



CHIEF FINANCIAL  
OFFICER

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

September 29, 2022

Rodney McCullum  
Senior Director  
Nuclear Energy Institute  
1201 F Street NW, Suite 1100  
Washington, DC 20004

SUBJECT: NUCLEAR ENERGY INSTITUTE, FULL FEE EXEMPTION REQUEST FOR  
INDUSTRY GUIDANCE PROPOSAL – WEATHER RELATED  
ADMINISTRATIVE CONTROLS DURING TRANSIENT OUTDOOR DRY CASK  
OPERATIONS

Dear Rodney McCullum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated July 26, 2022 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML2207B651), requesting a fee exemption under Part 170.11(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR) for NRC review and endorsement of Nuclear Energy Institute (NEI) 22-02, "Guidelines for Weather-Related Administrative Controls for Short Duration Outdoor Dry Cask Storage Operations," revision 1.

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."<sup>1</sup> Though you submitted your fee exemption request pursuant to 10 CFR 170.11(1)(ii) and 10 CFR 170.11(a)(13), these specific fee exemption regulations were amended in the FY 2022 final fee rule.<sup>2</sup> As a result, the NRC staff has reviewed your request based on the fee exemption regulations 10 CFR 170.11(a)(1)(ii) and 10 CFR 170.11(d). Section 170.11(a)(1)(ii) states:

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).

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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."

<sup>2</sup> Revision of Fee Schedules; Fee Recovery for Fiscal year 2022 (87 FR 37197; June 22, 2022). This rule was effective on August 22, 2022.

Section 170.11(a)(d) states:

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.

By letter dated February 16, 2022 (ML22048A581), NEI submitted NEI 22-02 for NRC review and endorsement. By letter dated March 2, 2022, (ML22061A187), NEI submitted a fee exemption request under 10 CFR 170.11(a)(ii) to cover activities associated with the review and endorsement of NEI 22-02, revision 0. In a letter dated April 12, 2022, I approved a partial fee exemption specifically for the NRC's initial review of the activities required to supplement NEI 22-02 prior to docketing because the guidance document may promote a consistent approach to meeting regulatory requirements and increase the efficiencies of NRC's reviews and inspection activities. In my letter, I explained that I denied the request to grant a fee exemption for a full endorsement review of NEI 22-02 at that time because the NRC staff could not make a determination regarding whether it planned to use the information from the endorsement review to assist the NRC in generic regulatory improvements or efforts. For example, the NRC required additional information on the potential use of NEI 22-02 to compliment the NEI 12-04 guidance document such that the NRC could assess the future regulatory efficiency. I also stated that if NEI revised NEI 22-02 due to the NRC's request for supplemental information (RSI), NEI may choose to resubmit NEI 22-02 for an endorsement review and request a subsequent fee exemption request for NRC review activities in the future if it meets the requirements in 10 CFR 170.11, and that if a future fee exemption is requested, it will be processed based on the criteria in 10 CFR 170.11.

In its July 26, 2022, letter, NEI requested that the partial fee exemption granted in the CFO's April 12, 2022, letter be extended to cover the endorsement review of NEI 22-02, or (if necessary) that a new fee exemption be issued to cover the endorsement review of NEI 22-02 once it is accepted by the NRC staff (ML22207B651). Under the partial fee exemption, the NRC staff reviewed NEI 22-02, revision 0 and issued the RSI to NEI on April 29, 2022 (ML22111A272). By letter dated June 17, 2022 (ML22168A135), NEI responded to the NRC staff's RSIs and submitted NEI 22-02, revision 1; these responses were discussed during a public meeting held on July 18, 2022 (ML22181B0642). During the public meeting, the NRC staff presented information describing methods that the NRC staff considers acceptable to meet the regulations and highlighting applicable regulations for licensees and CoC holders to follow. The NRC staff then provided an initial assessment of the RSI responses, which included, but was not limited to, the following items: (1) the NEI 22-02 guidance document should provide more detailed guidance to licensees and CoC holders on how to establish and implement administrative controls that would meet regulatory requirements, including potential risk based discussions, (2) the introduction of engineering evaluations for CoC holders and licensees adds another layer of review and inspection instead of having the guidance document provide the necessary technical basis for the development of the administrative controls, and (3) the NEI 22-02 guidance document could provide templates for the incorporation into final safety analysis report (FSAR), and/or 10 CFR 72.212 evaluation reports. A standard template would make it easier to incorporate versus having different versions with the engineering evaluations described in NEI 22-02, revision 1. In addition, the NRC staff provided examples of additional guidance needed for NEI 22-02. During the public meeting, NEI stated that further clarification from the NRC staff was needed in order to provide additional detail in the guidance. The NRC staff advised that it would consider appropriate next steps in its acceptance review of the guidance.

