

**JOHN C. BUTLER**  
Senior Director, Strategic Programs

1201-F-Street-NW-Suite-1100  
Washington, DC 20004  
P: 202.739.8108  
jcb@nei.org  
nei.org



NUCLEAR ENERGY INSTITUTE

May 6, 2016

Ms. Cindy Bladey  
Office of Administration  
Mail Stop: OWFN-12-H08  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

3/22/2016  
81FR15352

(2)

RECEIVED

2016 MAY -9 AM 11:28

RULES AND DIRECTIVES  
BRANCH  
USNRC

**Subject:** Fees Development and Communications (81 *Fed. Reg.* 15352); Docket ID NRC-2016-0056

Dear Ms. Bladey:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)<sup>1</sup> submits these comments on the above-referenced request for information on issues associated with the development of the agency's fees.

We appreciate the opportunity provided in the April 13 public meeting to discuss the request for information on general fee policy issues. We encourage NRC to continue to conduct these meetings and additional stakeholder outreach on fees and budgetary issues in the future, and would like to thank the Chief Financial Officer for her proactive outreach to stakeholders regarding the fees and budget process.

As discussed in more detail below, our responses to the questions included in the request for information focus on the following three areas:

1. Agency programs and activities subject to fee recovery need to be managed and communicated to licensees in a more proactive and effective manner.
2. The proposed and final fee rule (and associated work papers) should include additional detail addressing the basis for determining which activities are fee-billable vs. non-fee-billable.
3. The timeliness of proposed and final fee rules should be improved.

<sup>1</sup> 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, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

NUCLEAR. CLEAN AIR ENERGY

SUNSI Review Complete  
Template = ADM - 013  
E-RIDS= ADM-03

Add= A. Bradford (ghbI)

The subject *Federal Register* notice identifies nine questions for which information is requested. Responses to these questions are provided below.

**1. What are some specific ways that the NRC can improve the public's understanding of its fees and how those fees relate to the agency's budget?**

The NRC Should Integrate Its Fee and Budget Processes

Inconsistencies between the fee rule and the Congressional Budget Justification (CBJ) make it difficult for licensees and members of the public to understand the relationship between information presented in the two documents. For example, the proposed FY 2016 fee rule uses the term "agency support" to cover \$324.6 million allocated for corporate support and the Inspector General (IG). Although the most recent CBJ lists corporate support (\$315.8 million) and IG (\$12.1 million) separately, when those items are combined, the amount does not equal the "agency support" amount listed in the proposed fee rule.

As another example, the proposed fee rule for FY 2016 identifies only \$12.6 million in fee-relief for international assistance activities. Yet the CBJ lists the funding for international activities as \$23.2 million. The NRC provided no explanation for why licensees should be assessed fees to pay for the remaining \$10.6 million even though NRC engagement in the international arena advances U.S. foreign policy objectives, but provides no direct benefit to the regulated community.

The NRC should identify and take steps to eliminate these types of discrepancies. Where discrepancies cannot be eliminated because the CBJ and fee rule serve different purposes, the agency should, at a minimum, clearly identify these differences and provide the public with an easy to understand crosswalk to match information in the two documents. The NRC also should explore legislative solutions to improve transparency and minimize the industry's obligation to pay for unjustified activities.

**2. What are some specific improvements that could be made to the fee-related work papers or forms that would assist in the public's understanding of those papers and forms? For example, can the NRC improve the clarity and content of NRC invoice forms? If so, how?**

The NRC Should Provide Additional Detail in Invoice Forms

Invoices provided to licensees currently contain insufficient detail to substantiate charges and ensure there is no double billing and that charges are directly related to work for the licensee. Invoices for payment should provide accurate information that fully describes what services are included.

Recommended changes to invoices are provided below:

- Invoices that list the names of NRC staff associated with the hourly charges would lead to more transparency of the work completed and would allow for improved auditing. This would also provide a capability to ensure that staff have not inadvertently charged time to an incorrect project code.
- The NRC should provide additional detail and line-by-line traceability between review and inspection activities for specific charges on the invoices. Task Assignment Control/Inspection Report (TAC/IR) numbers are currently used to show charges but the corresponding TAC/IR Name is often confusing and does not clearly line up with a specific submittal under review, NRC inspection or audit.

