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May 10, 1991

FEDERAL EXPRESS

Secretary
U. S. NUCLEAR REGULATORY COMMISSION
Washington, D. C. 20555

Attention: Docketing and Service Branch

Gentlemen:

PROPOSED REVISION TO PARTS 170 AND 171
FEE SCHEDULES
56 FEDERAL REGISTER 14870

These comments are provided in response to the proposed revision to Parts 170 and 171 of Chapter 10 of the Code of Federal Regulations as published in the Federal Register at 56 FR 14870 on April 12, 1991.

Wisconsin Electric Power Company is the sole owner and operator of Point Beach Nuclear Plant, Units 1 and 2. Wisconsin Electric is a member of the Nuclear Management and Resources Council (NUMARC) and generally supports the NUMARC comments submitted on this matter. Wisconsin Electric also supports the comments submitted by the law firm of Shaw, Pittman, Potts, and Trowbridge on behalf of Wisconsin Electric and certain other power reactor licensees.

A. ALLOCATION OF SERVICE COSTS

We acknowledge that both the nuclear industry and the NRC are burdened by the decision of Congress to collect approximately 100% of NRC's budget from those who use or receive NRC's services. We are dismayed, however, at the extent of the proposed regulation's apparent dependency on power reactor licensees as a convenient resource for the recovery of costs unrelated to power reactor regulation. In a number of areas, the proposed rule appears to disregard the Congressional instruction that "any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value."

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In the discussion of export/import activities at 56 FR 14876, it is stated that NRC proposes to assess costs "on the basis of the criteria of who can equitably and practicably afford to pay." This position is patently unfair to the customers and stockholders of electric utilities and, if implemented, would abrogate the legislative direction provided. Notwithstanding the merit or lack of merit inherent in the basic Congressional mandate, NRC's implementing rule must properly identify the recipients of NRC services, regardless of how difficult that task might be. It is inappropriate to balance the 100% recovery equation by using power reactor licensees as an expedient in lieu of a proper allocation of charges.

There are a number of specific activities which are inappropriately included in the calculation of power reactor licensee assessments. If these charges are instead billed directly to service recipients as described below, then the actual customer or end user will eventually and properly pay the cost.

1. The costs for reviewing standardized and advanced reactor plant designs should be charged to the person(s) submitting the design. The community of beneficiaries of such designs is most likely to be different than the community of existing, operating power reactor licensees. If review costs are billed to the applicant, the customer or end user will eventually and properly bear the regulatory cost in a manner similar to any other marketed service or product.
2. Other Federal agencies should be assessed for services provided to those agencies, and such costs must not be allocated to operating power reactors. In particular, those activities supporting DOE and/or DOD which are related to defense programs or the consequences of defense programs should not be allocated to power reactor licensees.
3. NRC should recover import and export costs for licensing activities from the import and export licensees or applicants. These activities provide no direct benefit to U. S. operating power reactors and should not be allocated to such reactors. Again, cost should be allocated to applicants so that the customer or end user eventually pays the cost.

4. Activities in support of the development of private uranium enrichment enterprises -- no matter whether related to the privatization of a government enterprise or to the establishment of wholly new private enterprises -- should be billed to the applicant and not to power reactor licensees.
5. NRC should recover costs for regulating educational and non-profit institutions from those institutions. Congress did not give NRC the prerogative for either exempting such institutions or for enforcing contributions by others. We note that many power reactor licensees support educational and non-profit institutions voluntarily. This may well continue or even be increased; however, the institution must still be held responsible for goods and services provided by others.
6. The costs of NRC international cooperative safety and safeguards programs should not be assessed to U. S. power reactor licensees, who receive no benefit distinguishable from the benefit to the world at large. Thus, the costs associated with such programs should not be assessed to power reactor licensees.
7. Peripheral activities, such as agreement state liaison, educational research grants, and the Small Business Innovation Research Program, have nothing to do with power reactor licensees; and the costs of such activities should not be allocated to those licensees.

In those cases where NRC finds it extremely difficult or impossible to identify and assess the beneficiary of a service, NRC should review the appropriateness of performing that service or whether the service better fits the charter of another agency.

B. TIMING OF ASSESSMENT

Virtually all power reactor licensees are electric utilities with closely controlled budgets further constrained by the rate approval process imposed by state public utility commissions. Early estimating and budgeting are inherent features of the state regulatory process. Congressional action on this matter occurred late in the year, making appropriate consideration in the ratemaking process difficult. The situation was further exacerbated by the length of time consumed by NRC before issuing the proposed rule. In our case, the Public Service Commission

of Wisconsin, in the absence of any preliminary information from NRC on the matter, disallowed consideration of our estimate of the "catch-up" amount for the last calendar quarter of 1990 (FY1Q91), which will be paid during 1991.

Although Congress specified that NRC's assessment be made by September 30, 1991, the time for collection was not specified. We, therefore, request that NRC consider delayed invoicing for collection by at least 90 or 180 days. In addition, we would appreciate much earlier publication of NRC's preliminary budget estimates, along with informal notice of changes being considered in the assessment rules. This would enable utilities to improve estimates used for ratemaking purposes.

C. BASIC FEE FOR POWER REACTOR LICENSEES

We note that the differences in the proposed fees for specific reactor types have reversed from the differences in previous years. For example, in the fee schedule published on March 2, 1990, the annual fee for Westinghouse reactors was the lowest of the four reactor vendor groups. In the proposed rule, they are, as a group, the highest. In 1990 the plants with ice condenser containments were assessed a higher fee. Now the fee for such plants is lower. These observations suggest that the variability of the difference is greater than the attempted refinement. Since these differences are quite small compared with the basic fee, we suggest that the Commission dispense with the attempted refinement and charge one uniform fee for all Part 50 power reactor licensees. This would have the benefit of improved predictability for ratemaking purposes.

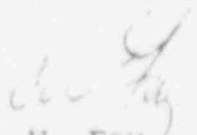
Finally, we note that certain inconsistencies are present in the treatment of certain exemptions: Two permanently shut-down plants are exempted; two others are not. In addition, two relatively low power units are partially exempted. These considerations merit further attention. We recommend that, once a plant has formally announced a permanent shutdown, no operating license fee should be charged. The low power units present a special problem: If the regulatory time and effort expended on small plants is, indeed, significantly less than that for large units, then NRC should determine the cost/megawatt ratio and charge all units accordingly. If, on the other hand, the small units require essentially the same regulatory effort as the larger units, then it is not appropriate to expect the customers and stockholders of larger units to subsidize the operation of small units.

Secretary - NRC
May 10, 1991
Page 5

In summary, we recommend that the separation of matters not related to power reactor licenses be further refined. At the same time, we see little, if any, benefit to over-refining the distribution of costs within the power reactor community. We appreciate your consideration of our comments.

Please feel free to contact us if you should need any further clarification.

Very truly yours,



C. W. Fay
Vice President
Nuclear Power