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

CHIEF FINANCIAL
OFFICER

May 25, 2023

Ms. Hilary Lane
Director, Fuel and Radiation Safety
Nuclear Energy Institute
1201 F Street NW, Suite 1100
Washington, DC 200004

SUBJECT: LETTER TO HILLARY LANE IN RESPONSE TO A REQUEST FOR A FEE EXEMPTION FOR NEI 23-03

Dear Hilary Lane:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated April 18, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23110A675*),* requesting a fee exemption under Sections 170.11(a)(9) and 170.11(a)(1)(ii) of Title 10 of the *Code of Federal Regulations* (10 CFR), for the NRC's review and endorsement of the Nuclear Energy Institute (NEI) guidance document, "Supplemental Guidance for Application of 10 CFR 50.59 to Digital Modifications at Non-Power Production or Utilization Facilities" (NEI 23-03). NEI 23-03 was submitted to the NRC on April 18, 2023 (ML23110A676).

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."[1] The NRC staff reviewed your request based on the regulations in 10 CFR 170.11(a)(1)(ii) and 10 CFR 170.11(a)(13).[2] 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).

Section 170.11(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.

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[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."

[2] While I note that you requested an exemption under 10 CFR 170.11(a)(9) in your letter, the NRC staff did not need to review your request under this criterion as there was sufficient justification to grant an exemption under 10 CFR 170.11(a)(1)(ii).

Your letter states that NEI, with assistance from the National Organization of Test, Research, and Training Reactors and other non-power production or utilization facilities (NPUFs), developed NEI 23-03 to provide supplemental guidance for the implementation of 10 CFR 50.59, “Changes, tests, and experiments,” specific to digital modifications at NPUFs. If the NRC staff endorses NEI 23-03, it is expected that many NPUF licensees will use the NEI guidance to assess the need for prior NRC approval for changes to digital modifications at their facilities as described in the final safety analysis report. Your letter also states that 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,” (NEI 21-06), which was endorsed by the NRC in 2022.

The NRC staff plans to use the guidance to supplement the guidance in NEI 21-06 as part of a generic regulatory effort to address licensing and oversight issues associated with implementing 10 CFR 50.59, “Changes, tests, and experiments,” for digital applications. If the NEI guidance is determined to be acceptable based on the NRC staff’s review, the NRC staff will develop a regulatory guide to endorse the NEI guidance.

For the reasons cited above, I conclude that NEI’s request for fee exemption for the NRC’s review and potential endorsement of NEI 23-03 meets the criteria under 10 CFR 170.11(a)(1)(ii) because the guidance in NEI 23-03 will assist the NRC with generic regulatory improvements or efforts; therefore, the fee exemption request is approved. This approval is not transferrable to any future revisions of NEI 23-03. Any future revisions of NEI 23-03 should be submitted separately for a fee exemption consideration, which will be reviewed on its merits.

If you have any technical questions regarding this matter, please contact Mr. Duane Hardesty at 301-415-3724. Please contact Mr. William Blaney, of my staff, at 301-415-5092 for any fee-related questions.

Sincerely,

Signed by Osborne, Howard
on 05/25/23

Howard K. Osborne
Chief Financial Officer

Project No. 689

cc: Jere Jenkins, TRTR Chair
Steven Reese, TRTR (OSU)

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