Additional detail is needed on the TAC/IR Names to allow licensees to more closely track invoiced amounts against specific activities.

- Fees associated with contractor costs lack transparency and predictability and inhibits sound financial planning. Contract charges are shown as one-line entries that identify them simply as "contract" charges. The invoice should identify the contractor and number of hours, in addition to the TAC/IR number and billing total. Preferably, and in accordance with standard industry practices, the contractor's invoice should be attached to the invoice. Ultimately, the level of detail in an invoice should not depend on whether the service was rendered by the NRC staff or a contractor.
- Provide electronic versions of invoices in a spreadsheet format so that invoices can be sorted by activity or inspection over a longer period. This would allow licensees to perform more detailed data analysis without having to manually create new spreadsheets from the PDF invoices. It would be helpful for licensees to be provided a cumulative cost per TAC/IR.
- The NRC should distribute invoices via email for faster processing.
- The NRC should include in inspection reports the amount of time for the inspection-related work and the total cost to the licensee. Since most inspection reports are public, this would allow the industry to compare inspection costs and benchmark whether the NRC is within reasonable parameters.

#### Project Manager Overhead

The FY 2015 final fee rule revised the methodology of charging overhead time for project managers and resident inspectors under 10 CFR Part 170. At that time, it was our understanding that this change intended to allocate overhead costs to each licensee based on direct time to each docket to ensure that a licensee's overhead costs are proportional to the regulatory services rendered by the NRC. In practice, however, the change added a 6% Project Manager/Resident Inspector allocation that is not transparent, has created confusion, and gives the appearance that licensees are being double or triple charged for project manager time. Our current understanding is that the 6% allocation is "indirect time" for overhead activities (e.g., branch meeting, training, other indirect support). Project managers continue to charge for work on a specific task for a licensee on top of the additional 6% allocation being invoiced. If the annual license fee and/or hourly rate includes overhead functions, the 6% allocation appears to be unnecessary and acts as a hidden extra fee for the licensee for non-direct work activities.

#### Fee-Related Work Papers should be provided in electronic format

The fee-related work papers are currently provided in a PDF format that inhibits the capability to properly analyze fee-related documents. Large tables have been reduced in size to fit an 8.5" by 11" format, making it difficult to read. Public release of spreadsheet materials in their native format would greatly assist efforts to understand and analyze the fee-related work papers. Releasing these materials in a usable, native format would also further the principles of the Freedom of Information Act (FOIA), namely openness and public access to government records. In fact, FOIA states that an agency "shall" make a "record" available "in any form or format requested by the person if the record is readily

reproducible by the agency in that form or format.”<sup>2</sup> It further states that “[e]ach agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of” FOIA.<sup>3</sup>

**3. How can the NRC improve its explanation of any changes to the annual fees or hourly rates in the annual fee rule?**

The NRC Should Identify, Periodically Report, and Manage to Estimated Cost and Schedule

The calculation of fees is fairly well understood. However, the number of hours charged for reviews and inspections is highly variable. The NRC should develop and disclose forecasts for the hours expected for various review activities. The NRC should use these forecasts to provide cost estimates associated with activities prior to initiating work based on the number of hours expected to be expended.

There is currently no transparency in the amount of hours NRC budgets to review a licensing submittal. NRC should establish and communicate a schedule, along with the expected number of hours needed for each licensing action. By establishing a budget estimate in advance, the NRC will have another benchmark to judge whether it and an applicant are meeting their respective obligations during the review process. When there is a departure from the budget estimate, the NRC should promptly issue a change notice documenting that its review efforts exceed either forecast costs or schedule, along with an account for the reason why.

**4. What additional information can the NRC provide along with the proposed fee rule and work papers to help explain how the NRC determines fees?**

The NRC should provide a rational basis for which international activities are fee-billable and which are non-fee-billable

The breakdown of fee recoverable and fee relief international activities are not transparent and the benefit provided to the regulated community is not clear. Because the breakdown of fee recoverable items and fee relief is not discernable from agency documents, it is effectively impossible for the industry to determine the extent to which it pays for activities that are not attributable to and do not benefit a class of NRC licensees. For example, a dollar amount for non-fee billable (*i.e.*, fee relief) international assistance activities is identified in the proposed fee rule. However, the international cooperation activities that are charged to each category of licensees through annual fees are not transparent. While each business line does identify an international component, the actual work that this budgeted activity entails is not disclosed to stakeholders.

