PUBLIC SUBMISSION

As of: 2/27/18 9:08 AM
Received: February 26, 2018
Status: Pending_Post
Tracking No. 1k2-91pw-elq8
Comments Due: February 26, 2018
Submission Type: Web

Docket: NRC-2017-0026
Revision of Fee Schedules: Fee Recovery for FY 2018

Comment On: NRC-2017-0026-0001
Revision of Fee Schedules; Fee Recovery for Fiscal Year 2018

Document: NRC-2017-0026-DRAFT-0009
Comment on FR Doc # 2018-01065

Submitter Information

Name: Joseph Pollock
Submitter's Representative: Allison Borst
Organization: Nuclear Energy Institute

General Comment

See attached file(s)

Attachments

02-26-18_NRC_NEI Comments on FY18 Proposed Fee Rule for FCF

JOSEPH E. POLLOCK
Vice President, Nuclear Operations

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.739.8114
jep@nei.org
nei.org

NUCLEAR ENERGY INSTITUTE

February 26, 2018

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

Submitted via Regulations.Gov

Subject: Fuel Cycle Industry and Materials User Comments on Fiscal Year 2018 Proposed Fee Rule (NRC Docket ID NRC-2017-0026)

Project Number: 689

Reference: Letter, P. Cowan (NEI) to A. Vietti-Cook (NRC), Industry Comments on Fiscal Year 2018 Proposed Fee Rule (NRC Docket ID NRC-2017-0026), dated February 26, 2018

Dear Ms. Vietti-Cook:

On behalf of Nuclear Energy Institute's (NEI)[1] fuel cycle facility members and materials users (hereinafter referred to as industry), we provide the following comments for the U.S. Nuclear Regulatory Commission (NRC) staff's consideration as it finalizes the fiscal year 2018 fee rule. These comments highlight specific concerns of fuel cycle licensees and materials users and are in addition to the comments provided in the above referenced NEI letter.

We appreciate the public meeting held by Ms. Maureen Wylie and other NRC managers and staff on February 12, 2018 to discuss the FY 2018 proposed fee rule and its underlying basis and assumptions. These meetings are informative and we ask that they be continued.

The FY 2018 proposed fee rule is based on the FY 2018 Congressional Budget Justification (CBJ) with $15 million added for the Integrated University Program. While we recognize that the final fee rule will be adjusted based on the final Congressional appropriation, the NRC budget in the proposed rule represents a 5% increase over fiscal year 2017. Accommodating any increase in budget and associated fees to licensees

[1] The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

will be challenging to industry and further highlights the need for the agency to continue its efforts to pursue efficiencies in its operations and programs.

Safe and reliable operation has been, and will always be, the top priority of our industry, and in today's current economic environment, where budgets are shrinking and cost reductions are mandated, the NRC's budget is a fundamental concern. In the last two fiscal years there has been a 21% decrease in work directly billable to fuel cycle facility licensees (Part 170), reflecting in part the economic constraints industry faces (source: "FY 2018 Proposed Fee Rule Public Meeting," Feb. 12, 2018, slide 28). However, despite the implementation of efficiency measures resulting from Project AIM, most fee classes are facing a 6% or more increase in annual fees (Part 171), as well as a 2.7% increase in the professional hourly rate. Given the critical state of the industry, this disparity cannot be maintained and must be promptly corrected.

As we stated in our September 15, 2017 and January 17, 2018 letters to NRC on related budget and fee matters, industry continues to have immediate concerns regarding NRC's total budget for the fuel facilities business line. To this end, we offer the following specific comments: 1) while the number of Full-Time-Equivalents (FTEs) has been decreasing since FY 2013, the overall budget is simply too large for the seven remaining operating facilities (i.e., 16 FTEs/operating facility). The business line request for one additional FTE in FY 2018 for "enforcement activities," in an environment of reduced agency resources, is not justified nor understood from a safety perspective. Such budgetary actions appear to be a shifting of resources from other business lines when a sizeable reduction in this business line is needed; 2) the portion of the budget attributed to "Indirect Services" (Part 171 fees) continues to escalate at an untenable rate, to incorrectly compensate for the decrease in billable hours (Part 170 fees). This type of accounting strategy does not align with the NRC principles of good regulation, in particular "efficiency," in which NRC is tasked with the "best possible management of regulatory activities," including fee/budget formulation. In FY 2017, annual fees represented more than two-thirds of the budget and the "purchased" products for these indirect services is not readily transparent, risk-informed, or prioritized based on industry input; 3) Category I fuel facility proposed annual fees are 1.7 times higher than an operating power reactor ($7.73M vs. $4.56M); 4) and annual fees do not reflect the relatively low risk profile of this category of licensee.

