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UNITED STATES OF AMERICA

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NUCLEAR REGULATORY COMMISSION

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STRATEGIC ASSESSMENT AND REBASELINING

STAKEHOLDERS PUBLIC MEETINGS

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MANAGING NRC FINANCES SESSION

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FRIDAY

OCTOBER 25, 1996

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WASHINGTON, D.C.

The Managing NRC Finances Session was held in
the Jefferson East Room of the Washington Hilton and
Towers at 1919 Connecticut Avenue, N.W., Washington, D.C.,
at 1:00 p.m., Douglas Brookman, presiding.

PRESENT:

JESSE FUNCHES

KEN ALKEMA

ROBERT ANDERSON

AL ANKRUM

RALPH ARCARO

DENNIS BECHTEL

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1 PRESENT (Continued):
2 RALPH BEEDLE
3 ROBERT BORSUM
4 GARY BOSS
5 JUDITH BRADBURY
6 KRISTI BRANCH
7 ROY BROWN
8 PAUL BUBBOSH
9 DAN BURNFIELD
10 MARK BURTSCHI
11 JON CARTER
12 NANCY CHAPMAN
13 STEVEN COLLINS
14 SIDNEY CRAWFORD
15 THOMAS CRITES
16 WILLIAM CROSS
17 RAPHAEL DANIELS
18 LYNNE FAIROBENT
19 DARRYL FARBER
20 DUANE FITZGERALD
21 JANE FLEMING
22 STEPHEN FLOYD
23 HERBERT FONTECILLA
24 ROBERT GAMBLE
25 PAUL GENOA

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1 PRESENT (Continued):

2 MICHAEL GILBERT

3 ROBERT GOFF

4 MARK GRACE

5 JANE GRANT

6 KIMBERLY GREEN

7 ANN HARRIS

8 LYNETTE HENDRICHs

9 THOMAS HILL

10 CLAYTON HINNANT

11 ANNE HOSFORD

12 ROBERT HUSTON

13 ALAN JACOBSON

14 JUDITH JOHNSRUD

15 PETE KOLOLAKIS

16 ROD KRICH

17 DANIEL LEROY

18 DAVID LOCHBAUM

19 RUTH McBURNEY

20 SHAWNA McCARTNEY

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22 BRIAN McINTYRE

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25 DAVID NICHOLS

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1 PRESENT (Continued):
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3 PHIL OLSON
4 ALEX PAUAGOS
5 SCOTT PETERSON
6 JOHN PFEIFFER
7 THOMAS POTTER
8 MATTHEW QUINT
9 RICHARD RATLIFF
10 JAMES RICCIO
11 A. CARTER ROGERS
12 JOHN RUSSELL
13 WOLFGANG SCHLUMP
14 MICHAEL SCHOPPMAN
15 WILLIAM SHIELDS
16 BRYCE SHRIVER
17 JOHN STAMOS
18 JANICE STEVENS
19 ROBERT SWEENEY
20 KATIE SWEENEY
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22 TOM TIPTON
23 GARY VINE
24 WAYNE VOGEL
25 ROBERT WALKER

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1 PRESENT (Continued):

2 RONALD WASCOM

3 DWAYNE WEIGEL

4 CLAUDE WIBLIN

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I N D E X

	<u>Agenda Item</u>	<u>Page</u>
1		
2		
3	Presentation by Jesse Funches, Deputy Controller	7
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

P-R-O-C-E-E-D-I-N-G-S

(1:15 p.m.)

MR. BROOKMAN: Hi, everybody. This is Doug Brookman.

The session, this is the direction setting Issue No. 21 on fees. Our presenter this afternoon is Jesse Funches, Deputy Controller.

Jesse.

MR. FUNCHES: Thank you.

Good afternoon. I have with me today Mr. James Holloway. Jim is the writer for this issue paper, and I am the sponsor.

I think, as maybe most of you know in the room, that NRC is required by law to assess fees to recover 100 percent of its budget, less the funds that come from the waste fund, and we've been required to do this since fiscal year 1991, so about six years.