The NRC should provide additional information on the fee and budget impact for generic rulemakings

To minimize the industry’s obligation to pay for unjustified generic activities, the NRC should be required to expressly identify in its budget request anticipated expenditures necessary for each rulemaking and

---

<sup>2</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>3</sup> *Id.*

for other generic activities. Offering a clear picture of what the NRC intends to spend on each rulemaking would significantly improve accountability and transparency.

**5. Given the statutory requirement to base the NRC's fees on the annual appropriation enacted by Congress, are there any ways that the NRC can improve the timeliness of completing its annual fee rulemaking or communicating fee changes?**

The NRC Should Issue the Proposed and Final Fee Rule Earlier in the Fiscal Year

Financial management policies and practice at NRC licensees and regulated entities are best served when the NRC provides timely and reliable fee information. The NRC's current schedule for publishing the proposed and final annual fee rule falls short of this objective, which leads to a lack of transparency and inhibits sound financial planning by licensees in budgeting for NRC fees. Furthermore, the magnitude of the fee increase for a number of categories of licensees is significant and problematic as it occurs well after licensee budgets for the year have been established.

For most companies, cash outlays occur early in the calendar year. Consistent with the NRC's Principles of Good Regulation, specifically the principle of reliability, the NRC has a responsibility—and companies have a reasonable expectation of the NRC—to accurately estimate Part 170 and 171 fees early in the year using the best available information. This allows licensees to plan, adjust budgets and manage cash flow. Cash outlays for fees are particularly impactful on materials licensees. They also affect cash flow for smaller companies. The provision in 10 CFR Part 171.19 providing a remedy in the fourth quarter of the fiscal year for overcharges occurring during the first three quarters the fiscal year does not adequately address these concerns. It also is not applicable to companies whose annual fee payment is due on the anniversary date of the license (i.e., when a licensee anniversary date occurs prior to issuance of the final rule).

The NRC's current approach is to publish the proposed fee rule six months after the beginning of the fiscal year (generally in the March timeframe) and the final rule approximately nine months into the fiscal year (generally in the June/July timeframe). This timetable for the fee rulemaking is problematic for the industry, particularly when there is a significant difference between the hourly rate or annual fee for a given category of licensee. It is also unnecessarily burdensome and inefficient for the NRC to do end-of-year adjustments that could have been avoided.

The current fee rulemaking approach lacks transparency, in large part, because the first and second quarter Part 170 and Part 171 billing invoices precede issuance of the proposed fee rule. Greater transparency and predictability in fee policy could be realized if the NRC published the proposed rule in the first quarter of the fiscal year and the final fee rule in the second quarter or early in the third quarter of the fiscal year. The proposed fee rule would continue to reflect the amount requested in the NRC Congressional Budget Justification (CBJ) or, if already approved, enacted appropriations. The final fee rule would reflect the amount in the enacted appropriations. Accelerating the rulemaking schedule by six months would not appear to be problematic for the NRC because the CBJ is publicly-released coinciding with transmittal of the President's Budget Request to Congress (i.e., in February before the fiscal year begins), and the CBJ currently provides a fee recovery estimate.

The industry understands the challenges the NRC faces in meeting the Omnibus Budget Reconciliation Act of 1990 fee collection criteria and the constraints attributable to the Congressional Review Act (CRA) categorizing the fee rule as a major rule. In the interest of transparency and improved financial planning for the NRC and licensees, the industry proposes that the NRC CBJ include a table providing estimated Part 170 and Part 171 fees similar to Table 1.1, "Estimated Final FY 2015 Fees" in the FY15 Proposed Fee Rule (this table was not included in the Proposed FY16 Fee Rule). This approach would allow the NRC to publish the proposed fee rule in the first quarter of the fiscal year. If enactment of the final appropriation occurs before the NRC publishes the proposed fee rule, the proposed fees would reflect the enacted level. If enactment occurs while the proposed rule is open for comment, a correction or supplement to the proposed rule updating the schedule of fees would be issued without creating timing challenges under the CRA and Administrative Procedure Act.

