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DOCKET NUMBER
PROPOSED RULE PR 170+171
(71FR07349)

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DOCKETED
USNRC

March 14, 2006 (3:14pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

March 13, 2006

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTENTION: Rulemakings and Adjudication Staff

SUBJECT: Proposed Rule: *Revision of Fee Schedules; Fee Recovery for FY 2006* (71 Fed. Reg. 7350, February 10, 2006)—RIN 3150-AH83

On behalf of the commercial nuclear industry, the Nuclear Energy Institute (NEI) submits the following comments on the Nuclear Regulatory Commission's proposed rule, Revision of Fee Schedules; Fee Recovery for FY 2006 (71 Fed. Reg. 7350).

These comments recommend that NRC: (1) limit its fees to expenditures that are clearly attributable to licensee activities; (2) provide a more detailed explanation of significant fee increases; (3) more precisely identify programs and activities for which generic assessments are charged under 10 CFR Part 171; and (4) reduce the agency's overall budget through more efficient decision-making and resource allocation. In addition, the industry again urges the NRC to project the amount of its generic assessment at least a year in advance. This years' increase is a significant amount for some facilities to absorb, particularly as it occurs well after the budgets for the year have been established. Each of these recommendations is discussed in greater detail below.

A. NRC Fees Should Be Limited to Expenditures That Are Clearly Attributable To Licensee Activities

The NRC's fees should not include charges for homeland security activities. We note that Section 637 of the Energy Policy Act of 2005 will remove certain homeland security activities from the fee base beginning in FY 2007. These activities include rulemakings, guidance development and vulnerability assessments. Although a significant portion of these activities will be completed in FY 2006, the industry does look forward to long overdue relief from homeland security charges that largely have been imposed only on the nuclear industry. We also acknowledge and appreciate that the NRC has been supportive of the transfer of these fees from the licensee fee base.

Template = SECY-067 SECY-02

Irrespective of the funding mechanism for security-based expenses, the NRC is responsible for managing its regulatory processes to maximize agency efficiency and effectiveness. Prior to the events of September 11, 2001, the best available information indicates the NRC had a combined security staff of approximately 35 employees. The workpapers referenced in the FY 2006 fee rule indicate there are 198 FTEs assigned to homeland security issues, almost a 600 percent increase. The NRC already has completed its review of the new security plans, the Force-On-Force program is proceeding in a stable fashion, Interim Compensatory Measure (ICM) B.5.b Phase 1 is all but complete, all of the NRC Phase 2 studies have been completed with only the final evaluation of the industry proposal outstanding, and Phase 3 is about 80 percent complete. The rulemakings underway should be fairly straightforward as it is our understanding that these rulemakings merely capture requirements that have already been imposed by orders.

With the completion of the remaining activities, we would expect to see a fairly significant reduction in homeland security FTEs in FY 2007, thus offsetting resources needed for new plant reviews.

We also note that the FY 2006 budget workpapers show $3,626K of unallocated funds for homeland security activities across both reactor and materials areas. We are now almost halfway through the fiscal year. Have these funds now been allocated to specific activities and, if so, what specific activities? If not allocated, they should be removed from the fee base.

B. NRC Should Provide a More Detailed Explanation of Significant Fee Increases

The annual fee for power reactors will increase by approximately $500K per reactor and by $377K for UF_6 conversion facilities. Such large increases deserve a more detailed explanation than the very brief description provided in the federal register for the proposed rule. At a minimum, a reasonably detailed listing of the major activities and their associated impact on the fee increased should be provided. The federal register notes that some of the fee increase (though unspecified) is associated with preparations for new plant license reviews. As new plant applications are filed, we would expect to see the generic fees reduced as costs are charged directly against an applicant under 10 CFR Part 170.

C. The NRC Should Clearly Define Programs and Activities for Which Fees Are Charged Under 10 CFR Part 171

The industry continues to object to the NRC's disproportionate allocation of user fees to the generic assessment under 10 CFR Part 171. Again this year, 70 percent

of the NRC's budget is recovered under 10 CFR Part 171, while only 30 percent is recovered under the discrete fee provisions of 10 CFR Part 170.

Fundamentally, this approach impedes the industry's ability to evaluate the agency's allocation of resources and designation of priorities. We note, and do appreciate, that the NRC has made the workpapers that provide a roll-up of the FY 2006 budget publicly available for the first time and we encourage the agency to continue this practice. While this additional information is useful, it still does not provide for an in-depth accounting of the specific changes that make up the annual fee recovery. The NRC must be accountable for the expenditures it seeks to recover from licensees. Licensees and Congress cannot ensure the agency's exercise of fiscal responsibility if the bases for the fees are, in essence, inscrutable.

Consistent with the notice and comment rulemaking provisions of the Administrative Procedure Act, stakeholders should be told the costs associated with each component of regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment on the proposed fee rules. Specifically, the NRC should provide an itemized accounting of the major elements that comprise the annual assessment under 10 CFR Part 171. This should include, among all the other items, a detailed description of the major contracts currently outstanding, including their purposes and costs.

The enclosure to this letter contains a number of questions on specific items in the FY 2006 workpapers, the answers to which would provide further clarity to the bases of the proposed rule.

