



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 17, 1992

Docet 70-36
SNM-33

Mr. A. Edward Scherer
Vice President, Regulatory Affairs
Combustion Engineering, Inc.
1000 Prospect Hill Road
P.O. Box 500
Windsor, Connecticut 06095-0500

Dear Mr. Scherer:

I am responding to your November 19, 1992, letter requesting an exemption from payment of the annual fees for the two low enriched uranium (LEU) fuel manufacturing licenses for Combustion Engineering's (CE's) facilities in Hematite, Missouri and Windsor, Connecticut.

Your request for exemption from the FY 1992 annual fees raises the same issues that were raised in your August 8, 1991, request for exemption from the annual fees. These issues were fully addressed in our response to Mr. Richard S. Siudek dated December 17, 1991, which denied CE's request for exemption from the annual fees (copy enclosed). As you indicate in your November 19, 1992, letter, CE challenged the FY 1991 final rule as well as the NRC denial of your exemption request and this case is now pending before the U.S. Court of Appeals (D.C. Circuit), Combustion Engineering Inc. v. United States Nuclear Regulatory Commission and the United States of America, D.C. Cir. Nos. 92-1435 and 92-1001.

The NRC indicated in the final rule which was published July 23, 1992 (effective August 24, 1992), that the basic methodology used in developing the amount of the fees for FY 1992 was unchanged from that used in FY 1991 to calculate the Part 170 professional hourly rate, the specific materials licensing and inspection fees in Part 170, and the Part 171 annual fees (57 FR 32692). Therefore, and as you have indicated in your November 19, 1992, letter, the FY 1992 amendments to the fee regulations did not modify in any significant respect their impact on CE as compared with any other low enriched uranium fuel facility. Thus, the NRC concludes that your arguments regarding economic and competitive impact, and capacity, do not provide a basis for the NRC to grant CE an exemption from the annual fee for FY 1992. We believe that the annual fee, including the surcharge, is based on a practical, fair and equitable allocation of the costs attributable to the LEU fuel fabrication subclass of licensees.

280000

Mr. A. Edward Scherer

-2-

Based on the above and the reasons specifically enunciated in our December 17, 1991, letter to CE, your request for exemption from the FY 1992 annual fee, including the surcharge, is denied and your request to base the annual fee on fuel fabrication capacity is denied.

Sincerely,

Original signed by
James M. Taylor

James M. Taylor
Executive Director
for Operations

Enclosure:
12/17/91 letter J. Taylor
to R. Siudek, CE

DISTRIBUTION: OC R/F, OC S/F, JHolloway, JFunches, RScroggins, TRothschild,
MRafkey, JTaylor, EDO R/F 0008340, OC-22-523, DDandois, LHiller, GJackson

NUDOCs/PDR

OFFICE	:OC	:OC	:OGC	:OC	:EDO
NAME	:JHolloway	:JFunches	:TRothschild	:RScroggins	:JTaylor
DATE	:12/18/92	:12/11/92	:12/ /92	:12/15/92	:12/17/92

OFFICIAL RECORD COPY



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 17, 1991

Mr. Richard S. Siudek
Vice President, Nuclear Fuel
Combustion Engineering, Inc.
1000 Prospect Hill Road
Post Office Box 500
Windsor, Connecticut 06095-0500

Dear Mr. Siudek:

I am responding to your August 8, 1991, letter requesting an exemption from payment of the annual fees for the two low enriched uranium (LEU) fuel manufacturing licenses for Combustion Engineering's (CE's) facilities in Hematite, Missouri and Windsor, Connecticut. For reasons specified in this letter, your request has been denied.

As stated in 10 CFR 171.11(d), the Commission may grant a materials licensee an exemption from the annual fee only if it determines that the annual fee is not based on a fair and equitable allocation of the NRC costs under 10 CFR 171.11. The following factors must be fulfilled as determined by the Commission for an exemption to be granted.

- 1) There are data specifically indicating that the assessment of the annual fee will result in a significantly disproportionate allocation of costs to the licensee, or class of licensees;
- 2) There is clear and convincing evidence that the budgeted generic costs attributable to the class of licensees are neither directly nor indirectly related to the specific class of licensee nor explicitly allocated to the licensee by Commission policy decision; and
- 3) Any other relevant matter that the licensee believes shows that the annual fee was not based on a fair and equitable allocation of NRC costs.

These criteria are consistent with the requirement of Public Law 101-508 that: "To the maximum extent practical, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees."

9201160072 8pp.

In support of the exemption request, CE has stated that:

"The new annual fee has an inequitable and disproportionate economic and competitive impact on CE as opposed to other fuel manufacturers and the imposition of the annual fee on both CE fuel facilities bears no "reasonable relationship to the cost of providing regulatory services" to CE, as required by OBRA. The NRC's generic costs for regulating fuel facilities are not substantially increased by the fact that CE has one process split between two facilities. However, even if CE were charged only one fee, under the new rule, CE would still pay a disproportionate amount of the generic NRC costs in relation to larger fuel manufacturers. For these reasons, the charges, therefore, also violate OBRA in that they have not been "fairly and equitably" allocated "among licensees."

