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sent to Cornell R
Fri Nov 27, '81

MEMORANDUM FOR: Chairman Palladino
Commissioner Gilinsky
Commissioner Bradford
Commissioner Ahearne
Commissioner Roberts

FROM: William J. Dircks, Executive Director for Operations

SUBJECT: PART 170 LICENSE FEES - REQUEST FOR ADDITIONAL INFORMATION
(REFERENCE: M811102B)

This responds to the Commission's request dated November 4, 1981 for the following information regarding the proposed license fee schedule in SECY 81-615.

ITEM 2: "the professional rate be recalculated based on actual FY 1981 costs rather than on FY 1977 costs modified by inflation factors and salary increases".

RESPONSE: The professional rates have been recalculated based on actual FY 1981 costs. The following are the revised rates.

<u>Office</u>	<u>Professional Staff-Year Rate</u>	<u>Professional Staff-Hour Rate</u>
NRR	\$111,792	\$62
IE	94,843	53
NMSS	104,807	58
ACRS	111,487	62
ASLBP	110,765	62
ASLAP	118,385	66

Based on the revised rates, the cost of a CP would range from \$2.2 million to \$3.3 million while an OL would range from \$2.7 million to \$3.2 million. This is about 15% more than the amount shown for the CP and OL ranges in SECY 81-615. Cost ranges for fuel cycle facilities would also increase by about 15%. The range for inspection fees would increase about 13%.

It is anticipated that collections would increase in FY 82 from \$50 million to \$59 million and in FY 83 from \$40 million to \$58 million.

ITEM 3: "staff provide a summary of the total IE manpower involved in inspections and other major actions for which the costs are recovered and a summary of the actions that involve the remainder of IE professional manpower expended"

RESPONSE: The FY 1982 budget contains 985 positions for IE. Of this amount, about 620 or 63% of the total are considered professional/technical staff and the remainder, 365 positions or 37% of the total, are management direction (supervisory) and clerical positions.

For fee purposes, it is estimated that about 300 of the 620 professional/technical staff years will be recovered through license and inspection fees since these positions are directly involved in preparing for, conducting, and documenting the routine and non-routine inspections. Under current license fee guidelines the remaining 320 professional direct positions are not recoverable through fees because they are performing inspection activities which are not directly chargeable to specific licensees; e.g., reviewing generic safety matters, NRC Operations Center Management, specific study groups, task force participation, program development, bulletin coordination, event evaluation, mobile lab management, technical support to HQ/other NRC offices, State Liaison Officer coordination, travel and attendance at training courses.

For cost recovery purposes the costs of the 365 supervisory and clerical support personnel have been distributed to the 620 IE professionals. Thus each professional bears a proportionate share of these costs. Assuming that approximately 300 professional staff years are charged to dockets, then 48% of the costs of the support personnel should be recovered.

Based on the above IE allocation of staff resources, we can expect to recover about \$18 million in FY 1982 and \$27 million in FY 1983 in inspection fees. The FY 1982 estimate assumes the adoption of the revised schedule on April 1, 1982.

ITEM 4: "staff explain the basis for the policy decision whereby licenses issued to Federal, state and local governments and to non-profit education institutions are exempted from fees. An estimate of the funds involved is to be included".

RESPONSE: SECY 81-675 proposes to continue the exemption from fees for licenses issued to Federal agencies (except for commercial power reactors), State and local governments, and to non-profit educational institutions where the use is teaching, training or medical purposes.

Federal Agencies - The Commission does not presently have statutory authority to collect fees from Federal agencies. The NRC collects fees under authorization provided by Title V of the Independent Offices Appropriation Act of 1952, which states, in part, that any license or permit issued by a Federal agency to any person except those engaged in the transaction of official business of the Government shall be self-sustaining to the full extent possible. Thus, Title V explicitly prohibits charging fees for licenses issued to other Federal agencies. However, there is one exception. On June 16, 1972, the Atomic Energy Act of 1954 was amended (new subsection 161w) to authorize the Commission to collect fees from Federal agencies for licenses for power reactors producing heat or electrical energy on a commercial basis.

Additional legislation would be required before the Commission could charge fees for non-power reactor licenses and permits and material licenses issued to Federal agencies. The costs in FY 81 for these licenses was about \$200,000 and involves about 1,100 licenses.