D. <u>NRC Fees Should Reflect Agency Efficiencies</u>

The agency should be able to reduce certain portions of its budget to account for the efficiencies currently derived from the reactor oversight program. It also should consider other programmatic changes that would yield additional efficiencies without impeding operational safety. For example, the agency should consider reallocating resources dedicated to inspection of areas of the plant that have little or no safety significance to efforts to risk-inform the regulations, license new reactor designs, and process combined operating licenses for new plants. This could add efficiencies to the process for the associated regulatory reviews which, in turn, would reduce costs and increase public confidence.

We note that the NRC has reduced its allocation of resources for license renewal in recognition of the efficiencies being realized in this area. FY 2006 program dollars have been reduced by $1,825K and total FTE's reduced from 83 to 61. The NRC should look for similar opportunities to streamline resources.

E. The NRC Should Provide More Advance Notice of Projected Fees

The timing of issuance of the fee rules makes it difficult for licensees to plan for regulatory expenses as part of their budget cycles. To address this problem, it would be helpful if—coincident with promulgation of the proposed fee rule each year—the NRC published an estimate of fees for the following year as well. Although it is, of course, impossible for the NRC to offer exact projections, the Commission nevertheless should be able to develop reasonable estimates based on the budget projections for the following year. (For example, the agency's projected total budget authority might be based on the five-year projection the Commission prepares as part of its annual budgeting process). Such an estimate would be of considerable assistance to licensees. We request that the five-year projection be stated in the Performance Budget: Fiscal Year 20XX (NUREG-1100 series).

As stated previously, power reactors and some materials facilities have seen significant increases in the FY 2006 annual fees. These fees exceed the budget estimates within the affected organizations. We request that the NRC give consideration to deferring a portion of the fee increase to the first calendar quarter of 2007 to alleviate the unexpected burden imposed by these large increases.

Conclusion

The industry respectfully requests that the Commission carefully consider the above recommendations and requests as it moves to promulgate the final fee rules. In addition, we request answers to the questions/issues addressed in the enclosure. If you have questions or would like to discus the industry's comments further, please contact me at (202) 739-8078.

Sincerely

Stephen D. Floyd

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Enclosure

Enclosure

Specific Questions on NRC Budgeted Costs for FY 2006

The following issues were derived from a review of the FY 2006 workpapers. Please provide an explanation of the following significant changes from the FY 2005 budget:

Power Reactors

1. General Information Technology has increased $1,075K and 1.5 FTE – an increase of 30%.
2. Aging of Reactor Systems and Components has increased by$1,075K and 16.1 FTE – an increase of 400%.
3. Civil/Structural Engineering and Earth Sciences went from 0 in FY 05 to $2,230K and 4.7 FTE in FY06.
4. Fire safety went from 0 in FY 05 to $1,095K and 4.2 FTE in FY06.
5. Testing, Development and Validation of Systems Analysis Regulatory and Licensing Tool increased from $5,733K to $10,687K from FY05 to FY06 – an increase of 90%.
6. Radiation Protection increased $850K and 3.4 FTE – an increase of over 100%.
7. Evaluation and Resolution of Operational Issues increased $777K and 15.3 FTE. The FTE was almost a 300% increase.
8. Other Licensing Tasks increased by 7.1 FTE – an increase of approximately 50%.
9. HLS Regulatory improvements increased by $960K and 7.8 FTE. This was an approximately 70% increase.
10. Regulatory Infrastructure for New Reactor Licensing has increase by 2,887K and 42.2 FTE – an increase of over200%.
11. HLS Safeguards Inspection Program was increased by 12.4 FTE – an increase of 60%.
12. Emergency Preparedness Inspection Program was increased by 4FTE – an increase of 200%.
13. The Internal Training and Development Program was increased by $1,332K and 9 FTE – an increase of over 100%.
14. Reactor Inspection & Assessment Program Development and Oversight was increased by $668K and 6.9 FTE – an increase of over30%.
15. TTC-Information Technology, TTC-Rental of Space and TTC-Other Administrative Services have increase from 0 in FY 06 to $1883K and 3 FTE.

Nuclear Materials Users

1. We can find no resources for proposed Part 40 or 70 rulemakings, for review of new license applications for new uranium recovery operations or for fuel cycle inspection and enforcement program revisions.

Enclosure

2. Major increases are forecast for "*Materials and Fuel Cycle Decommissioning Licensing*" (75% increase in expenses to $155K)
3. "*Internal Training and Development*" ($151K in FY2006 versus $0.00 in FY2005)
4. "*Event Response and Incident Evaluation*" (56% increase to $108K)
5. No changes in expenses or personnel to "*Risk Informed Regulatory Framework*" or to fuel cycle facility inspection/oversight even though these areas warrant considerable work in FY2006.
6. Major increases are forecast for "*Materials and Fuel Facility Decommissioning Licensing*" (increase of 6.5 FTE, 172% increase in expenses to $388,800).
7. "*Information Technology*" (115% increase in expenses to $2,109K).
8. Projected expenses for transportation issues rise by 63% to $947K, but FTEs remain constant. The significant increase in expenses is attributable to a $154.000 rise for DHS activities and a 100% increase for "*Licensing and Certification*" activities related to Spent Fuel Storage and Transportation.
9. International HLS Licensing Support has 2 FTE. Please explain the use of the resources.
10. HLS International Activities has 4.9 FTE. Please explain the use of the resources.
11. HLS Regulatory Improvement has 12.2 FTE. Please explain the use of the resources.