

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

TITLE: AFFIRMATION/DISCUSSION AND VOTE

LOCATION: ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND

DATE: FRIDAY, AUGUST 5, 1988

PAGES: 1-2

RETURN TO SECRETARIAT RECORDS

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on 8/5/88 in the Commission's office at One White Flint North, Rockville, Maryland. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

AFFIRMATION/DISCUSSION AND VOTE

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Friday, August 5, 1988

The Commission met in open session, pursuant to short notice, at 4:15 p.m., the Honorable LANDO W. ZECH, Chairman of the Commission, presiding.

COMMISSIONERS PRESENT:

LANDO W. ZECH, Chairman of the Commission
THOMAS M. ROBERTS, Member of the Commission
KENNETH CARR, Member of the Commission
KENNETH ROGERS, Member of the Commission

STAFF AND PRESENTERS SEATED AT THE COMMISSION TABLE:

S. CHILK

W. PARLER

P R O C E E D I N G S

[4:15 p.m.]

CHAIRMAN ZECH: Good afternoon, ladies and gentlemen. This is an affirmation session. We have one item to come before us this afternoon.

Before I ask the Secretary to take us through that item, do any of my fellow Commissioners have any comments to make?

[No response.]

CHAIRMAN ZECH: If not, the Secretary may proceed.

MR. CHILK: Mr. Chairman, the Sunshine Act requires us to vote to hold this matter on less than one week's notice. I wonder if the Commission might give me a vote for that.

CHAIRMAN ZECH: Aye.

COMMISSIONER ROBERTS: Aye.

COMMISSIONER ROGERS: Aye.

COMMISSIONER CARR: Aye.

MR. CHILK: The paper before us is SECY-88-225. It's the interim rule for collection of required fees mandated by Congress (Public Law 100-203). In this paper the Commission is being asked to approve interim revisions to 10 CFR Parts 170 and 171 which would lift certain license fee ceilings to provide for NRC collection of not less than 45% of its budget through license fees.

1 All Commissioners have approved the rule changes with
2 the modifications made by Chairman Zech.

3 Would you please affirm your votes?

4 CHAIRMAN ZECH: Aye.

5 COMMISSIONER ROBERTS: Aye.

6 COMMISSIONER ROGERS: Aye.

7 COMMISSIONER CARR: Aye.

8 CHAIRMAN ZECH: Anything else to come before us?

9 MR. CHILK: I have nothing.

10 CHAIRMAN ZECH: We stand adjourned.

11 [Whereupon, at 4:20 o'clock, p.m., the Commission
12 meeting was adjourned.]



RULEMAKING ISSUE

(Affirmation)

August 2, 1988

SECY-88-225

For: The Commissioners

From: Victor Stello, Jr.
Executive Director for Operations

Subject: INTERIM RULE FOR COLLECTION OF REQUIRED FEES
MANDATED BY CONGRESS (PUBLIC LAW 100-203)

Purpose: To obtain Commission approval of a notice of interim rulemaking relating to annual fees.

Category: This paper covers a fee collection and budget matter requiring the immediate attention of the Commission.

Issue: Timely collection of fees to satisfy the legislation approved by Congress for NRC to collect not less than 45 percent of its budget for FY 1988.

Background: On June 16, 1988, the Commission approved publication of a proposed rule which would revise the license/annual fee rules under 10 CFR Parts 170 and 171 (see SECY 88-149). These proposed revisions (53 FR 24077, June 27, 1988) would implement the Commission's policy on fees for standardization designs, increase the hourly rate used in calculating fees, lift certain fee ceilings, ensure that those licensees who require the greatest level of services pay the greatest fees and raise fees so that fee collections would approximate, but be not less than 45 percent of NRC's budget in fiscal years 1988 and 1989.

