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RULEMAKINGS AND ADJUDICATIONS STAFF
U.S. NRC

Robert Willis Bishop
VICE PRESIDENT &
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April 26, 2000

Mr. David L. Meyer
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

DOCKET NUMBER
PROPOSED RULE PR 170+171
(65FR16250)

ATTN: Rulemakings and Adjudications Staff

SUBJECT: Proposed Rule: *Revision of Fee Schedules; 100% Fee Recovery, FY 2000* (65 Fed. Reg. 16250; March 27, 2000)

Dear Mr. Meyer:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)[1] hereby submits the following comments on the NRC's proposed rule, *Revision of Fee Schedules; 100% Fee Recovery, FY 2000* (65 Fed. Reg. 16250).

The NRC's ongoing reform efforts appear to be producing significant improvements in the agency's approach to regulation. However, revising the agency's regulatory approach is only one facet of NRC reform the industry believes is necessary. The NRC also should continue to seek opportunities for increased efficiency of its own operation and organization. To this end, on March 7, 2000, the NRC provided its *FY 2001-2005 Five-Year Planning Information* to the Senate Committee on Environment and Public Works, Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety. The five-year plan identifies both the NRC's projected need for resources, as well as the major assumptions the NRC considered in developing its resource projections.

Although statements in the five-year plan indicate that the NRC recognizes that changes in operational and organizational efficiency should flow from the agency's

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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SECY-02

broader regulatory reform initiatives, the current fee schedule and proposed recovery rule do not reflect these changes. As the industry has suggested in the past, NRC's annual fee schedule and recovery rule, as a minimum, should fully explain the bases for the agency's overall budget. Additionally, the industry remains concerned about the NRC's continued use of the percent change method as its basis for calculating hourly fees and about the lack of formal procedures for developing licensing fees. Finally, the agency's allocation of specific agency costs between 10 CFR Part 170 and 10 CFR Part 171 fails to meet the requirements of the Administrative Procedure Act, which requires an agency promulgating a rule to provide sufficient information to the public to enable it to comment meaningfully on a proposed rule.

Following is a detailed discussion of our concerns with the proposed rule.

1. NRC's overall budget does not reflect the more efficient use of resources resulting from the agency's revised regulatory approach.

The industry strongly believes that the changes in NRC's regulatory approach and the industry's continuing excellent performance should have resulted in a greater decrease in the NRC's overall budget than is currently proposed. In a letter from NRC Chairman Richard Meserve to Senator James Inhofe dated March 13, 2000, a chart was provided that shows an increase in NRC full time equivalents (FTE) over the five years of the budget plan. The increase in FTEs is inconsistent with the agency's stated objective to become more effective and efficient. Regulatory trends presented by Mr. Sam Collins, Director, Office of Nuclear Reactor Regulation, at the NRC's 2000 Regulatory Information Conference (RIC), reveal a three-year decline in licensing actions processed by the agency, a decrease in the number of generic communications and a decrease in the number of hours spent addressing allegations. These trends, also, should lead to fewer agency FTEs.

We also note that the revised inspection, assessment and enforcement processes are far more objective and risk-informed, which should lead to more efficient use of agency resources while still ensuring that licensees maintain a high level of operational safety. Specifically, the NRC recognizes that under the new oversight program, most licensees will only require baseline inspections, which will necessitate only approximately 2,400 inspection hours per plant. While there is little difference between the old core inspection program and the new risk-informed, baseline inspection program in terms of inspection hours, a reduction in the number of regional initiative inspections is expected, based on plant performance.

The performance curves presented at the RIC confirm that industry performance overall is continuing to improve. Given that events requiring NRC response have become increasingly less frequent, we would expect to see a concomitant reduction of FTEs – not the increase projected in the budget plan.