Your request for an exemption from the annual fees raises two questions. The first question involves whether economic and competitive impacts, and capacity should be considered in assessing annual fees. The second question concerns whether there is a reasonable relationship between the LEU fuel manufacturing license to which the annual fee is assessed, and the regulatory services provided.

Economic and Competitive Impact and Capacity.

Most of the commenters on the proposed rule published April 12, 1991, indicated that the annual fees would result in some type of impact on the licensee. Many commenters, including fuel facilities, noted that the annual fees would result in adverse economic and competitive impacts. Therefore, in developing the final rule, the Commission considered generically the adverse impact of implementing Public Law 101-508. The Commission concluded 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 the fees assessed for one class of licensee would require a corresponding increase in the fees assessed for another class. Therefore, the impacts noted cannot be eliminated without creating

adverse effects for other licensees. For this reason, consideration has been given only to the effects that NRC is required to consider by law (i.e., the Atomic Energy Act, the Energy Reorganization Act, and the Regulatory Flexibility Act)." (56 FR 31476; July 10, 1991).

Consistent with the Commission conclusion in the final rule, the economic and competitive impacts you noted are not a basis for adjusting the annual fees. In addition, the Commission is not required to equalize the economic and competitive impacts on the more than 9,000 NRC licenses or on specific licensees (e.g., CE) within a specific class (e.g., LEU fuel manufacturers). The fact that the impact varies for the more than 9,000 licenses or within the LEU fuel class of licensees does not lead to the conclusion that the fees have not been fairly and equitably allocated among licensees or a class of licensees. In fact, it would be expected that the same annual fee could have different economic and competitive impacts on different licensees because of the different economies of scale, financial positions, business strategies, and other business and economic factors associated with the specific licensee. It would not constitute sound policy or the wise use of limited NRC resources to tailor fees to accommodate the particular situation of each of these licensees.

In discussing the impact of the new annual fees, you have provided data indicating that CE's annual fee per production capacity (kilograms of Uranium 235 (KGU)) is higher than that for other LEU fuel fabricators. The NRC does not debate this claim. However, the NRC does not agree with the implication that annual fees should be based on a licensee's size, production capacity or the actual production of LEU, and hence revenues generated by the organization. The annual fees are to recover the NRC's generic and other regulatory costs not appropriated from the Nuclear Waste Fund or recovered from license fees under 10 CFR Part 170. The amount of these costs is not materially affected by a facility's LEU fuel fabrication capacity, but is primarily dependent on NRC's regulations, guidance and policy development activities, research and other activities that are necessary for NRC to regulate safely a class of licensees. It is also noted that the annual fees for other classes of licensees are based on possession of a license and not on capacity (e.g., number of hospital beds, number of radioactive sources, or capacity to produce electricity).

For the above reasons, I conclude that your arguments regarding economic and competitive impact, and capacity do not support an exemption from the annual fee.

Allocation of NRC Costs to LEU Fuel Manufacturing Licensees

You indicated that the allocation of costs in the rule to LEU facilities results in a significantly disproportionate allocation of costs to CE as compared to other LEU fuel manufacturers. The basis for this claim is that you believe the generic and other regulatory costs for regulating LEU fuel facility licensees are not materially increased by the fact that CE operates two facilities as opposed to one.

The NRC has reexamined the allocation of costs to the LEU fuel manufacturing licenses. This reexamination has been accomplished within the framework of the Public Law and accompanying Conference Report, and the fundamental principles used by the Commission in establishing annual fees for all classes of licensees.

Public Law 101-508 and the accompanying Conference Report provide that to the maximum extent practicable, the annual fee shall have a reasonable relationship to the cost of providing regulatory services to the licensees. Consistent with the law and the guidance in the Conference Report, the NRC allocated its budgeted generic and other regulatory costs not recovered from 10 CFR Part 170 license fees to the major classes of licensees. To the extent practicable and where necessary for a more fair and equitable allocation of costs, a major class of licensees was further subdivided into subclasses. For example, NRC costs for the fuel facilities class of licensees were allocated further to UF₆ conversion, HEU fuel fabrication, LEU fuel fabrication and other licenses. Within a subclass, the cost was uniformly allocated to each license in the subclass based on the premise that there is no significant difference in the generic and other regulatory services provided to each license within a subclass. This approach and principle were used for all classes of licensees.

The costs allocated to the licenses within the LEU subclass are for the safety and safeguards generic and other regulatory activities that are attributable to this subclass of licensees and that are not recovered by 10 CFR Part 170 license and inspection fees. These costs were allocated uniformly to each of the six licenses within the LEU subclass, based on the premise that there is not a significant difference in the generic and other regulatory services provided to each of the six licenses. (The six licenses are shown in the enclosure.) Thus, the question presented is whether, in fact, there is a significant difference between the generic and other regulatory services provided to either of the two CE LEU licenses and to the other four LEU licenses.