The proposed rule provided for comments on a second option. Under this second option, the NRC would not make changes to 10 CFR Parts 170 and 171 other than to increase the percentage specified in 10 CFR Part 171 from 33 percent to not less than 45 percent so that when fees collected under 10 CFR Part 171 are added to those collected under 10 CFR Part 170 they would approximate, but be not less than 45 percent of the NRC's budget. The proposed rulemaking allowed a 30-day public comment period which closed July 27, 1988.

Contact:
Lee Hiller, ARM/FMC
492-7351

Discussion:

The governing statute requires that the NRC collect 45 percent of its budget in fees for FY 1988. To ensure that the statutory mandate for collections in FY 1988 is met, invoices to reactor licensees need to be issued by August 15, 1988. Because the comment period for the proposed rulemaking did not expire until July 27, there is insufficient time to properly consider all comments on the proposed rule and promulgate an effective final rule in time for invoices to be issued by August 15. Therefore, because of the time constraints and the need for complying with the statutory mandate, the staff thinks that the second option presented in the June 27 notice of proposed rulemaking (i.e., changing the percentage specified in 10 CFR Part 171 from 33 percent to not less than 45 percent) should be published as an interim rule. This interim rule would allow NRC to meet the statutory requirement for FY 1988 while later giving due consideration to all aspects of a final rule. In late August, the staff intends to recommend to the Commission that the fee schedule for FY 1989 be based on the principles contained in the proposed rule (Option 1).

Some commenters have indicated that the 45 percent amount represents a ceiling and that refunds should be made if that amount is exceeded. We disagree. The best reading of the statute is that Congress intended collections to be not less than 45 percent of the NRC budget which would relieve the NRC of the administrative burden and loss of revenue to the U.S. Treasury by making refunds. Some commenters were opposed to the adoption of Option 2 while others favored adoption. In view of the fact that the nuclear power industry opposed it, we propose not to adopt Option 2 for the long term. However, as we have indicated, the time constraints necessary to fully consider all comments, publish a final rule to be effective 30 days after publication, and send out additional 10 CFR Part 171 invoices so that collections will be received prior to the end of the fiscal year, require the NRC to adopt Option 2 in the interim.

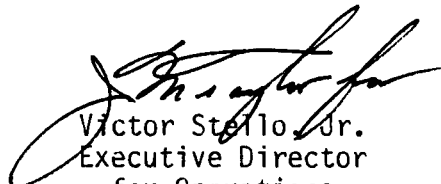
All licensees were advised in their April and July quarterly invoices under 10 CFR Part 171 that, based on the new law, there would be an additional sum to be invoiced in late FY 1988. A copy of the interim rule is attached as an enclosure. This interim rule is to be effective 30 days after publication in the Federal Register to meet the statutory fee collection

requirement for FY 1988. Invoices would be issued to licensees approximately August 15, 1988, after publication of the interim rule, with payment due immediately. In accordance with current regulations, if the invoices are paid within 30 days from issuance, interest is waived for that period.

Under the interim rule, the NRC would estimate the fees to be collected by September 30, 1988, under 10 CFR Parts 170 and 171. These amounts would be subtracted from the \$177 million required to meet the (not less than) 45 percent budget amount for FY 1988. The remaining sum would be divided by the 106 operating power reactors paying full annual fees, including a like percentage increase in the annual fees for the plants granted partial exemptions for FY 1988. Plants granted full exemptions are not affected. The amount for each reactor paying the full annual fee is expected to be approximately \$350,000.

Coordination: The Office of the General Counsel has reviewed the interim rulemaking and has no legal objection.

Recommendation: That the Commission approve the enclosed interim rulemaking for immediate publication in the Federal Register to be effective 30 days after publication.


Victor Stello, Jr.
Executive Director
for Operations

Enclosure:
Interim Rule on Revision of Fee Schedule

In order to publish this rule in the Federal Register by 8/15/88, Commissioners' comments should be provided directly to SECY ASAP.

Affirmation will be scheduled as soon as possible.