State and Local Governments - The exemption from fees for licenses issued to States and political subdivisions thereof was granted by the Commission on May 25, 1972. There are approximately 400 NRC licenses held by States and local governments and their costs in FY 81 were about \$45,000. The exemption was granted for the purpose of providing assistance to the States. OMB Circular A-25, the implementing circular for the Independent Offices Appropriation Act, provides that an agency may make exceptions to the general policy for assessing fees for services rendered when "payment of the full fee by a State, local or non-profit group would not be in the interest of the program".

There is no legal constraint that would prohibit the Commission from modifying past policy to recover these costs.

Non-Profit Educational Institutions - The exemption from fees for NRC licenses issued to and held by educational institutions was granted October 1, 1968. The policy to exempt such licenses from fees was intended to encourage higher education and research and considered to be in the public interest. In FY 1981 the revenue loss because of the exemption for these 950 licenses was about \$425,000.

ITEM 1: "staff conduct a study to determine whether use of the actual cost method when determining fees for radioisotopes licenses would have a significant economic impact on a substantial number of small entities. The results of the study are to be presented to the Commission in February. In the interim period, fees for the stated licenses and inspections need not be revised."

RESPONSE: Due February 1982.

William J. Dircks
Executive Director for Operations

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MEMORANDUM FOR: Commissioner Ahearne

FROM: William J. Dircks, Executive Director For Operations

SUBJECT: SECY 81-615, COMMENTS AND RECOMMENDATIONS

This responds to your comments on the proposed license fee schedule in SECY 81-615.

Item 1: "Even considering the EDO's November 30, 1981 response, I do not believe the staff proposes recovering an adequate percentage of the inspection and licensing effort. For example, I would expect to recover a significantly greater percent of the entire regional effort than the projected 50 percent. This leads me to conclude the Commission needs a better understanding of what the EDO plans to exclude from fee charges, particularly in the inspection and licensing offices. I understand, for example, travel time to an inspection site, the mobile lab, technical training and a large portion of IE program support are excluded. I would like the EDO to provide a list of the programs, overhead categories and functions which are excluded from fee charges (e.g., travel, generic studies, NRC Operations Center, program development, contract support, indemnity programs, state liaison, etc.) and the estimated annual resource expenditures for these programs."

RESPONSE: Enclosure 1 is a list of the activities included and excluded in developing the proposed license fee schedule in SECY 81-615. In developing the schedule, we adhered to the Commission's 1977 license fee guidelines. The rationale for this decision was that these guidelines had been reviewed and approved by the U.S. Court of Appeals (5th Circuit) in 1979.

Recent discussions with the legal staff indicate that the Commission's license fee regulations may be broadened to recover a greater share of NRC's regulatory costs. This would necessitate a comprehensive indepth analysis/study of the activities and allocation of staff and costs of each NRC office as was done in FY 1977 in development of the current schedule. The results of the study would provide the detail regarding specific items as you requested. Each activity would require an individual decision for inclusion or exclusion from fees with justification. The analysis would require the combined effort of the License Fee Branch and legal staff working with representatives in each NRC office. This type of analysis requires considerable time because the agency budget and individual offices budgets do not allocate funds and expenses to specific functions. Allocations are made on a very broad basis, e.g., casework, safety technology, etc. To isolate the specific activities and costs which are currently excluded from fees such as generic effort, research and standards coordination, indemnity, etc. would require greater detail in the agency accounting and budgeting

system. In addition, each NRR, IE, and HMSS contract would have to be individually reviewed to determine whether it should be included or excluded for fee purposes.

It is estimated that it would require up to six months to complete a comprehensive analysis of each NRC office (staff and costs on a functional basis). We recommend that such an analysis or study be undertaken and completed in time for preparation of the 1983 revision to Part 170.

Item 2: "The rule should be modified to allow automatic annual update of fees based on prevailing salary schedules."

RESPONSE: The "Notice of Proposed Rule Making" in SECT 81-615 will be modified to provide for an annual update of professional staff rates and ranges of costs in Part 170. This can be accomplished by inserting a statement to the effect that the rule will be updated annually to take into consideration increased costs due to salary increases and inflation.

Item 3: "I would propose instituting fee charges for non-profit institutions."

