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March 13, 2006

VIA RULEFORUM

DOCKETED
USNRC

March 14, 2006 (3:14pm)

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Attention: Rulemaking and Adjudications Staff
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Comments on Revision of Fee Schedules and Fee Recovery for FY 2006

Dear Ms. Vietti-Cook:

We are submitting the attached comments on behalf of Honeywell and its Metropolis Works Facility in response to "Revision of Fee Schedules; Fee Recovery for FY 2006: Proposed Rule," in accordance with the *Federal Register* notice issued by the U.S. Nuclear Regulatory Commission on February 10, 2006 (71 Fed. Reg. 7350).

Honeywell urges you not to revise the annual user fees as proposed because the dramatic increase in annual fees for UF6 Conversion Facilities is unsupported and without a clear basis. As is described in the attached comments, the increase in the annual user fee is nearly 54% from FY 2005. However, the publicly-available documents supporting the proposed rule do not provide sufficient information to establish a reasonable relationship between the increase in costs of NRC's regulatory oversight and the benefit derived from such services.

If you have any questions regarding these comments, please contact Mr. Jim Tortorelli, Manager, Regulatory Affairs, Metropolis Works Facility, at (618) 524-6221.

Sincerely,


David A Repka
Tyson R. Smith

Template=SECY-067

SECY-02

**HONEYWELL COMMENTS ON PROPOSED REVISION
OF FEE SCHEDULES AND FEE RECOVERY FOR FY 2006**

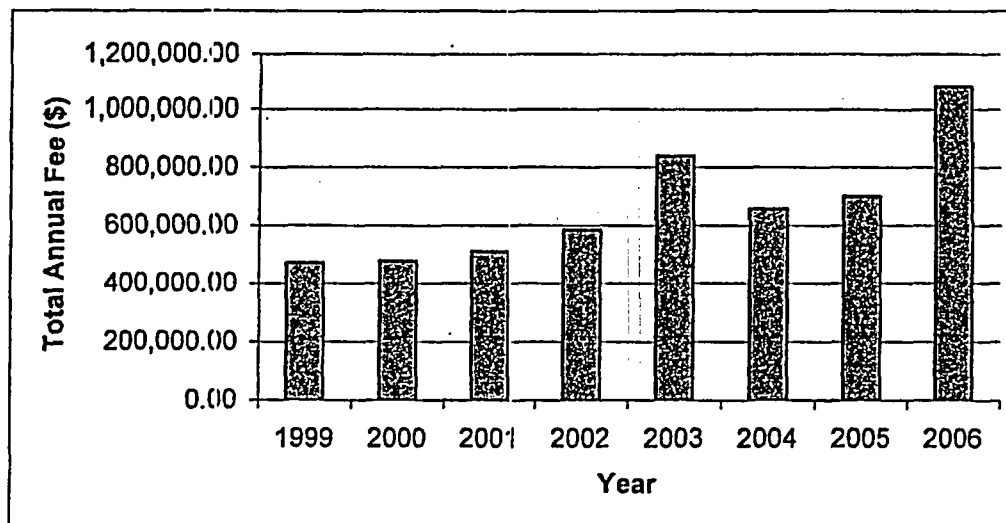
Introduction

Upon careful review of the explanations and bases for the proposed revisions to the fee schedule and fee recovery for FY 2006 outlined in the *Federal Register* notice and the FY 2006 Working Papers available through the agency's ADAMS database, Honeywell concludes that there is insufficient information for Honeywell to provide a thorough evaluation of the proposed revisions. The proposed rule lacks a clear explanation for the dramatic increases in "effort factors" for several categories of agency activities related to UF6 conversion. Moreover, any fees associated with a conversion facility rulemaking should not be assessed to Honeywell directly. For all of these reasons, the NRC should maintain the annual fees for UF6 Conversion Facilities at FY 2005 levels unless the agency develops a detailed explanation and justification for any proposed increases.

Discussion

A. The proposed revisions result in a significant and unexplained increase in annual fees for UF6 conversion facilities.

In the proposed revisions to the FY 2006 fee schedule, the NRC proposes to increase the annual fee for UF6 conversion facilities from \$699,000 to \$1,076,000. This is an increase of nearly 54% (or \$377,000) in a single year. This increase reflects a significant increase over years past and is not in line with reasonable expectations based on previous adjustments. As the chart below demonstrates, the increase in annual fees from 2005 to 2006 is wholly disproportional to the previous annual increases.