To answer the above question, the NRC regulatory activities covered by the annual fee were reexamined to determine whether any vary to a significant degree from license to license. These activities and their relationship to the license are discussed below:

- Safety, Safeguards and Environmental Regulations, Guidance and Policies: The same NRC regulations (e.g., 10 CFR Parts 70, 73 and 74), guidance (e.g., Regulatory Guides) and policies are applied to each of the six licenses to the same degree. That is, the regulations, guidance and policy applied to the General Electric license, for example, are the same as those applied to the CE Windsor license or to the CE Hematite license. The NRC does not apply only a part of the regulations, guidance and policies to CE Hematite because the facility only converts UF_6 to UO_2 , and a different part to CE Windsor and B&W because they only convert UO_2 to finished fuel. Instead, the application of the regulations, guidance and policies is the same independent of what part of the conversion process is licensed or whether the entire process is licensed. For CE, this means that NRC regulations, guidance and policies are applied to each license separately.
- Safety and Safeguards Research: The research costs included in the annual fee are for research in the areas of safeguards and environmental policy/decommissioning. These research activities are uniformly applicable to each license, and do not depend on a specific part of the LEU fuel fabrication process. For example, CE has two licenses at separate locations to decommission and the research associated with decommissioning is applicable to each site.
- Inspection Procedures and Oversight of Regional Activities: As with the regulations and regulatory guides, the NRC does not apply one part of the inspection procedures to facilities that convert UF_6 to UO_2 and a different part to those that convert UO_2 to finished fuel. Instead, the same procedures are uniformly applicable to each license. In addition, headquarters oversight of the regional activities is uniformly applicable to each license. It is also noted that the two CE facilities are also located within and inspected by two different regions.

- Event Analysis: The analysis of events benefits each license the same. For example, generic communications resulting from an event are sent to CE for each license held by the company.
- Regional Enforcement: Allegation followup and regional enforcement are dependent on the fact that there is a facility (i.e., license), independent of what process is used. Enforcement regulations, for example, apply to a specific license and not to the process used by the licensee.
- Other Regulatory Activities: Other regulatory activities whose costs are included in the annual fee include, for example, responses to 2.206 petitions and responses to Congressional letters.

As indicated by the above discussion, the NRC costs attributable to the LEU facilities subclass are more related to the fact that a license exists and not to the LEU manufacturing process. Thus, a uniform allocation of costs to each license results in an annual fee that has a reasonable relationship to the generic and other regulatory services provided.

The surcharge part of the annual fee includes NRC budgeted costs that are not attributable to the LEU subclass, but it was assessed to the licensees in the subclass for policy reasons. For the LEU subclass of licensees, the surcharge includes a portion of low-level waste costs and costs not recovered from small entities. In the Conference Report, Congress indicated that these types of costs "may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment." Following this guidance, the Commission decided to uniformly allocate these costs to each fuel facility resulting in the same surcharge for each license.

For the above reasons, I conclude that the annual fee, including the surcharge, is based on a practical, fair and equitable allocation of the costs attributable to the LEU fuel fabrication subclass of licensees.

Conclusion:

The economic and competitive impacts noted in your exemption request do not provide a basis for the NRC to grant Combustion Engineering, Inc. an exemption from the annual fee. Based on a reexamination of the allocation of costs to the LEU fuel

manufacturing subclass of licensees, the NRC concludes that uniformly allocating the costs to the license to determine the amount of the annual fee is a fair, equitable and practical way to recover its costs attributable to the LEU fuel fabrication subclass of licensees. In addition, this method of allocating the costs results in annual fees that have a reasonable relationship to the cost of providing the regulatory services; therefore, the annual fees do not result in a disproportionate allocation of NRC generic and other regulatory costs to the LEU fuel fabrication licenses.

Based on the above, your request for an exemption from the FY 1991 through FY 1995 annual fees, including the surcharge, is denied and your request to base the annual fee on fuel fabrication capacity is denied.

Sincerely,

Original Signed By:
James M. Taylor

James M. Taylor
Executive Director
for Operations

Enclosure:
As stated

Enclosure

SUBCLASS

LOW ENRICHED URANIUM FUEL FACILITIES

	<u>Licenses</u>	<u>Docket #</u>	<u>Location</u>	<u>Fuel Fabrication Process</u>
-	Combustion Engineering (Hematite)	70-36	RIII	UF ₆ to UO ₂
-	Combustion Engineering (Windsor)	70-1100	RI	UO ₂ to finished fuel
-	Babcock and Wilcox	70-1201	RII	UO ₂ to finished fuel
-	Advanced Nuclear Fuels	70-1257	R-V	UF ₆ to UO ₂ to finished fuel
-	General Electric Co.	70-1113	RII	UF ₆ to UO ₂ to finished fuel
-	Westinghouse Electric Co.	70-1151	RII	UF ₆ to UO ₂ to finished fuel