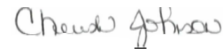
By letter dated September 12, 2022, (ML22216A117), to NEI, the NRC staff acknowledged acceptance of the NEI 22-02 guidance document for review and endorsement. The NRC staff determined that some sections of NEI 22-02, revision 1, of the guidance document contain the information needed to start its technical review. The NRC staff has identified other areas; however, where the document has not provided, or not provided in sufficient detail, information that the staff will need in order to schedule and conduct its review. These areas correspond to some of the same areas addressed by RSIs that the staff issued on April 29, 2022.

The NRC staff determined that some sections of NEI 22-02, revision 1, contain the information needed for the NRC staff to start its technical review. For example, in NEI 22-02, revision 1, NEI included information on roles and responsibilities of the CoC holders and licensees, and added the following generic guidance into the document: (1) it provides guidance on how licensees and CoC holders should use additional resources to assist in the decision making for weather-related administrative controls, including information on how the licensees should obtain the forecast information from other sources, the responsible personnel, and how it should be captured in the procedures or instructions; (2) it guides CoC holders to add a reference to the NEI 22-02 guidance and provide dry storage system (DSS) design-specific information within the FSARs for each affected DSS technology and how to evaluate the necessary administrative controls to ensure a reasonable level of consistency across licensees; and (3) it guides CoC holders to include the administrative controls in the Operations chapter of the FSAR, including a summary of “analyzed configurations.” However, the NRC staff has identified other areas where the document has not provided, or not provided in sufficient detail, information that the NRC staff will need in order to schedule and conduct its review. For example, NEI-22-02 needs to provide additional guidance including how CoC holders and licensees: (1) can identify the design basis parameters and develop procedures to establish administrative controls that will prevent exceeding any design bases limits; (2) should consider the timing, frequency, and area of the forecast checks within the established procedures, as well as maintain records of forecast checks; (3) should identify specific actions taken for changes in weather conditions if they were to occur.

I have reviewed the fee exemption request and conclude that the review of NEI 22-02 may fulfill the criteria required by 10 CFR 170.11(a)(1)(ii). Therefore, the fee exemption request is partially approved for the review activities associated with review of NEI 22-02, revision 1. As the review progresses, the NRC staff will continue to assess the information needed to complete the review of NEI 22-02 guidance, including the review of the clarifying RSIs. The fee exemption request granted in this letter is limited to a time period not to exceed April 2023. The NRC staff considers this time to be sufficient to allow NEI to respond to future requests for additional information (RAIs, one round) and the NRC staff to review that information. After complete RAI responses (one round) are provided by NEI, the NRC staff will re-evaluate this effort. I will then make the determination of whether or not to continue with a fee exemption based on the generic applicability of the approach discussed in NEI 22-02 guidance to a broad segment of the industry.

If you have any technical questions regarding this matter, please contact John Nguyen at 301-415-0262. Please contact Jo Jacobs, of my staff, at 301-415-8388, for any fee-related questions.

Sincerely,

A handwritten signature in black ink that reads "Cherish K. Johnson". The signature is written in a cursive style with a vertical line under the letter "J".

Signed by Johnson, Cherish  
on 09/29/22

Cherish K. Johnson  
Chief Financial Officer

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 DATED: SEPTEMBER 29, 2022

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