiveness of the NRC's review of licensing applications or will increase clarity and predictability for subsequent licensing reviews to implement increased enriched fuels.

Further, in accordance with 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 fees that provide specific benefits to identifiable recipients, such as licensing activities, inspections, and special projects. In this case, it would not be fair to recover through annual fees to the operating power reactors fee class the NRC costs that were derived from reviewing the Vogtle RLA. User fees are appropriate where the licensee derives benefits from NRC's services. The review of the Vogtle RLA is a fee-billable activity.

For the reasons cited above, I am denying your request for a fee exemption under 10 CFR 170.11(a)(1)(ii) to cover review fees for the evaluation of the Vogtle RLA pertaining to LTA. If you have any technical questions regarding this matter, please contact, Mr. John G. Lamb at 301-415-3100. Please contact Mr. William Blaney, of my staff, at 301-415-5092, for any fee-related questions.

Sincerely,



Signed by Johnson, Cherish  
on 09/29/22

Cherish Johnson  
Chief Financial Officer

SUBJECT: VOGTLE ELECTRIC GENERATING PLANT, UNITS 1 AND 2 REQUEST FOR FEE EXEMPTION FOR NRC REVIEW FEES FOR THE LICENSING AMENDMENT FOR LEAD TEST ASSEMBLIES WITH INCREASED ENRICHMENT, DATED: SEPTEMBER 29, 2022

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**ADAMS Accession Number: ML22228A212 (Package); ML22228A220 (Response Letter)**

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