RESPONSE: Currently 2,500 out of a total of approximately 8,800 materials licenses are exempt from licensing and inspection fees under the provisions of Part 170. 650 of the fee exempt licenses are held by nonprofit educational institutions, 750 by States or political subdivisions thereof, 970 by Federal agencies, and the remaining 100 by patients with implanted cardiac pacemakers, licenses covering material incidental to operation of a power reactor, uranium shielding, museums, etc.

In addition to the materials licenses there are 53 operating and four non-operating research reactors and critical facilities licensed at colleges and universities. These licenses are fee exempt.

NRC Costs of Fee Exempt Licenses. In FY 1981 the Materials Licensing Branch and the Materials Certification and Procedures Branch received approximately 5,100 applications for processing. Just over 3,000 of these applications and consequent licenses were subject to licensing fees under Part 170 and collections were \$300,000. The other 2,100 applications and any licenses issued were not subject to fees, and the Commission review costs for these applications were \$190,000. In addition, the NRC's costs to conduct routine inspections of the existing 2,500 materials licenses which are not subject to fees is approximately \$300,000.

In FY 1981 the NRC's costs to review the 39 applications to amend research reactor operating licenses held by college and universities were approximately \$85,000 and the costs incurred to inspect these facilities were approximately \$200,000. None of the costs associated

Item 3: with the 53 research reactors or critical facilities located at the colleges and universities were recovered. Part of fees billed by office showing the percent of contract and staff effort recovered for that six. Thus, in FY 1981 the NRC expended approximately \$775,000 for licensing and inspections of small materials license programs and research reactors which were exempt from fees under Part 170. amended regulations and revised schedule of fees, and every six months thereafter. The staff recommends that Part 170 be amended to require fees for all materials licenses except those issued to Federal agencies and patients with cardiac pacemakers. The NRC does not have statutory authority to assess license and inspection fees to Federal agencies. It would not be practical to assess fees for pacemakers installed in patients.

With respect to the research reactors located at colleges and universities we are informed by DOE that it helps these schools to defray the costs of fuel and fuel fabrication for these facilities, and that the imposition of licensing and inspection fees in this instance would impose a serious burden on these licensees who generally operate on a marginal budget. In view of the circumstances, the staff recommends that the Commission continue the fee exemption for non-profit educational institutions for research reactors and critical facilities.

Item 4: "I would include charges for Commission orders (no application from licensee), show cause orders, and contested casework (ASLBP and ASLAP)."

RESPONSE: The staff recommends that the Proposed Notice of Rule Making in SECY 81-615 be modified to provide for assessment of fees for orders based on actual costs. SECY 81-615 provides only for recovery of those costs incurred in the evaluation of licensee responses to orders. Since Three Mile Island there has been a significant increase in the number of licensees receiving orders. In FY 1981 more than 100 individual orders were dispatched to licensees without the assessment of fees. In FY 1977, when the current rule was developed, the issuance of orders was infrequent, and required limited resources.

The legal staff has advised us that fees can be collected for contested casework hearings. If the Commission adopts this policy, the ASLBP and ASLAP would need to implement a procedure for charging professional staff time to contested casework.

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Item 5: "In conjunction with the six month billing cycle, I would propose the Commission be provided a report on the amount of fees billed by office showing the percent of contract and staff effort recovered for that six month period."

RESPONSE: Beginning six months after adoption of the amended regulations and revised schedule of fees, and every six months thereafter, the Commission would be furnished a report showing the total amount billed, amount collected and amount of contract costs and staff effort recovered.

William J. Dircks
Executive Director for Operations

Enclosure: As Stated

cc: Chairman Palladino
Commissioner Gillinsky
Commissioner Roberts
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ENCLOSURE I

SERVICES AND ACTIVITIES

In developing the current fee schedule in 1977 each office of the NRC was analyzed to determine which activities provide "special benefit" for cost recovery purposes. "Special benefits" include those services rendered by the agency at the request of the recipient and services necessarily rendered to aid the recipient in complying with statutory and regulation obligations. Services providing special benefit to identifiable recipients were included for computation of fees. Those for which the beneficiary was obscure, or which confer independent public benefit, were excluded from fees. The activities have been designated as excluded or included.

