



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555-0001

April 10, 2014

Dr. Sean O'Kelly
National Institute of Standards and Technology
NIST Center for Neutron Research
100 Bureau Drive, MS 6100
Gaithersburg, MD 20899-6100

Dear Dr. O'Kelly:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your February 4, 2014, letter requesting a fee waiver under Title 10 of the *Code of Federal Regulations* (10 CFR) 171.11, "Exemptions," for "all fees in the public interest."

The NRC has established regulations for granting fee exemptions under 10 CFR 171.11 for which licensees may apply in accordance with 10 CFR 171.9, "Communications." The NRC has reviewed your request based on the following regulations: 10 CFR 171.11(a), 10 CFR 171.11(b), and 10 CFR 171.9:

- *10 CFR 171.11: (a) An annual fee is not required for: (2) Federally owned and State-owned research reactors used primarily for educational training and academic research purposes. For purposes of this exemption, the term research reactor means a nuclear reactor that; (i) Is licensed by the Nuclear Regulatory Commission under section 104c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of 10 megawatts or less; and (ii) If so licensed for operation at a thermal power level of more than 1 megawatt, does not contain-- (A) A circulating loop through the core in which the licensee conducts fuel experiments; (B) A liquid fuel loading; or (C) An experimental facility in the core in excess of 16 square inches in cross-section.*

The National Institute of Standards and Technology Center for Neutron Research (NCNR) reactor is currently operating with a Class 104(c) license. However, the NCNR license is for operations at a thermal power level of 20 megawatts (MW). Rule 10 CFR 171.11(a)(2)(i) explicitly states that reactors with licensed thermal power levels equal to, or less than, 10 MW will be exempt from annual fees. The NCNR reactor is licensed above the maximum power level for the exemption; therefore, it does not satisfy this criterion. Furthermore, the additional language in 10 CFR 171.11(a)(2)(ii) cannot exempt the reactor as it does not satisfy the requirements in 10 CFR 171.11(a)(2)(i).

- *10 CFR 171.11 (b): The Commission may, upon application by an interested person or on its own initiative, grant an exemption from the requirements of this*

part that it determines is authorized by law or otherwise in the public interest. Requests for exemption must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which the exemption is sought in order to be considered. Absent extraordinary circumstances, any exemption requests filed beyond that date will not be considered. The filing of an exemption request does not extend the date on which the bill is payable. Only timely payment in full ensures avoidance of interest and penalty charges. If a partial or full exemption is granted, any overpayment will be refunded. Requests for clarification of or questions relating to an annual fee bill must also be filed within 90 days from the date of the initial invoice to be considered.

The NCNR waiver request was received by the NRC on February 4, 2014, which is within the 90 day period allotted in the rule. As for the “public interest” test, the statute that authorizes the NRC to collect fees—The Omnibus Budget Reconciliation Act of 1990—requires the NRC to *equitably* recover the costs of providing regulatory services. Furthermore, longstanding NRC fee policies dictate that fees assessed to licensees should—to the maximum extent practicable—reflect the actual costs that the NRC incurs when providing regulatory services. Implicit in this policy is the expectation that annual fees should be based on basic notions of fairness and equity. See, e.g., 42 U.S.C. § 2214(c)(3) (noting that the Commission should establish “a schedule of charges fairly and equitably” and that fees should “have a reasonable relationship to the cost of providing regulatory services”). Here, the NRC incurred actual regulatory costs associated with the NCNR reactor. Therefore, the NRC cannot exempt the NCNR reactor from Part 171 fees because that would essentially require other licensees to pay for work that the NRC performed on NIST’s behalf. As a result, the NRC does not believe a waiver of the NCNR annual fees would be in the public interest.

- *10 CFR 171.9: 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. Electronic submissions must be made in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions can be obtained by visiting the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>; by e-mail to MSHD.Resource@nrc.gov; or by writing the Office of Information Services, the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The guidance discusses, among other topics, the formats the NRC can accept, the use of electronic signatures, and the treatment of nonpublic information.*

The NCNR fee exemption request was submitted in writing; therefore it satisfies this criterion.

Your letter also references 10 CFR 171.15(a). A pertinent part of that rule states;

“Each person holding an operating license for a power, test, or research reactor; each person holding a combined license under part 52 of this chapter after the Commission has made the finding under § 52.103(g); each person holding a part 50 or part 52 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel onsite; and each person holding a part 72 license who does not hold a part 50 or part 52 license shall pay the annual fee for each license held at any time during the Federal fiscal year in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).”

In the letter, you assert that the language in 10 CFR 171.15(a) implies the intent of 10 CFR 171.11(a) was to exempt all Federally-owned and State-owned research and test reactors used for education and training. This claim is incorrect. The above rule specifically excuses only those test and research reactors that are exempt from annual fees under 10 CFR 171.11(a). The language in 10 CFR 171.15(a) relies on the specific exemptions contained in 10 CFR 171.11(a). The lack of clarification in 10 CFR 171.15(a), with regard to test and research reactors, denotes the rule's deliberate dependence on the terms of 10 CFR 171.11(a), and not a conflict in language between the rules. The exemptions contained in 10 CFR 171.11(a) are unambiguous, and no additional meaning can be interpreted.

In conclusion, the NRC finds that the NCNR request does not satisfy all criteria under 10 CFR 171.11, and 10 CFR 171.15 (a); therefore, the fee waiver request is denied. If you have any technical questions regarding this matter, please contact Mr. Alexander Adams Jr. at (301) 415-1127. Please contact Mr. Alexander Balkin, of my staff at (301) 415-5835 for any fee-related questions.

Sincerely,

/RA/ Mary C. Muessle (for)

J. E. Dyer
Chief Financial Officer

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J. E. Dyer
Chief Financial Officer

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