

# PUBLIC SUBMISSION

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 Fees Development and Communications

**Comment On:** NRC-2016-0056-0001  
 Fees Development and Communications; Request for Information

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 Comment on FR Doc # 2016-06422

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## Submitter Information

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## General Comment

Please see attached letter (LTR-NRC-16-27) for comments.

## Attachments

LTR-NRC-16-27

SUNSI Review Complete  
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 E-RIDS= ADM-03  
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Your ref: NRC-2016-0056  
Our ref: LTR-NRC-16-27

May 5, 2016

**Subject: Transmittal of Comments on Fees Development and Communications  
[Docket NRC-2016-0056]**

Westinghouse Electric Company LLC (Westinghouse) appreciates the opportunity to provide responses to the NRC's questions associated with the development of the agency's fees. Westinghouse provided responses to Questions #1-4, 7, and 8. Westinghouse appreciates the NRC staff's consideration of its comments.

**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?**

Each NRC business line's budget should be clearly shown with enough detail so that an informed member of the public could trace how it is paid for through fees for services, annual fees, and any funding that is not fee recoverable. In addition, the relationship to the budget could be enhanced by providing budget execution data, to include contract dollars and staff time and what was achieved (number of licensing actions, inspections, etc.) This concept is further amplified in our response to Question #4.

**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?**

With respect to the fee-related work papers, Westinghouse suggests that fees should be tallied by license type or fee category and balanced against the fees collected for that category to show that NRC is appropriately distributing its fees to each category of licensee commensurate with the regulatory services they are consuming.

Regarding invoicing, Westinghouse uses two "tools" for the invoice process, which are provided by OCFO/DC/ARB. A weekly "snapshot" of the Westinghouse account and outstanding invoices provides a confirmation that the Westinghouse account is up-to-date. Additionally, bi-weekly Part 170 estimates (between issuance of the quarterly invoices) give more frequent cost data. Each Westinghouse project checks the estimates for reasonableness and adjusts the project budget in between quarterly invoices as necessary. Westinghouse requested and received a simplified invoice, which combined the multiple Westinghouse dockets into a single invoice. The simplicity is appreciated.

A few areas to consider for improvement:

- The TAC descriptions should be made clearer, at times it is difficult to know what project is being billed based on the cryptic TAC description included on the invoice.
- Unlike the invoices most of us see in our everyday business, the invoices NRC sends include no information on the outcomes achieved, i.e., no explanation of what we bought for the invoiced amount. While this is understandable for our annual fee, the quarterly invoices for Part 170 fees for licensing actions should identify the pertinent licensing milestones and the status of progress towards those milestones. This is consistent with the Project AIM 2020 recommendations approved by the Commission, which include direction to improve transparency in the calculation and accounting for fees, and to enhance the predictability, timeliness, and efficiency in licensing reviews.<sup>1</sup>
- Westinghouse understands the need to have contractors support NRC licensing reviews. However, the applicant receives no information from the NRC about the value from contractors work other than a bill. Westinghouse suggests that contract costs be discussed and explained during the acceptance review for a licensing action and status subsequently provided, at least quarterly. Details like the contract scope, ceiling and burn rate are not shared with the applicant. This lack of transparency creates uncertainty in regulatory costs and creates budgeting challenges for licensees and applicants.

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

In keeping with the Westinghouse response to Question #1, any drivers that impact an NRC business line budget should be shown and how each driver impacts annual fees assessed for licensees within that business line should also be explained. For example, if the fees are going up because the number of licensees went down, that should be clearly discernable, not just in direction but the magnitude as well. Likewise, the impact of changes in annual fees that result from changes to the size of the NRC staff in the business line should be traceable. In short, enough information should be provided that explains the current year's fees as well as changes from the previous years. The combination of the NRC's publicly available budget documents and the fee rule working papers should allow an interested party to fully understand the basis of the proposed fee rule.

There is also an apparent inconsistency and lack of transparency in the NRC staff's new methodology for allocating project manager and resident inspector costs. The 2015 rulemaking referred to changes in NRC practices in this area and introduced a new definition of "Overhead and General Administrative Costs," but the new rule does not use that definition to provide any additional clarity for licensees.<sup>2</sup> Based on other public NRC statements, Westinghouse understood that direct charges for project manager time would be removed, and replaced with a flat 6% surcharge on professional staff time.<sup>3</sup> Instead,

<sup>1</sup> SRM-SECY-15-0015, "Project AIM 2020 Report and Recommendations" at 6 (June 8, 2015) (ML15159A234).