Finally, the value of many of the NRC's research activities should be reviewed. For example, it appears that the Office of Nuclear Regulatory Research continues to focus substantial resources on human factors and organizational performance issues. These analyses are unwarranted because current data demonstrate that most plants are performing in the "green" licensee control band which inherently requires strong human and organizational performance. We would encourage the Commission to closely scrutinize research activities being undertaken to ensure that they are properly aligned with the Commission's priorities.

2. NRC should revise its method for calculating licensee fees and NRC hourly rates.

In the request for comment on the FY 1999 fee rule, the NRC sought public comment on whether the agency should continue to use the percent change method or should rebaseline its fees. (64 Fed. Reg. 15882.) The industry's comments on the FY 1999 rule advocated rebaselining fees on an annual basis to comport with the provisions of Independent Offices Appropriations Act of 1952, 31 USC 9701. The NRC did not adopt that recommendation and, for FY 2000, has again used the percentage change method for determining its fees, based on the agency's determination that the percentage change method would provide greater stability in the fee amount. Although programmatic fee stability is a reasonable goal, and rebaselining would require a more resource-intensive evaluation and analysis, the industry continues to believe that rebaselining should be undertaken annually. Rebaselining will promote maximum agency efficiency by focusing agency review on the value of individual programs, and on various regulatory, organizational and other changes that have an impact on agency resource requirements.

The NRC Office of Inspector General has also supported the rebaselining of NRC fees. In a recent audit, "NRC's License Fee Development Process Needs Improvement,"[2] the OIG found that by using the percent change method over an extended period of time, the resulting relationship between fees and the costs of providing service does not reflect the changes in the budget and in the number of licensees.[3] Further, OIG pointed out that

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[2] OIG/99A-01, dated December 14, 1999.
[3] Id. at 2.

> ". . . because the percent change method is not based on the cost relationship of providing services, fees may become inequitable over time. As a result, some licensees actually subsidize the cost of other licensees until the next rebaseline method is applied. This situation is compounded when the number of licensees in a class decreases during the period NRC uses the percent change method."[4]

In addition, the OIG recommended that the NRC evaluate the hourly rate calculation methodology. Yet the response by the NRC was only that the NRC will undertake an examination of the existing approach to determine if improvements can be made "in a cost-effective manner." This answer seems to ignore the OIG's point that the NRC's fee-development process must comply with the full cost recovery principles contained in IOAA and the guidance provided in OMB Circular A-25.

The industry strongly urges the Commission to address the Inspector General's conclusion. No substantive justification has been provided for formulating hourly rates by using data developed for budget preparation and not traceable to billable activities, rather than actual data from the previous year's billings. The NRC should address these issues prior to issuing the final version of Parts 170 and 171.

The OIG also faulted the NRC for not having developed written procedures for developing the annual fee rule. The industry believes that it is critical for the Commission to direct the NRC staff to develop such procedures and make them available to the public. Publication of such procedures would allow all stakeholders to understand the NRC's methodology and calculations, and more meaningfully comment on the proposed rule.

3. NRC must justify proposed Part 171 charges.

The industry has previously objected to the NRC's approach to allocation of fees through 10 CFR Part 171. Part 171 charges typically account for 80 percent of a licensee's fees. Reactor licensees bear a large share of the Part 171 burden, amounting to $2.815 million per operating power reactor.[5] This fee simply represents an increase of 1.4 percent of last year's fee.

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[4] Id. at 3.
[5] 65 Fed. Reg. at 16254.

The proposed rule does not explain in meaningful detail the association of costs with the proposed generic fee assessments. Without adequate explanation of the bases for the generic costs, licensees cannot evaluate the agency activities that their fees support. In addition, given that licensees are billed for contractor activities under Part 171, the NRC should provide a much more detailed account of the major contracts currently outstanding, their purposes, and their costs. Consistent with the notice and comment rulemaking provisions of the Administrative Procedure Act, stakeholders should be told the costs associated with each component of reactor regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment.