In the proposed rule, the basis for the 54% increase is as follows:

Note that the proposed annual fees for the gas centrifuge enrichment demonstration project and UF6 conversion facilities are higher than the FY 2005 annual fees because the safeguards efforts for these facilities have been raised. These revised factors better reflect the effort levels associated with safeguards activities for these facilities, including those associated with interim compensatory measures and the handling of sensitive information.¹

As is discussed in additional detail below, this basis does not explain why entirely new efforts are required relative to previous years, especially when previous Commission programs have addressed similar activities. For example, the fee increase in 2003 was explained in sufficient detail for the licensee to understand the anomalous increase (*i.e.*, homeland security related activities relating to fuel facilities, including issuance and follow-up of orders directing licensees to take interim compensatory measures to increase security, and a series of risk-informed vulnerability assessments that the NRC was conducting). However, these homeland security related fees have been taken out of the fee base in 2006. In other cases (*e.g.*, the FY 2005 working papers), the NRC provided a stand-alone justification for changes greater than 10% from FY 2004. Thus, unlike in years past, the FY 2006 proposed rule does not provide sufficient explanation for the increase in annual fees for UF6 conversion facilities.

The NRC must provide a supplemental explanation to support the large increase in annual fees. This is especially true for a licensee such as Honeywell that already faces disproportionate fee distributions due to the fact that the facility is in a "category of one" as the only licensed UF6 conversion facility in the United States. When there is but a single licensee in a particular category, the NRC must be wary of annual fees that impose unnecessary or experimental fees, since the cost cannot be spread among multiple licensees. Given the tremendous increase in proposed annual fees for 2006, the NRC must expect heightened scrutiny of the revisions and should provide additional information to support such an unexpected increase. The proposed rule lacks this explanatory information.

B. The proposed revision does not provide sufficient information to support a rational relationship between the fees and services provided.

In the proposed rule, the NRC uses an effort/fee determination matrix that was first established in the FY 1999 final fee rule. In the matrix and in the associated working papers, the NRC groups licensees into various categories and allocates effort according to the level, scope, depth of coverage, and rigor of the generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. The effort factors are assigned one of the following numbers: zero (no regulatory effort); one (low regulatory effort); five (moderate regulatory effort); or ten (high regulatory effort). The budgeted resources for each category are then allocated in proportion to the total regulatory effort for safety and safeguards activities.

¹ 71 Fed. Reg. at 7360.

In the FY 2006 working papers, the Metropolis Works Facility is assigned a total effort factor of 19. This represents the total of the effort factors for "safety" (12) and "safeguards" (7).² Based on these allocations, the 54% change from FY 2005 to proposed FY 2006 is due almost entirely to the effort factor for "safeguards" going from 0 to 7. As the chart below demonstrates, since 2001, that effort factor has been 0. Based on a review of the specific breakdown of the fee allocation in the FY06 working papers, the effort factor of 7 can be subdivided into three components. First, an effort factor of 1 (low effort) is assigned to the specific safeguards category of "Solid UF6/Metal." Second, and most significantly for the purposes of the total fee increase, an effort factor of 5 (moderate) was assigned to the "Liquid UF6" category. Lastly, the category of "Sensitive Information" was assigned an effort factor of 1.

Fuel Facility Fee Matrix

	Safety Effort Factor	Safeguards Effort Factor	Total Effort Factor	Total Annual Fee (\$)
1999	8	3	11	473,000
2000	8	3	11	478,000
2001	8	3	11	510,000
2002	12	0	12	585,000
2003	12	0	12	839,000
2004	12	0	12	657,000
2005	12	0	12	699,000
2006	12	7	19	1,076,000

Effort/Fee Determination Allocation

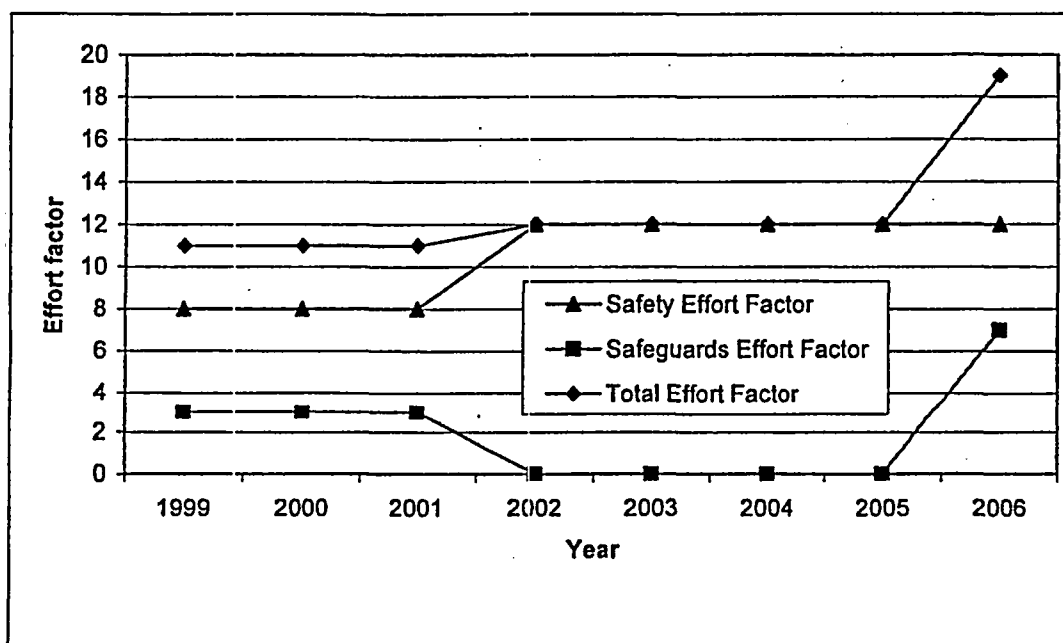
	Solid UF6/Metal	Liquid UF6	Sensitive Information
2002	0	0	0
2003	0	0	0
2004	0	0	0
2005	0	0	0
2006	1	5	1