Prior to that, we were required to get about 33 percent for a while, and then even before that we had no set amounts, but as a result of the 100 percent requirement, the fees for many people were increased, you know, manyfold.

Unlike maybe some of the other issues we will talk about today, the implementation of fees is something that we are required to do by rulemaking. So

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1 implementation details we kind of have a history of going
2 out and getting public comment on, and we do it every
3 year. So implementation details for next year, again,
4 will be issued through public comments, and you'll have an
5 opportunity to comment on those implementation details.

6 The issue we're talking about today basically
7 involves more the strategy or the policy in terms of how
8 we consider fees and how we try to make those fees as fair
9 and equitable as possible.

10 There are two separate, but somewhat related,
11 issues here. The first issue relates to the consideration
12 of fees in the NRC decision-making process. Over time,
13 because of the controversial fees and people being
14 concerned about paying fees, the issue sometimes creeps
15 into the decision: well, you know, if I can't get to the
16 exact person who's going to pay this fee, should I be
17 doing this function at all?

18 And so the first issue deals with that
19 question.

20 The second issue that's on the next chart
21 addresses basically the question of what should we do to
22 make fees as fair and equitable as possible if we are to
23 assess fees or what are the alternative funding mechanisms
24 that NRC could pursue, in addition to annual
25 appropriation, to make fees more fair or more equitable.

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1 A related question, and it has to do with the
2 second means of NRC's funding, and it's through
3 reimbursable, that question relates to if we are to
4 perform activity on the reimbursable, how do we deal with
5 the question of ceiling on the number of people that we
6 can have. That ceiling is imposed by OMB, and it
7 typically is imposed as it relates to appropriated funds.

8 The key factors that surround this issue are,
9 first, as I mentioned, NRC gets its funds from two places:
10 one, from appropriation, and the second place we get funds
11 is through what we call reimbursable agreement.

12 The appropriations that we get are -- you
13 know, the budget goes to OMB and goes to Congress.
14 Congress has hearings, and then ultimately they
15 appropriate funds to NRC.

16 The second means from which we get funds would
17 be from reimbursement or from others for the performance
18 of certain activities that are not required to be funded
19 through appropriations, and no reimbursements are added to
20 the appropriations. So the total amount of funds that we
21 do have to spend is the sum of the appropriated fund plus
22 the funds we receive through reimbursement.

23 The type of funds we receive through
24 reimbursement could include a cooperative research
25 agreement with a foreign country. We receive those

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1 monies, and we retain those funds, and we use for the
2 purpose that we receive them for. We also will do a
3 reimbursement work, say, for the Department of Energy or
4 for NASA.

5 Although Congress appropriates funds to us, we
6 are required to recover those funds through fees. We
7 don't keep the fees. We collect the fees, and we give
8 them to Treasury, which then in their accounting
9 mechanism, they offset our budget, but the amount of funds
10 we have to expand on a year is the amount that we get
11 appropriated.

12 Over the omnibus budget reconciliation of 1990
13 -- and I think that's the basic factor that causes a lot
14 of the issues that we'll be talking about today --
15 requires us to get 100 percent of our budget by assessing
16 fees. It requires us to use type types of fees to receive
17 those funds.

18 The first type is what we call fee-for-
19 service. If I perform an inspection or issue a license,
20 then there is a fee that is paid for that.

21 The second type of fee is what we call an
22 annual fee. That annual fee makes up the difference
23 between 100 percent and what we get through these fees for
24 services.

25 The annual fee, in essence, recovers the

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1 generic type of activities that are not recovered through
2 the fee for services.

3 The laws have certain constraints that they
4 place on NRC in recovering fees. For example, the law
5 that gives us authority to recover a fee for service says
6 we cannot recover a fee for service from another federal
7 agency.

