

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

[Docket No. PRM-171-1; NRC-2019-0084]

Nuclear Power Plant License Fees Upon Commencing Commercial Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; partial consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in its rulemaking process one issue raised in a petition for rulemaking, PRM-171-1, dated February 28, 2019, submitted by Dr. Michael D. Meier on behalf of the Southern Nuclear Operating Company (the petitioner), and is denying the remaining issue in PRM-171-1. The petitioner requested that the NRC amend its regulations related to the start of the assessment of annual fees for certain nuclear power plants.

DATES: The docket for the petition for rulemaking PRM-171-1 is closed on November 26, 2019.

ADDRESSES: Please refer to Docket ID NRC-2019-0084 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <https://www.regulations.gov/> and search for Docket ID NRC-2019-0084. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical

questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-1325, e-mail: Dennis.Andrukat@nrc.gov, or Jo A. Jacobs, Office of the Chief Financial Officer, telephone: 301-415-8388; e-mail: Jo.Jacobs@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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I. The Petition

The NRC received and docketed a petition for rulemaking (PRM), dated February 28, 2019 (ADAMS Accession No. ML19081A015) filed by Dr. Michael D. Meier, on behalf of the Southern Nuclear Operating Company (the petitioner). The NRC published a notice of docketing and request for comment in the *Federal Register* on June 10, 2019 (84 FR 26774). The petitioner requested that the NRC revise its regulations in part 171 of title 10 of the *Code of Federal Regulations* (10 CFR), “Annual fees for reactor licenses and fuel cycle licenses and materials licenses, including holders of certificates of compliance, registrations, and quality assurance program approvals and government agencies licensed by the NRC,” related to the start of the assessment of annual fees for a combined license (COL) holder, to align with commencement of “commercial operation”¹ of a licensed nuclear power plant. Specifically, the petitioner requested that the NRC revise the timing of when annual license fees commence for holders of a COL under 10 CFR part 52, “Licenses, certifications, and approvals for nuclear power plants,” in order to coincide with the time when a reactor achieves commercial operation, rather than when a § 52.103(g) finding is issued, which is when the NRC finds that the acceptance criteria in the COL are met and the licensee can begin operating the facility.

The petitioner stated that the issuance of the § 52.103(g) finding will occur prior to reactor startup, and several months before commercial operation of the reactor. The petitioner further noted that during this startup phase, the reactor will not have achieved commercial operation, and the licensee will be incapable of deriving revenue from the production of energy beyond the *de minimis* amounts from test energy. The petitioner asserted that because commercial operation does not occur until several months after

¹ The petitioner defined “commercial operation.” The NRC does not have an official definition for commercial operation.

the § 52.103(g) finding, the current language of § 171.15(a), “Annual fees: Reactor licensees and independent spent fuel storage licenses,” does not align with the NRC’s stated policy to assess annual fees based on the benefits of receiving authorization to operate. The petitioner proposed that the regulations in § 171.15(a) be revised such that the responsibility of 10 CFR part 52 licensees to pay annual fees under 10 CFR part 171 be imposed at the time when the power reactor is deemed available for commercial operation under the licensee’s and/or State regulatory agency’s accounting rules.

The NRC identified two main issues in the petition related to the start of the assessment of annual fees for certain nuclear power plants:

Issue 1: To amend the regulations, for 10 CFR part 52 COL holders, to commence the assessment of annual fees at a time after the § 52.103(g) finding is issued.

Issue 2: To amend the regulations, for 10 CFR part 52 COL holders, to commence the assessment of annual fees when the “facility has been declared available for commercial operation under applicable standards of the licensee or the State regulatory commission with jurisdiction over the facility.”

II. Public Comments on the Petition

The docketing notice for the petition invited interested persons to submit comments. The comment period closed on July 10, 2019. During the 30-day public comment period, the NRC received five public comment submissions with a total of seven comments, from the Nuclear Energy Institute, industry stakeholders, and one non-government organization. Comments received on the petition will be addressed in the proposed rule, “Revision of Fee Schedules: Fee Recovery for FY 2020” (NRC-2017-0228; RIN 3150-AK10).

III. Reasons for Consideration

The NRC will consider Issue 1 in the rulemaking process.

The petitioner proposed that § 171.15(a) be revised such that the responsibility for 10 CFR part 52 licensees to pay NRC annual fees under 10 CFR part 171 begin when the power reactor is deemed available for commercial operation under the licensee's and/or State regulatory agency's accounting rules. The petitioner stated there could be several months between the issuance of the § 52.103(g) finding and when the reactor has achieved commercial operation—that is, “capable of deriving revenue from the production of energy beyond the *de minimis* amounts from test energy.”

The NRC regulations at § 171.15 currently require a 10 CFR part 52 COL holder to pay the annual fee upon the Commission's finding under § 52.103(g) that all acceptance criteria in the COL are met. Historically, annual fees commence when a licensee becomes authorized to possess and use licensed material, because this is when the licensee receives the benefits of a license. For 10 CFR part 52 COL holders, the authorization to use the material (i.e., begin operating the reactor) is currently received when a § 52.103(g) finding is issued. Additionally, the NRC does not base fees on economic considerations such as licensees' economic status, market conditions, or the inability of licensees to pass through costs to its customers.

