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NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

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'92 DEC 11 P3:52

December 10, 1992

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, DC 20555

ATTENTION: Docketing and Services Branch

RE: Petition for Rulemaking
American College of Nuclear Physicians
and Society of Nuclear Medicine;
57 Fed. Reg. 46818 (October 13, 1992)
Request for Comments

Dear Mr. Chilk:

The Nuclear Management and Resources Council, Inc. (NUMARC)¹, on behalf of the nuclear industry, submits the following comments on the petition to amend 10 CFR Parts 170 and 171 filed by the American College of Nuclear Physicians and the Society of Nuclear Medicine.

We strongly oppose increased exemptions from user fees of one class of NRC licensee at the expense of other classes of licensees, and, in fact, any shift of the cost of regulation from one class to another.

The intent of Congress in mandating 100 percent cost recovery was clear -- charges were to be equitably allocated among classes of NRC licensees and were to be reasonably related to regulatory services provided each class of licensee. When the

¹NUMARC is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic regulatory policy issues and on the regulatory aspects of generic operational and technical issues affecting the nuclear power industry. Every utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect/engineering firms and all of the major nuclear steam supply system vendors.

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petitioners commented in 1991 on the proposed user fee rule, protesting the adverse effects of the proposed fees on their class of licensees, the Commission responded, in our view correctly, that

"to eliminate the adverse effects, the annual fees would have to be eliminated or reduced. Because Public Law 101-508 requires the NRC to assess and collect approximately 100 percent of its budget authority, a reduction in fees assessed for one class of licensee would require a corresponding increase in the fees assessed for another class. Therefore, the impact noted cannot be eliminated without creating adverse effects for other licensees."

However, the Commission has recognized the significant impact of user fees on "small entities," such as organizations with annual receipts of \$3.5 million or less or private practice physicians with annual receipts of \$1 million or less. Since the subject petition was filed, NRC has acted to reduce the maximum fee paid by small entities. As a result, other licensees (in this case, power reactor licensees) are forced to pay an additional \$5.4 million to subsidize the FY 1992 shortfall in fee collection resulting from the "small entity" exception. The petitioners admit, however, that this provision "provides almost no relief to members of the ANCP/SNM because they exceed the criteria established by the NRC for treatment as small entities." While the fee impacts cited by the petitioners are sizable, it must be kept in mind that these are organizations and physicians in private practice whose revenues exceed the small entity criteria.

We have the following comments on the four specific changes to 10 CFR Parts 170 and 171 that are requested in the petition. The first three changes involve fee exemption for non-profit medical institutions, individualized exemption criteria, and sliding scales for small entities. If these changes are made, some medical licensees would pay less in fees than they pay currently -- but other licensees would have to pay more under the current 100 percent cost recovery scheme. The costs at issue here are specific to medical uses of radioactive materials. As long as NRC continues to recover the total cost of regulatory services provided to this class of licensee from licensees in this class, we have no objection to the proposed changes. However, if the proposed changes were implemented and other classes of licensees were forced to pay for regulatory services provided to the medical community, that would be unfair and contrary to Congressional intent.

The fourth change requested by the petition calls for licensees to have a "greater voice in the NRC's decision-making process for developing new programs where the development costs themselves could have substantial economic impacts." We agree with that recommendation.

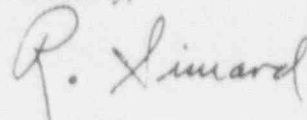
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Finally, we note that this petition vividly illustrates the undesirable impacts of 100 percent cost recovery through user fees -- the economic impacts on utility ratepayers, on health care costs, and, ultimately, on the American public. The imposition of 100 percent cost recovery has impacted the benefits that the public receives from commercial and medical applications of nuclear technologies, as documented so clearly by the hundreds of letters to the NRC from members of Congress, the Small Business Administration, the medical community, and others. And it continually introduces economic considerations into interactions between NRC and its licensees that, in various subtle ways, hamper NRC's ability to focus on public health and safety. As Commissioner Roberts commented when NRC user fees were first mandated by Congress

"I do not support the idea of mandating an annual 'user fee' to fund the NRC budget. I believe that for the *regulated* to fund the activities of the *regulator* is an inimical conflict of interest. In this regard, one needs to understand that the decisions we need to make at the NRC to protect the public's health and safety are unique in their far-reaching consequences and should be made in an atmosphere free from actual or potential conflict of interest. This is not only a 'nice to have' principle, but it is vital to the proper discharge of our responsibilities."

We strongly urge the NRC to make Congress aware of the unanticipated and undesirable impacts of 100 percent cost recovery through user fees, and to seek a return to an appropriations process that allows the NRC to focus on the technical, safety-related aspects of their programs, without the diversion of resources required to respond to the economic impacts of user fees.

Sincerely,



Ronald L. Simard
Director, Industry Relations
and Administration Division

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