8 Likewise, the law over telling us to assess an
9 annual fee, it tells us we can only assess fees to
10 licensees.

11 As a result of these constraints, one of the
12 issues that has come up is not all beneficiaries of NRC
13 services pay a fee, and this has led some people to say
14 that they are paying a fee for things that do not benefit
15 them.

16 So this controversy, as a result of people
17 believing that they're paying for services that don't
18 benefit them, plus the fact that once we went to 100
19 percent it was a quantum jump from what people had been
20 paying before, and they did not see, quote, an added value
21 at that time because they were receiving the same value.
22 There was a lot of controversy in the early days about
23 fees. We received probably about three or 4,000 comments
24 on the rules that we've had. We have had hundreds of
25 letters from Congressmen as it relates to fees, and

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1 primarily revolving around those two areas.

2 As a result, Congress, in the Energy Policy
3 Act of 1992, requested that we perform a study of how to
4 make fees more fair and equitable, and during that study,
5 they requested that we go out and obtain comments from the
6 public.

7 We did that, got over 500, I believe, comments
8 from the public. Based on those comments, our own
9 evaluation of lessons we had learned in the earlier part
10 of implementation of the fees, we wrote a report and sent
11 it to Congress.

12 One of the key recommendations in that report
13 was that the amount -- we have about 50 to \$60 million or
14 about ten percent of NRC's budget -- that was not being
15 paid for by the people that were necessarily benefitting
16 from those, and we recommended that that amount be taken
17 off the fee base, that is, that we recover approximately
18 90 percent of our budget as opposed to 100 percent.

19 We testified to Congress. The Chairman at
20 that time testified to the Senate and, again, made the
21 recommendation. We subsequently also had discussion with
22 OMB concerning the recommendation, and as of this date, no
23 legislation has been enacted as a result of that
24 recommendation.

25 Given the legislation that was enacted, about

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1 two years ago we looked to see if we could, within the
2 existing constraints, make the collection of that 50 to
3 \$60 million more equitable, and what we did basically was
4 looked at it and said we would treat it similar to
5 overhead and prorate it to all fee paying licensees based
6 on the amount of fee that they were paying otherwise.

7 The options that we looked at in relation to
8 these issues, in developing the option, especially in
9 regards to how we consider fees in making decisions about
10 what we do, we divided our activities up into two
11 categories. The first category is what we call mandated
12 activities. These are activities that we are, quote,
13 mandated to do either because of -- I shouldn't say the
14 activity, but either the activity we are performing in
15 response to mandates. For example, we license plants in
16 response to the Atomic Energy Act. We do certain things
17 in response to treaties. We do other things in response
18 to executive orders, et cetera, but things that are
19 mandated to us to do.

20 That was the first category of activity. Then
21 the other category is the opposite of that. It is non-
22 mandated activities. There basically these are activities
23 that we perform as a service to another agency or another
24 entity that we are not performing in response to a
25 mandate, but in response to a request, and typically these

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1 activities are performed under what is called the Economy
2 Act within the government. It basically says that if you
3 have a capability that another agency can use cost
4 effectively, then you are allowed to provide that service,
5 but you're not required to.

6 The first option we had was to say for
7 mandated activities, we would not consider fees in making
8 decision for most mandated activities, and for non-
9 mandated activity, we would consider fees.

10 This is, in essence, what we are doing today,
11 and I think the key word there is "most." From time to
12 time, as issues arise, I think the Commission was finding
13 itself having one factor, who's going to pay for it, built
14 into it as opposed to the question of: do I need to
15 perform this function? Is it for effectiveness of my
16 regulatory program or in support of my regulatory program
17 or in my mission?

18 The second option is basically no
19 consideration of fees for mandated activities and for non-
20 mandated activities, we would consider fees, and we
21 requested the requester to reimburse the NRC for
22 performing the activity.

23 In essence, the only difference between the
24 first and the second option is in the second option it
25 would be a clear decision that our decision on whether or

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1 not to perform the activity that's mandated would be based
2 on the merits of performing the activity as opposed to
3 who's going to pay for it.