The NRC is required by statute, the Omnibus Budget Reconciliation Act of 1990, as amended, to apply fairness and equity in the assessment of fees to licensees. The NRC has found that it is fair and equitable to change the timing of when annual fees commence for 10 CFR part 52 licensees from when a § 52.103(g) finding is issued to a time that aligns more closely with becoming fully operational after the start up and initial testing phase. The NRC recognizes that, after the § 52.103(g) finding, fuel must be

loaded and power ascension testing must be completed to provide assurance that the facility is fully operational. This process includes written notification to the NRC that successful power ascension testing is completed².

Based on the NRC's review of this issue in PRM-171-1 and the public comments received, the NRC also will consider amending the timing regarding the assessment of annual fees to apply to future 10 CFR part 50 power reactor licensees. Public commenters were supportive of the proposed change, including the Nuclear Energy Institute, which represents numerous members of the class of licensees that would be directly impacted by this change. This issue will be considered in the FY 2020 proposed fee rule.

IV. Reasons for Denial

The NRC is denying Issue 2 raised by the petitioner.

The petitioner proposed that the regulations in § 171.15(a) be revised such that the responsibility for NRC annual fees under 10 CFR part 171 for 10 CFR part 52 licensees be imposed at the time when the power reactor is deemed available for commercial operation under the licensee's and/or State regulatory agency's accounting rules. The petitioner recommended revising § 171.15(a) to commence annual fees "after the facility for which such license was issued has been declared available for commercial operation under applicable standards of the licensee or the State regulatory commission with jurisdiction over the facility." The petitioner also recommended deleting "after the Commission has made the finding under § 52.103(g)."

² Only the current 10 CFR part 52 COLs contain a standard license condition that requires written notification be submitted to the NRC upon successful completion of power ascension testing. The NRC will consider adding this standard license condition to future 10 CFR parts 50 and 52 power reactor licensees.

The Commission has previously addressed this issue in the statement of considerations for the FY 2002 final fee rule (67 FR 42611; June 24, 2002). Specifically, the Commission stated that “the NRC has not based its fees on licensees’ economic status, market conditions, or the ability of licensees to pass through the costs to its customers.” In keeping with the agency’s safety and security mission, the NRC’s regulations deliberately are not tied to economic viability or profitability, and the NRC has not assessed fees based on these concepts.

The petitioner interpreted the statement of considerations from the FY 2007 final fee rule (72 FR 31426, June 6, 2007) to mean that charging annual fees is associated with the “benefits of receiving the NRC’s authorization to operate.” The petitioner maintained that this benefit is not gained with the issuance of a § 52.103(g) finding but with the start of commercial operation of the reactor. The petitioner defined commercial operation as the point at which “the power reactor will be capable of generating sufficient energy to reliably serve the licensee’s customers and generate sufficient revenue for the licensees to justify imposition of the annual fee.”

For three reasons, the NRC did not elect to adopt this approach. First, in contrast to the point at which power ascension tests are complete, there is no regulatory requirement for a licensee to notify the NRC when the licensee first begins commercial operation. Second, the term “commercial operation” is undefined in NRC regulations. Third, the Commission’s longstanding and fundamental policy underlying the fee structure states that the imposition of the annual fee should not be related to the licensee’s financial justification if the NRC is to maintain the integrity of the statutorily mandated fee collection requirements. The statement of considerations for the FY 2007 final fee rule, which the petitioner references, discusses that annual fees are based on the benefits of receiving operation authorization, regardless of whether the licensee chooses to operate. The “benefits” received, as described therein, are not related to a

determination of when commercial operation begins or the licensee's ability to generate revenue. The collection of annual fees is required to recover the resources needed to regulate each fee class that are not otherwise recovered through charges assessed for specific services in each fee class under 10 CFR part 170, "Fees for facilities, materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended." Additionally, NRC fees are not based on whether a licensed entity is commercially operating or commercially viable, and the NRC achieves fairness and equity by conducting an annual public rulemaking process to update its fees. Furthermore, an analysis of a licensee's commercial viability is outside the mission of the agency. Therefore, the NRC will not consider amending fee regulations to begin annual fee assessments based upon commercial operation under the licensee's and/or State regulatory agency's accounting rules.

V. Conclusion

For the reasons cited in this document, the NRC will consider one issue raised in this petition in its rulemaking process and will deny the remaining issue. The NRC will consider the one issue in the FY 2020 proposed fee rule. The NRC notes that acceptance of this portion of the petition into the rulemaking process does not mean that the petitioner's concerns will be addressed exactly as the petitioner requested.

The NRC tracks the status of petitions and rules on its Web sites at <https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html> and <https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html>. The public may monitor the docket for the rulemaking addressing Issue 1 on the Federal rulemaking Web site, <https://www.regulations.gov>, by searching on Docket ID NRC-2017-0228. In addition, the Federal rulemaking Web site allows members of the public

to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2017-0228); (2) click the “Email Alert” link; and (3) enter an email address and select the frequency for email receipts (daily, weekly, or monthly). As in all rulemakings, the NRC will request and consider public comments during the proposed rule phase before determining the approach that will be the basis for the final rule.

Dated at Rockville, Maryland, this 19th day of November, 2019.

For the Nuclear Regulatory Commission.

/RA/

Maureen E. Wylie,
Chief Financial Officer.