DISTRIBUTION:
Commissioners
OGC
GPA
REGIONS
EDO
ACRS
ASLBP
ASLAP
SECY

NUCLEAR REGULATORY COMMISSION

10 CFR PART 171

Revision of Fee Schedule

AGENCY: Nuclear Regulatory Commission

ACTION: Interim Rule.

SUMMARY: The NRC is amending its regulations, on an interim basis, to revise the annual charges for licensed power reactors for Fiscal Year 1988 (FY88). The interim rule raises the ceiling on collection of annual fees to an amount that will approximate, but not be less than 45 percent of the Commission's budget. The increase of 12 percent will be apportioned among the licensed power reactors in the same manner as under the current fee schedule regulations. This action is necessary to provide for the timely collection of fees as required by recently enacted legislation.

EFFECTIVE DATE: This rule is effective 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Lee Hiller, Assistant Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7351.

SUPPLEMENTARY INFORMATION:

On June 27, 1988, the NRC published in the Federal Register (53 FR 24077) a proposed rule that would amend its regulations in 10 CFR Parts 170 and 171 by changing the hourly rate under Part 170; removing ceilings on certain collections under Part 170; charging for each routine and nonroutine inspection; raising the annual fee under Part 171 when necessary, based on the principle that those licensees requiring the greatest expenditure of resources should pay the greatest fee; including collections from the Department of Energy Nuclear Waste Fund in agency collections; removing the application fee and deferring recovery of costs for standardized reactor designs; and removing amendment application fees for reactors and reactor-related (topical) reports. The bulk of these proposals are intended to help the NRC meet its statutorily mandated requirement to recover not less than 45 percent of its budget for each of fiscal years 1988 and 1989 through fees and other collections authorized by law. The increase in collections from 33 percent of the NRC's budget to not less than 45 percent is mandated by section 5601 of the Omnibus Budget Reconciliation Act of 1987 (OBRA - Pub. L. 100-203).

In its Federal Register notice on proposed amendments to 10 CFR Parts 170 and 171, the Commission requested comments on a second option for recovery of not less than 45 percent of its budget. Under that option, the Commission would not amend 10 CFR Parts 170 and 171 other than to raise the annual fee

under 10 CFR Part 171 so that when added to fees collected under 10 CFR Part 170, the Commission would collect not less than 45 percent of its budget in FY88.

Several comments were received which addressed the option. They were divided about equally between those in favor and those opposed. Generally the power reactor community was opposed to the second option on the ground that it increased the annual fee for power reactors without any commensurate sharing of the mandated increase in collections to 45 percent by other licensees and applicants. On the other hand, materials licensees favored the second option for the reason that it did not increase their burden. Two power reactor licensees favored the second option, one of them as an interim measure. The bulk of the power reactor community, in opposing the second option, appeared to be viewing it as a long term option and not as a stopgap measure to meet the immediate statutory directive for collections for fiscal year 1988. In view of the balance of the comments, the Commission will not pursue the second option for fiscal year 1989 and beyond, but will proceed with amendments to both 10 CFR Parts 170 and 171. The comments do not, however, present a persuasive argument for not proceeding with the second option for fiscal year 1988 collections.

Commenters also addressed the issue of refunds for overpayment of annual fees under 10 CFR Part 171. The only comments received were from the power reactor community and are based upon reading the language in Section 5601 of

OBRA as imposing a 45 percent ceiling on the collections in a fiscal year. In the view of the Commission, reading the 45 percent as a ceiling is contrary to the plain language and clear meaning of the statute which requires that, "in no event shall such percentage be less than a total of 45 percent of such costs in each such fiscal year." Although the statute presents some problems of interpretation, this is not one of them. The 45 percent is clearly a floor, not a ceiling. Accordingly, the provision for refunds is removed in this interim rule. It is the intention of the Commission, however, that collections of fees for fiscal year 1988 should exceed 45 percent by only a trivial amount, if at all.