No basis has been provided for the NRC's decision not to detail the costs characterized as generic under Part 171. We strongly urge the NRC to provide licensees and the public with the specific activities and associated costs that form the bases for this fee. Two significant benefits will accrue from such action. First, stakeholders could provide the NRC with far more effective feedback and comment on the efficiency of regulatory activities if Part 171 related costs were described with specificity. Second, by making the cost of actual services and other agency obligations (e.g., overhead) more visible to stakeholders, the Commission would be propelled to exercise its authority to promote increased fiscal responsibility.

In addition, the proposed FY 2000 Part 171 fee includes a surcharge on NRC operating power reactor licensees of almost $500,000. We arrived at this number by calculating that the programs for which the surcharge is assessed cost approximately $60 million[6] and reactor licensees shoulder approximately 80 percent of the amount of the fees levied on NRC licensees. It appears that the Part 171 rule does not meet the requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA) which mandates that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value." 42 USC 2214(b). OBRA also mandates that there be a reasonable relationship between the fees charged and the cost of providing regulatory services. 42 USC 2214(c)(3). By shifting costs from others (e.g., Agreement States) receiving benefits from the NRC services to reactors (e.g., $21 million charged for support and oversight of Agreement States), the NRC's fee rule does not comport with OBRA.

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[6] The 1999 surcharge was approximately $56 million; Ohio has been added as an Agreement State, which we estimate increases the surcharge to just under $60 million.

4. Fairness in Funding

The NRC has promulgated 10 CFR Part 170 and 10 CFR Part 171 to recover the full amount of its FY 2000 budget. As noted above, the proposed FY 2000 Part 171 fee includes a surcharge on NRC operating power reactor licensees of just under $500,000, which we believe is inconsistent with Omnibus Budget Reconciliation Act (OBRA) for the reasons stated above.

The industry is aware that the NRC recognizes that there is no relationship between the programs funded by this surcharge and reactor regulation or regulation of the other sectors of the commercial nuclear industry. The industry also is aware that the NRC supports legislation allowing the agency to exclude these costs from its fee base and obtain funding for them through the general Treasury. The NRC's proposed budget for 2001 provides for a two percent decrease in licensee fees each year for five years until a total of ten percent of the agency's budget is funded through the general treasury.

On April 13, 2000, the U.S. Senate passed S. 1627, which calls for the NRC gradually to remove "inequitable costs" from the NRC fee base – two percent per year for five years culminating in a twelve percent overall reduction in fee base. The industry strongly supports the NRC's initiative and S.1627.

5. Fees charged uranium recovery licensees should be reconsidered.

Increased licensing fees are being assigned to the holders of uranium recovery licenses primarily as a result of a decreasing number of licensees. At the beginning of 2000, there remained only nine licensees (three domestic uranium mills and six *in-situ* uranium mines), many of which operate on a standby basis due to adverse market conditions. Decommissioning of uranium mines and mills continues to reduce the number of facilities to which the costs of NRC regulatory oversight programs can be allocated.

As more states become Agreement States, remaining uranium recovery licensees must bear an even greater share of the regulatory program cost. The current fee structure unfairly gives preferential treatment to uranium recovery licensees that are based in Agreement States.

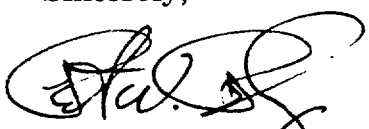
There is also a reasonable basis for lessening or discontinuing the assessment of annual license fees on decommissioned facilities that are simply awaiting NRC

approval of reclamation plans. Such facilities require minimal regulatory oversight and pose little risk to the public or the environment, but remain subject to significant license fees pending NRC approval of decommissioning and reclamation plans.

6. Conclusion

The industry appreciates the opportunity to comment on the proposed fee rules for FY 2000 and recommends the NRC revise the rule to comport with the comments provided herein. The Commission must exercise its authority to ensure that the agency is fiscally responsible in the overall amount of funding it recovers from licensees, as well as how the charges are allocated among fees and among licensees.

Sincerely,



Robert W. Bishop