Further, in 1999, annual fees totaled $16.1M for 11 operating fuel cycle facilities. At present day, annual fees have nearly doubled, to close to $30M, while the licensee base has shrunk over 30% to 7 operating facilities. Meanwhile, the risk profile for this class of facilities has remained unchanged over this timeframe. For one Category III fuel facility, the annual fee tripled from 2008-2017 with no changes to the scope of licensed activities. In just the last ten years, annual fees for the fuel cycle facilities have increased at a rate nearly 7 times that of operating reactors. In addition, the 2 currently operating Category I fuel fabrication facilities pay a combined approximate $14.5M in annual fees (approximately half of the annual fees for the entire business line).

NRC staff has recently stated that the indirect services (Part 171 fees) such as maintaining the NRC website, guidance updates, general administration, and other generic activities may or may not have any impact on the safe and secure continued operations of the fuel cycle facilities. In fact, one could argue that perhaps such resource expenditures detract from our collective efforts to ensure continued safe and secure operations for this diverse, yet small fleet of facilities. It is incumbent upon the NRC to identify additional efficiencies that can better prioritize and most importantly, reduce such indirect generic costs, which

currently account for an astounding 2/3 of the business line budget. We strongly encourage NRC staff to provide additional transparency on the programmatic breakdown of these indirect generic activities in terms of cost, scope, priority, and schedule. As such, NEI and industry believe that several activities can be shed, de-prioritized or performed with fewer resources without impacting NRC's ability to meet its safety mission.

To that end, NEI reinforces its earlier offer of assistance and proposition that resources can be conserved through: 1) re-evaluating the current program infrastructure by making the license renewal and amendment processes more timely and efficient by further analyzing recent examples; 2) transitioning certain routine inspection duties to Resident Inspectors at HEU (Category I) fuel cycle facilities; 3) evaluating historical inspection findings and data across the fleet to more effectively focus limited NRC inspection resources and reduce the burden on licensees (e.g., reducing frequency of fire protection (IP 88055), radioactive waste processing (IP 88035) and environmental protection (IP 88045) inspections); and 4) eliminating rulemaking and other regulatory initiatives that add marginal or no safety or security benefits (e.g., the dermal-ocular Draft Interim Staff Guidance, 10 CFR Part 73 rulemaking– Enhanced Security for Special Nuclear Material, 10 CFR Part 74 rulemaking– Material Control and Accounting, and the ANS 57.11 Integrated Safety Analysis (ISA) Standard, to name a few); and 5) reviewing and prioritizing any updates to the approximate 250 guidance documents identified by NRC staff during the December 2017 public meeting. Further, it is in our mutual interest that any new regulatory initiatives be vetted with industry to ensure resources are available to support it and its safety or security basis and benefit is specifically identified.

Finally, we believe the staff should validate the "Low Level Waste Surcharge" (LLW) figures in table IV of the proposed rule (page 3411 of the Federal Register Notice). Specifically, it seems illogical that the fuel facilities would be allocated the highest LLW surcharge percentage considering the number of facilities and plants nationwide in some stage of decommissioning. Since NRC fees are based in part on the LLW surcharge, NRC should work with the Department of Energy to ensure the accuracy, completeness and timeliness of data entered into DOE's Manifest Information Management System (MIMS). MIMS contains data on four generator classes, and it is unclear whether fuel cycle facilities are aligned with the class generically identified as "industrial."

Uranium Recovery: If Wyoming becomes an Agreement State for the purposes of regulating uranium recovery by the beginning of FY 2019 (October 1, 2018) as NRC has stated, the remaining three licensees are not—nor should they be placed—in a position to pay for the current NRC programmatic infrastructure associated with this category of licensee. NRC has assured stakeholders that they are considering various funding options to avoid this potential outcome; yet, industry has had no visibility of what could be a significant NRC policy and fee rule decision which will impact licensees' purses in less than 8 months. We urge you to engage the potentially remaining NRC licensees on this matter today. Further, it is unclear whether conducting a "flat fee" pilot for this category of licensees in FY 2020, as stated by NRC during the February 12, 2018 meeting, is the best use of limited NRC and industry resources. NRC should consult with the potentially remaining licensees and revisit this decision.

NRC fees represent a significant factor in the preparation and planning of budgets for the industry, therefore, it is important that NRC communicate anticipated changes to fee schedules as early as possible. We ask that revised fee schedules be released in advance of publication of the final fee schedule so that timely adjustments to budgets can be made.

Please contact me or Hilary Lane of my staff (hml@nei.org) if you have any questions regarding these comments.

Sincerely,

Joseph E. Pollock

Joseph Pollock

c: Ms. Maureen Wylie, NRC/CFO
Mr. Marc Dapas, NRC/NMSS