



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

December 22, 2000

CHIEF FINANCIAL  
OFFICER

Electric Power Research Institute  
Attn: Dr. Robin L. Jones  
Vice President, Science & Technology Division  
and Chief Nuclear Officer  
3412 Hillview Avenue  
Palo Alto, CA 94304-1395

Dear Dr. Jones:

I am responding to your December 20, 1999, letter requesting that the Nuclear Regulatory Commission (NRC) reconsider its decision to deny the Electric Power Research Institute's (EPRI) April 22, 1999, request for a waiver of the 10 CFR Part 170 fees for the review of EPRI's reactor safety analysis code, RETRAN-3D. In my August 27, 1999, letter, I informed you that your fee waiver request was denied because it did not meet the waiver requirement in Footnote 4 to 10 CFR 170.21. Your letter provides additional information that you believe shows that RETRAN-3D review meets the NRC fee waiver requirements.

The bases for your appeal are: (1) your assessment of likely future use is that the RETRAN-3D code will be used in a substantial way by EPRI, EPRI contractors, and others to address generic issues and support regulatory reform activities, including efforts toward risk-informed regulation; and (2) in your opinion, the requirement for the fee waiver does not stipulate that NRC must request the information. In addition, in an August 16, 2000, letter to Ashok Thadani, Director, Office of Nuclear Regulatory Research, you committed to perform analysis in support of risk-informing the 10 CFR Part 50 technical requirements under the Option 3 study and referenced your fee exemption request. That analysis would be applicable to planned efforts to risk-inform requirements associated with the PWR rod ejection accident.

In conjunction with the Offices of Nuclear Reactor Regulation (NRR) and Regulatory Research (RES), we have carefully reviewed the additional information you submitted. As explained below, we have determined that the additional information does not support a waiver of the fee for NRC's review of the RETRAN-3D computer code. *J*

Footnote 4 to 10 CFR Part 170.21 states that:

Fees will not be assessed for requests/reports submitted to the NRC: ... (2.) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issues, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin, or (3.) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

As indicated by the above, the waiver criteria relate to the purpose for which the report is submitted and reviewed, not to the eventual use of the topical report. This is supported by the history associated with the development of the waiver provision. In the FY 1994 proposed fee rule (May 10, 1974; 59 FR 24067), the NRC solicited public comment on its proposal to waive the Part 170 review fees for certain requests or reports submitted to the NRC. In the statement of considerations for the proposed rule, the NRC stated:

These reports, although submitted by a specific organization, support NRC's development of generic guidance and regulations (e.g., rules, regulations, guides and policy statements), and resolution of safety issues applicable to a class of licensee such as those addressed in generic letters.

After evaluating the public comments received on the proposed rule, in the final FY 1994 fee rule the NRC revised Part 170 to include the provision that review fees will not be assessed for certain requests/reports (June 20, 1994; 59 FR 36895). The statement of considerations for the final rule reiterated that the NRC believes that the costs for review of such requests/reports are more appropriately recovered through Part 171 fees because they support NRC's generic regulatory improvements or efforts. For your convenience, copies of the proposed and final FY 1994 fee rules are enclosed.

The RETRAN-3D reactor safety analysis code was not submitted to the NRC or reviewed by the NRC as a means of exchanging information between EPRI and the NRC for the purpose of supporting generic regulatory improvement or efforts. Nor was the RETRAN-3D code submitted or reviewed in response to an NRC request to develop a regulatory document or resolve an issue. EPRI requested that NRC review and approve the code, presumably so that the code could be used in the future. Use of the code by EPRI or other organizations to support their positions in the resolution of generic issues is not a basis to waive the 10 CFR Part 170 fee for review and approval of the code. We appreciate your offer to use the code to perform analysis in support of risk-informing the 10 CFR Part 50 technical requirements. However, that effort is not a basis to grant a fee waiver for the review of the RETRAN-3D computer code, since it occurred after the code was reviewed and does not affect the purpose for which the code was submitted and reviewed. While we are not able to waive the review fees, the Office of RES has indicated that they will continue to work cooperatively with you to determine whether other arrangements can be made to use the code in support of risk-informing 10 CFR Part 50.

For the above reasons, your request for a fee waiver under Footnote 4 to 10 CFR 170.21 is denied. Currently, there are 40 unpaid invoices related to NRC's review of the RETRAN-3D code for a total amount of \$350,530. These invoices are: RL0078-99, RL0335-99, RL0378-99, RL0384-99, RL0385-99, RL0386-99, RL0388-99, RL0576-99, RL0577-99, RL0578-99, RL0579-99, RL0580-99, RL0581-99, RL0584-99, RL0593-99, RL0027-00, RL0028-00, RL0029-00, RL0030-00, RL0031-00, RL0032-00, RL0035-00, RL0049-00, RL0186-00, RL0187-00, RL0188-00, RL0189-00, RL0190-00, RL0193-00, RL0363-00, RL0364-00, RL0365-00, RL0430-00, RL0529-00, RL0530-00, RL0531-00, RL0532-00, RL0533-00, RL0011-01, and RL0014-01. The invoices are due and payable. All late charges that have accrued on these invoices will be waived if payment is received within 30 days from the date of this letter. If payment is not received within 30 days, all late charges will be accrued from the date of the invoices.

R. L. Jones

-3-

If you have any question about the invoices, please contact Ellen Poteat of my staff at 301-415-6392.

Sincerely,

/RA/

Jesse L. Funches  
Chief Financial Officer

Enclosure: FY 1994 Proposed  
and Final Fee Rules

Distribution:

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RL0364-00, RL0365-00, RL0529-00, RL0530-00, RL0531-00, RL0532-00, RL0533-00,  
RL0011-01, and RL0014-01.

Project File 00669 PDR  
LFARB (LF0-000)  
OCFO RF  
OCFO-2000-05

Document Name: G:\DAF-0-006glenda-redline version 12-4 jlf.wpd

\*Previously concurred.

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cc: Mr. Gary Vine