**6. Are there activities that the NRC should convert from fee-billable to non-fee-billable (or vice versa) and, if so, why? For example, should hearings for new licenses be fee-billable, or should the NRC continue to recover those costs through 10 CFR part 171 annual charges?**

The NRC should continue to look for ways to ensure it properly recovers fees for specific services provided by the NRC that benefit an individual (e.g., charging user fees for Touhy requests). However, the NRC should not bill licensees fees—hourly, annual, or flat—for activities that provide no direct benefit to an individual or to the regulated community. This includes excessive overhead costs (e.g., costs that are higher than peer agencies);<sup>4</sup> unjustified generic rulemakings (e.g., rulemakings that are unlikely to be necessary for NRC to accomplish its public health, safety, and security mission); and other generic activities provide no direct benefit to the regulated community (e.g., international activities). While converting some of these activities to non-fee items may require appropriations or authorizing legislation, and may involve larger federal budget questions, it is important for the Commission to take a leadership role in addressing problems that members of Congress and industry have identified with the current system.

The NRC should consider making hearings a non-fee activity and, if the current 10 percent fee-relief offset is insufficient to cover hearing activities, seeking appropriations to cover these activities. The Commission should continue to support legislation eliminating mandatory hearings. While mandatory hearings remain, however, those hearings should be treated same as contested hearings. Alternately, if NRC continues to charge applicants for mandatory hearings, they are well suited to a flat fee, and additionally application of a flat fee would place some fiscal responsibility on the Commission and NRC staff to control spending on the process. Note that in a recent case the NRC expended more than \$1.2 million on a mandatory hearing.

---

<sup>4</sup> The NRC has noted that it "has additional security requirements that contribute to higher overhead costs in areas such as physical and personnel security." 80 FR 37450. However, physical and personnel security is only one component of the agency's administrative services budget, which itself comprises only about a third of the agency's corporate support spending. FY 2017 CBJ at 96. The administrative services budget also includes significant resources for rent and utilities for NRC headquarters, regions, and other office space. As those resources change to reflect the agency's current workload, we would expect to see corresponding efficiencies in the physical and personnel security area as well.

**7. Are there activities or fee classes that are more suited to flat fees rather than hourly? For example, should reviews of topical reports be subject to a flat fee or is the level of effort associated with individual topical reports too variable?**

The License Amendment Request (LAR) and Topical review processes should be modified to identify up front the anticipated schedule and estimated cost to complete the review. The licensee should be made aware of any changes to the schedule and estimated cost on a periodic basis.

Review categories (e.g., small, medium, large) with established cost and schedule parameters could be used to establish a general range of anticipated costs and schedule. Review progress, in close coordination with the applicant, would then be monitored and managed to these parameters.

**8. Are the current fee classes and categories appropriately defined? If not, how should they be revised and why?**

Looking to the future, stakeholders would benefit from a discussion in the FY 2017 proposed and final fee rule and working papers of the calculation methodology and treatment of annual and hourly fees for small modular reactor and 10 CFR 50.21 / section 104 licenses. The industry acknowledges that the staff anticipates amending 10 CFR Part 170 and 171 in 2017 to reflect the Commission decision on the draft final rule for the Variable Annual Fee Structure for Small Modular Reactors (RIN 3150-AI54). We encourage the NRC to consider whether any changes are necessary for potential future advanced reactor applicants and licensees.

**9. Is there general information that the NRC can add to its public Web site that would assist stakeholders in their understanding of the NRC's fees development and invoicing processes?**

A response to and disposition of stakeholder comments provided in response to the *Federal Register Notice* should be made public.

Ms. Cindy Bladey

May 6, 2016

Page 8

**Conclusion**

The industry appreciates the opportunity to comment on the fees development and communications and encourages the NRC to carefully consider these comments. The industry and the public rely on the NRC to be an effective and credible nuclear safety and security regulator. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Butler". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John C. Butler

C: Maureen Wylie, CFO, NRC