1. Office of Nuclear Reactor Regulation

- a. Processing of applications for facility construction permits and operating licenses by the NRC staff and consultants. This involves safety, environmental, and antitrust and special nuclear materials safeguards reviews (included).
- b. Processing of applications for facility license amendments and technical specification changes performed by the NRC staff and consultants (included).
- c. Review of topical reports filed by licensees and vendors of reactor components (included).
- d. Review of standardized reference designs for nuclear steam supply systems filed by vendors (included).
- e. Review of standardized reference designs for balance of nuclear plants filed by architect engineers (included).
- f. Examination and testing of the qualifications of prospective reactor operators (included).

- e. Staff assistance in development of standards, codes, criteria and licensing guides (excluded).
- h. Staff effort in facilities research projects (excluded).
- i. Licensing effort which is generic in nature, i.e., not specifically identified with applications on file (excluded).

2. Advisory Committee on Reactor Safeguards

The services of this office are concerned with facilities. Its safety review is included in the computation of fees. Generic licensing, research and standards development effort are all excluded.

3. Atomic Safety and Licensing Board Panel

Boards appointed from this panel in accordance with the provisions of Section 191 of the Atomic Energy Act of 1954, as amended, conduct mandatory hearings for power reactors and test facilities and issue initial decisions with respect to granting, suspending, revoking or amending licenses or authorizations. Effort in this office concerned with uncontested facility hearings is included in fee computation. All other effort was excluded.

4. Atomic Safety and Licensing Appeal Board

These boards review decisions affecting facility licensing.

Effort concerned with uncontested cases is included in fee computation; the remainder concerning contested cases is excluded.

5. Office of Nuclear Materials Safety and Safeguards

- a. Processing of applications for non-reactor facility construction permits and operating licenses, fuel cycle licenses, and materials licenses by the NRC staff and consultants. This includes safety, environmental, and special nuclear material safeguards reviews (included). Antitrust reviews as required by 10 CFR Part 50 non-reactor facility applications (included).
- b. Processing of applications for license renewal and amendments by the NRC staff and consultants (included).
- c. Examination and testing of the qualifications of non-reactor facility operators (included).
- d. Staff assistance in development of standards and licensing guides (excluded).
- e. Staff effort to research projects (excluded).
- f. Licensing effort which is generic in nature, i.e., not specifically identified with applications on file (excluded).
- g. Staff assistance in development of safeguards contingency plans, and safeguards assessment activities (excluded).

6. Office of Inspection and Enforcement

- a. Routine health, safety, environmental and safeguards inspections of licensed activities (included).
- b. Quality assurance inspections during the preconstruction, construction, preoperational and operations phases of facility licensing (included).
- c. Staff assistance in development of standards and inspection criteria (excluded).
- d. Nonroutine inspections: investigations, incident inspections, audit of licensee management and enforcement activities (excluded).
- e. Generic inspection activities, i.e., inspection activities which are not concerned with a specific licensee, facility or vendor (excluded).

7. Office of Standards Development

- a. All standards services would be excluded even though these activities provide substantial benefit to applicants, licensees and vendors by helping to define NRC requirements and practices and helping to establish predictability of the regulatory process. However, the identifiable recipient of the service is obscure.

8. Office of Nuclear Regulatory Research

- a. Research or confirmatory assessment which generally relates to regulatory decisions for the safe and environmentally compatible operation and protection of nuclear facilities and materials has been excluded from fee computation because the identifiable recipient of the benefit is obscure.

9. The Office of the Commissioners

- a. The Commissioners are the governing body of NRC who exercise the overall responsibility for policy guidance and administration and management of the Commission. Accordingly, it is not practical to isolate and allocate the services of this office to individual activities. The services provided by this office have been excluded from fee computation.

10. The Office of the Secretary

- a. The allocation of services as well as related costs to the various offices was determined by examination of the functional workload associated with each operating activity of the Office of the Secretary. Those activities supporting the licensing and inspection process were included in fee computation.

E. Office of Nuclear Regulatory Research

- a. Research or confirmatory assessment which generally relates to regulatory decisions for the safe and environmentally compatible operation and protection of nuclear facilities and materials has been excluded from fee computation because the identifiable recipient of the benefit is obscure.