The NRC is under statutory mandate, which it cannot ignore, to collect approximately, but not less than 45 percent of its budget for FY88. Given the time necessary to review all comments, to publish a final rule, and to send out additional invoices so that collections will be received prior to the end of the fiscal year, the Commission is publishing the second option as an interim rule applicable to FY88, effective 30 days after publication. Because the Commission has received and considered public comments on the two aspects of 10 CFR Part 171 being changed by this interim final rule, there is no need to request further public comment. Accordingly, the rule is being published as a final rule without a separate and independent comment period.

The adjusted invoices based on this interim rule will be sent to licensees on approximately August 15, 1988, after the rule is published in the Federal Register. These invoices will be due and payable upon issuance. In accordance with current regulations, interest on the invoices will be waived if the invoices are paid within 30 days of their issuance. Licensees were notified with their April and July quarterly invoices under 10 CFR Part 171 that there would be an additional invoice, based on the new statute, in FY88.

It is expected that a final rule based on the proposed revision of 10 CFR Parts 170 and 171 will be published to be effective for FY89. Adoption of the second option for FY88 requires that §171.15 be amended to reflect collections of not less than 45 percent instead of the current 33 percent ceiling on total fee collections. This interim rule will be superseded by the final rule resulting from the proposed revision of 10 CFR Parts 170 and 171 published in the Federal Register on June 27, 1988, when it is finally published. That rule will apply to fees for FY89.

Based on current estimated collections under 10 CFR Part 170 of \$41.3 million and anticipated total collections under 10 CFR Part 171 of \$99.5 million, the Commission must collect an additional \$36.2 million in order to reach the collections objective of not less than 45 percent of its FY88 budget. Accordingly, the FY88 annual fee adjustment is \$350,000 for each licensed power reactor. The annual fees for those plants previously granted a

partial exemption for FY88 pursuant to §171.11 will be increased in a like manner using the percentage rate used for the exemptions. Those plants totally exempted from the annual fee for FY88 are unaffected by this amendment.

The NRC's reading of the 45 percent legislative statute (Section 5601 of the Omnibus Budget Reconciliation Act of 1987 - Public Law 100-203) is that 45 percent does not represent a ceiling. Congress intended collections to be not less than 45 percent of the NRC's budgets for FY88 and FY89. Therefore, actual collections will approximate but be at least 45 percent of the Commission's budget. On this basis, the current refund provision of 10 CFR 171.21 is no longer necessary and is being removed.

Environmental Impact: Categorical Exclusion

The NRC has determined that this interim rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This interim rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

Regulatory Analysis

Section 7601 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) required the NRC, by rule, to establish an annual charge for regulatory services provided to its applicants and licensees, that when added to other amounts collected, equaled up to 33 percent of Commission costs in providing those services. Section 5601 of the Omnibus Budget Reconciliation Act of 1987 requires that the NRC, for the fiscal years 1988 and 1989, increase the moneys collected pursuant to section 7601 and other authority to not less than 45 percent of the Commission's costs. In order to accomplish this statutory requirement, the NRC, as an interim measure, is amending 10 CFR 171.15(c) and (d) by revising the figure 33 percent to a target of 45 percent.

This interim rule will not have significant impacts on state and local governments and geographical regions; on health, safety, and the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this interim rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 650(b), the Commission certifies that this rule does not have a significant economic

impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this interim rule and, therefore, that a backfit analysis is not required for this interim rule, because this amendment is mandated by 31 U.S.C. 9701 and section 7601, Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 146), as amended by section 5601, Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, 101 Stat. 1330).

List of Subjects in 10 CFR Part 171

Annual charges, Nuclear power plants and reactors, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR 171.

PART 171 - ANNUAL FEE FOR POWER REACTOR OPERATING LICENSES

1. The authority citation for Part 171 is revised to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§171.15 [Amended]

2. In §171.15, paragraph (e) is removed and paragraphs (c) and (d) are amended by revising the percentages specified as "33" and ".33," respectively, to read "45" and ".45."

§171.21 [Removed]

3. Section 171.21 is removed.

Dated at Rockville, Maryland this day of August 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission.