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NUCLEAR ENERGY INSTITUTE

April 18, 2023

James C. Corbett (Acting)
Chief Financial Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Fee Exemption Request for Review and Endorsement of NEI 23-03, "Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications at Non-Power Production or Utilization Facilities"

Project Number: 689

Dear Mr. Corbett:

On April 18, 2023 NEI[1] submitted NEI 23-03, "Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications at Non-Power Production or Utilization Facilities," to NRC staff for review and endorsement. This document was developed with assistance from the National Organization of Test, Research, and Training Reactors (TRTR), and other non-power production or utilization facility (NPUF)[2] licensees.

NEI 23-03 was developed to provide guidance for the implementation of 10 CFR 50.59 digital modifications at NPUFs. For consistency, efficiency, and ease of review, it is modeled after NEI 96-07, Revision 1, "Guidelines for 10 CFR 50.59 Implementation," which was issued in 2000 and endorsed by the NRC, as well as NEI 21-06, Revision 1, "Guidelines for 10 CFR 50.59 Implementation at Non-Power Production or Utilization Facilities," which was also endorsed by the NRC in 2022.

NEI believes that there is mutual interest in reviewing NEI 23-03 for NRC endorsement, NRC staff has requested this type of guidance for NPUF licensees, and that a fee exemption under 10 CFR 170.11(a) is appropriate. We are therefore submitting this request at the early stages of our engagements with the NRC

[1] The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

[2] NPUFs collectively refer to non-power reactors and certain other production or utilization facilities that are licensed under 10 CFR 50.21, "Class 104 licensees; for medical therapy and research and development facilities," paragraphs (a) and (c) or 10 CFR 50.22, "Class 103 licenses; for commercial and industrial facilities." NPUFs do not include nuclear power reactors or production facilities as defined under paragraphs (1) and (2) of the definition of "production facility" in 10 CFR 50.2, "Definitions."

on NEI 23-03, at the NRC's request. We request a fee exemption to cover all activities involved in the review and endorsement of NEI 23-03.

This document will be primarily utilized by licensees that are considered class 104 licensees, under the Atomic Energy Act of 1954, as amended, which dictates provisions for a "minimum amount of regulation." Section 104(c) states, "*The Commission is directed to impose only such* ***minimum amount of regulation*** *of the licensee as the Commission finds will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will permit the conduct of widespread and diverse research and development.*"

NEI requests a fee exemption for the review and endorsement of NEI 23-03 based on two provisions within 10 CFR 170.11(a):

1) With regards to NPUFs specifically, 10 CFR 170.11(a)(9) states that "*no application fees, license fees, renewal fees, inspection fees, or* ***special project fees*** *shall be required for… federally-owned and State-owned research reactors used primarily for educational training and academic research purposes…*" and;

2) 10 CFR 170.11(a)(1)(ii), which states that no fees shall be required for special projects that are requests or reports submitted to the NRC "[w]hen 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)."

We understand that the NRC staff plans to utilize NEI 23-03 as guidance (pending NRC endorsement), to further address generic licensing and oversight regulatory issues as pertaining to implementation of 10 CFR 50.59, "Changes, tests, and experiments," digital modifications at NPUFs. We look forward to future engagements with the NRC staff, on arriving at an agreeable version of NEI 23-03, that allows for endorsement in an NRC Regulatory Guide (RG).

We also would like to note that a companion document to NEI 23-03 (NEI 21-06, Rev. 1, "Guidelines for 10 CFR 50.59 Implementation at Non-Power Production or Utilization Facilities") was submitted to the OCFO for a similar fee-exemption request, dated August 23, 2021. We appreciated the OCFO's timely approval of this request via return letter to NEI, dated October 15, 2021[3]. Ultimately, staff from the Office of Nuclear Reactor Regulation (NRR) approved a "clean" endorsement of NEI 21-06, Rev. 1, via NRC Regulatory Guide (RG) 2.8, "Guidance for Implementation of 10 CFR 50.59, "Changes, Tests and Experiments," at Non-Power Production or Utilization Facilities," issued in February 2022.

[3] ML21250A182

Please contact me should you have any questions.

Sincerely,

Hilary Lane

c: Mo Shams, NRR/DANU
Josh Borromeo, NRR/DANU
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NRC Document Control Desk