9. The Office of the Commissioners

- a. The Commissioners are the governing body of NRC who exercise the overall responsibility for policy guidance and administration and management of the Commission. It is not practical to isolate and allocate the services of this office to individual activities because of the constant change in responsibilities placed on the Commissioners individually and in toto. The services provided by this office have been excluded from fee computation.

10. The Office of the Secretary

- a. The allocation of services as well as related costs to the various offices was determined by examination of the functional workload associated with each operating activity of the Office of the Secretary. Those activities supporting the licensing and inspection process were included in fee computation.

11. Office of the General Counsel

Effort in this office is devoted to contested hearings as well as providing legal opinion and advise in connection with quasi-judicial responsibilities of the Commission and in policy development, litigation and legislative matters. These services are not directly concerned with the licensing and inspection process, except for the effort in contested hearings. All services provided by this office were excluded from fee computation.

12. Office of Policy Evaluation

This office advises the Commissioners on a broad range of substantive policy matters and provides an independent review of positions developed by the NRC staff which require policy decisions by the Commission. Services provided by this office do not generally deal directly with licensing or inspection activities and are thus excluded from fee computation.

13. Offices of the Inspector and Auditor, Congressional Affairs, Public Affairs and Equal Employment Opportunity

The services provided by these offices provide an independent public benefit and were excluded from fee computation.

14. The Executive Director for Operations

This office coordinates and directs the Commission's operational and administrative activities. It is concerned directly with the licensing, inspection, standards and

research activities of the Commission. The services and related costs of this office, with the exception of the Special Projects Branch, were allocated to the operation offices after analysis of the services provided. Those services supporting the licensing and inspection process were included in fee computation. The Special Projects Branch is concerned with special projects which are not directly concerned with licensing, inspection, standards, or research activities and, therefore, the services of this branch were excluded from fee computations.

15. The Office of Administration

Analysis shows that this office, with the exception of the Division of Rules and Records, provides service to the respective NRC offices essentially on a per capita basis, and this is the basis for distribution of its services for fee computation purposes. Those services supporting the licensing and inspections process were included in fee computation. The Division of Rules and Records is concerned primarily with requests under the Freedom of Information Act, Privacy Act, and the Federal Reports Act and provides support involving changes to rules and regulations. It services an independent public interest and it was excluded for fee computation purposes.

16. The Office of the Controller

Analysis shows that this office provides services to the respective NRC offices essentially on a per capita basis. Those services supporting the licensing and inspection process were included in fee computation.

17. The Office of Management Information and Program Control

This office provides management information and control systems dealing with project status and schedules for several of the NRC offices. Based on analysis, the services, as well as costs, were allocated to the offices receiving the services. Those services supporting the licensing and inspection process were included in fee computation.

18. Office of Planning and Analysis

This office assists the Executive Director for Operations in program assessment and policy analysis and development. It does not deal with licensing or inspection activities and the services were excluded from fee computation.

19. Office of the Executive Legal Director

Analysis of the services provided by this office shows that the effort goes to licensing, hearings, and providing legal advice to the Executive Director of Operations. Those services supporting the licensing and inspection process were included in fee computation.

20. Offices of State Programs and International Programs

These offices provide an independent public benefit
and all of their services were excluded from fee computation.

Mr. Ahearne's comments on Secy-81-615:

1. Even considering the EDO's November 30, 1981 response, I do not believe the staff proposes recovering an adequate percentage of the inspection and licensing effort. For example, I would expect to recover a significantly greater percent of the entire regional effort than the projected 50 percent. This leads me to conclude the Commission needs a better understanding of what the EDO plans to exclude from fee charges, particularly in the inspection and licensing offices. I understand, for example, travel time to an inspection site, the mobile lab, technical training and a large portion of IE program support are excluded. I would like the EDO to provide a list of the programs, overhead categories and functions which are excluded from fee charges (e.g., travel, generic studies, NRC Operations Center program development, contract support, indemnity programs, state liaison, etc.) and the estimated annual resource expenditures for these programs.
2. The rule should be modified to allow automatic annual update of fees based on prevailing salary schedules.
3. I would propose instituting fee charges for non-profit institutions.
4. I would include fee charges for Commission orders (no application from licensee), show cause orders, and contested casework (ASLBP and ASLAP).
5. In conjunction with the six month fee billing cycle, I would propose the Commission be provided a report on the amount of fees billed by office showing the percent of contract and staff effort recovered for that six month period.