In its only explanation for the increase in the proposed rule itself or in the working papers associated with the FY06 fee rule, the NRC simply states that "the revised factors better reflect the effort levels associated with safeguards activities for [UF6 conversion and centrifuge enrichment demonstration facilities], including those associated with interim compensatory measures and the handling of sensitive information." 71 Fed. Reg. at 7360. Since

² Although Table VII in the proposed rule indicates that the safeguards total is 70 (not 7) for UF6 conversion facilities, Honeywell recognizes that this is a typographical error based on the numbers provided in the associated working papers as well as the assigned percentages. See 71 Fed. Reg. at 7360.

the NRC is proposing an increase of \$377,000 in annual fees, a more detailed explanation must be provided. Without an explanation as to the basis for a reevaluation of the effort level (again, from 0 to 7, or \$0 to ~\$377,000), the proposed fee rule cannot satisfy the Administrative Procedure Act requirement that an agency rulemaking provide a rational basis for the fee schedule. Indeed, this is particularly true where, as here, the rulemaking involves the revocation of the previous rule (based on effort factor of 12). The revision requires a reasoned analysis beyond that required when the agency acted in the first instance, since allocation of annual fees (based on effort factor of 19) represents a reversal of the NRC's former views as to the proper course.³

To the extent that the NRC's explanation suggests a "better" reflection of effort levels than in previous years, Honeywell finds it difficult to understand how there can be an improved reflection of effort levels when there was no effort level in the past. The increase from 0 to 7 must therefore reflect an entirely new activity (or three activities) that did not previously exist. Neither the proposed rule nor the associated working papers discusses the nature or scope of these new activities. Accordingly, there is insufficient information in the proposed rule or associated publicly-available documents for Honeywell to discern a rational explanation for the shift from "zero" to "moderate" effort levels. Furthermore, by not providing such information, the NRC is effectively precluding Honeywell from participating in the rulemaking.⁴



In addition, because of the lack of information regarding the changes in effort factors, Honeywell cannot determine whether the NRC's use of a simplified 0, 1, 5, or 10 effort allocation system is sufficiently sensitive to the relative distribution of fees to satisfy the statutory requirement that fees bear a reasonable relationship to the services provided. The

³ See e.g., *Motor Vehicle Mfrs. Assn. v. State Farm Mut.*, 463 U.S. 29, 41-42 (1983).

⁴ See 5 U.S.C. § 553(c).

insensitivity of the effort factor matrix is again amplified when there is only a single licensee in a given category. Without an adequate discussion of the activities that supposedly justify the higher fee, Honeywell cannot discern whether the fees satisfy the statutory requirement that they be "fair and equitable."⁵ Consequently, an explanation of new activities and an explanation of the assignment of relative effort are prerequisites to a fee schedule revision.

C. Any fees for future Part 40 or conversion facility rulemakings should not be allocated to Honeywell.

Although Honeywell is not aware of any final decision regarding a rulemaking for UF6 conversion facilities, Honeywell is aware that such discussions are underway at the NRC. To the extent that any portion of the annual fee assessed to Honeywell relates to those rulemaking activities, the annual fee should be reduced by that amount. Since Honeywell is already licensed under Part 40, it would not receive any of the benefit from a new conversion facility rulemaking. Indeed, only future, hypothetical applicants (and, conceivably, Honeywell competitors) would receive the benefits for the rule established at Honeywell's sole expense. During a recent briefing to the Commission, there was some indication that the Staff would consider taking any such rulemaking off of the fee base. Honeywell supports those NRC Staff efforts.

Conclusion

As the prior discussion indicates, the proposed fee schedule lacks an adequate explanation for the substantial increase in annual fees for UF6 conversion facilities. Without such an explanation, Honeywell is unable to discern a reasonable relationship between the fee increase and the new services that the NRC will perform. For those categories with a single licensee, the NRC's use of simplified allocations may distort the user fee for the sole licensee, thereby rendering the fee unfair and inequitable. In addition, any generic or regulatory fees used to support a UF6 conversion rulemaking should not be allocated to the UF6 Conversion Facility category (or Honeywell).

DC:457440.3

⁵ See 42 U.S.C. § 2214(c).

From: Carol Gallagher
To: Evangeline Ngbea
Date: Tue, Mar 14, 2006 10:06 AM
Subject: Comment letter on Fee Rule

Attached for docketing is a comment letter on the above noted proposed rule from David A. Repka, Winston and Strawn, that I received via the rulemaking website on 3/13/06.

Carol

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