<sup>2</sup> Final Rule, Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015, 80 Fed. Reg. 37,432, 37,454 (June 30, 2015).

<sup>3</sup> Proposed Annual Fee Rule Public Meeting, April 20, 2015 transcript (ML15153A028).

Westinghouse has received invoices with individual project manager time charged directly to technical and project management TACs, plus a 6% surcharge on all NRC staff time, including project manager time. This practice effectively raises the hourly rate for all NRC staff time from \$268 to \$284.

As described in the final rule, the hourly rate accounts for "agency overhead or indirect costs."<sup>4</sup> However, consistent with the NRC's stated commitment to transparency in fee recovery, Westinghouse suggests that the NRC clarify its practices for recovering all types of administrative and overhead costs, such that licensees can ensure their invoices do not include multiple charges for such costs. In addition, the NRC should clarify the distinction between "overhead" costs recovered under Part 170 and costs for generic activities recovered under Part 171 annual fees, so that licensees can verify that invoices do not account for these costs twice.

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

Westinghouse requests that work papers and the proposed fee rule include budget execution data for the previous fiscal year. The public meeting on the fee rule outlined at a high level the budget drivers for the NRC Offices.<sup>5</sup> The work papers provide a comparison between the proposed fee rule and the previous fiscal year full time equivalents (FTEs). However, the actual FTE expended in the previous fiscal year is not provided. To improve transparency and work toward maximum efficiency, the accomplishments of the previous fiscal year should be provided along with the actual FTE expended. This information would inform the public of the fact of life changes that NRC made during the budget execution year. The budget execution data provided should have enough granularity to understand the product line budget within each NRC business line. The large business lines may want to go to the product level to provide transparency on how budgeted resources were expended.

**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?**

Westinghouse does not believe the effort in determining appropriate flat fees for topical reports would be worthwhile. The level of effort required to review topical reports can vary by two orders of magnitude or more and as such there would have to be a tiered approach. There would always be the question of whether an applicant over or under paid for the review. More importantly, irrespective of the billing mechanism, Westinghouse believes that NRC adherence to an outcome focused review process emphasizing the regulatory requirements needed to support the safety evaluation report will yield efficient and fair reviews. A disciplined approach to reviewing topical reports and licensing actions will keep NRC safety-focused and also save significant resources.<sup>6</sup>

One possible approach to bringing more certainty to topical report and licensing action related fees is to enhance the use of the resource estimate provided in the acceptance letter. The resource estimate should include both staff and contractor resources necessary for the review. Therefore if the progress of the review as measured by the achievement of key milestones (e.g. draft safety evaluation report) is not

<sup>4</sup> 80 Fed. Reg. at 37,434.

<sup>5</sup> Proposed Annual Fee Rule Public Meeting, April 13, 2016.

<sup>6</sup> LTR-NRC-15-74, "Westinghouse Electric Company's Comments on the Common Prioritization and Rebaselining of Nuclear Regulatory Commission's Work," September 14, 2015.

consistent with the resources expended, it should trigger more management engagement and a discussion with the applicant to determine the reason(s) and make any necessary adjustments.

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

As mentioned in the response to Question #2, NRC should provide clarity in how its fee categories are funded through Part 170 and 171 fees and what criteria NRC uses to conclude that the fees are fair given the amount of regulatory services consumed by a fee class.

Westinghouse previously provided comments on the variable annual fee structure for SMRs [Docket ID NRC-2008-0664] via Westinghouse letter LTR-NRC-15-100.<sup>7</sup>

If you need additional information, please contact myself or Camille Zozula at 412-374-2577 or zozulact@westinghouse.com.

Sincerely,

A handwritten signature in black ink that reads "Douglas Weaver". The signature is fluid and cursive, with the first name "Douglas" and last name "Weaver" clearly distinguishable.

Douglas Weaver  
Vice President, Nuclear Regulatory Affairs

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<sup>7</sup> LTR-NRC-15-100, "Transmittal of Westinghouse Electric Company Comments on Proposed Rule, Variable Annual Fee Structure for Small Modular Reactors [Docket ID NRC-2008-0664], December 4, 2015.