4 The next option is one where we say we won't
5 consider fees in making decisions by the NRC's activity,
6 mandated or non-mandated, and this is, in essence, where
7 we were before we had 100 percent. Basically we would
8 decide whether it was something in the government
9 interest, and we would go ahead and do it without
10 considering fees.

11 Obviously, you know, the 400 percent fee was a
12 big factor in the decision anyway. So this would be a
13 step back to where we were in the past with 400 percent.

14 The last option is what we call a fee-for-
15 service option. It's basically to say we would consider
16 the payment of fees in making all our decisions, and it
17 would be more like anything that we do we would consider
18 who's going to pay for it and would only do it if we could
19 get the person to pay for it.

20 Obviously this option would require us to have
21 legislation because, as I mentioned earlier, there are
22 some things that, for example, we can't charge now for a
23 license that is being issued to a VA hospital, the
24 issuance of that license.

25 If we were to go with this option then either,

1 one, we would have to be relieved of our responsibility or
2 the VA couldn't have a license, or we would have to get
3 authority to be able to charge them.

4 So implementation of Option 4 would require
5 that we have some type of legislation either to give us
6 more authority to charge fees or say if you can't charge
7 fees, you're not required to perform the function for your
8 mission.

9 Under each of these four options, the payment
10 of fees would be considered when we would add new
11 responsibilities, such as when new responsibility would be
12 given to NRC, such as with what was done when we were
13 given a responsibility to oversee the uranium enrichment
14 facility that DOE had. As part of the legislation giving
15 us that authority, Congress explicitly said you now can
16 charge DOE for any activity you perform for those
17 facilities.

18 Recently, in the fiscal year 1997
19 appropriation, DOE had also come forward and asked us to
20 do some work at Hanford. We had two choices there. One
21 is to do it through reimbursement or to have it taken off
22 the fee base.

23 As part of our appropriation request, with the
24 agreement of OMB we requested that the money for those
25 activities not be included in the fee base, and as part of

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1 the appropriation that was recently passed, Congress had
2 removed that amount of money from the fee base. So in
3 this case, they made the consideration as part of the
4 appropriation bill, and they gave us the -- they did not
5 require us to recover those funds from other licensees.

6 The next set of options talks about a funding
7 mechanism for recovering fees, our recovering NRC's cost
8 or not recovering NRC's cost, and I think we look broadly
9 here from recovering the cost of taxes all the way up
10 through recovering the cost through fees or reimbursement.

11 The first funding mechanism is to recover the
12 cost of providing requested service from the requested
13 user fees or reimbursable agreements, and costs of
14 activity that serves the collective interest of the
15 general public would be recovered from general revenues
16 raised by taxes.

17 This, in essence, is the recommendation that
18 we had made to Congress as part of the report we had sent
19 to them in response to the Energy Policy Act. In essence,
20 we were saying that those activities associated with the
21 \$50 million or so were definitely not directly related to
22 the licensees that we had and, therefore, should be, you
23 know, considered in response to the collective interest of
24 the public and, therefore, should be taken off the fee
25 base, which would imply it should be funded through taxes.

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1 So in essence, that was the alternative we
2 recommended as part of the fee policy report.

3 Alternative 2 would be, in essence, what we
4 are doing today. We would charge all applicants and
5 licensees, would continue to pay for 100 percent of the
6 appropriated budget, and would use reimbursable agreements
7 to fund all non-mandated activity. That, in essence, is
8 the current situation, and that's Alternative 2.

9 Alternative 3 would give us more flexibility
10 to assess fees and, therefore, give us more authority to
11 assess fees to other entities, thereby removing what might
12 be considered some fairness and equity concern by those
13 who are currently paying fees.

14 And the last alternative is what we would call
15 basically you would go back and you would fund all NRC's
16 activities through general revenues, and you would request
17 Congress to rescind the Independent Office Appropriations
18 Act, which gives us the authority to charge our fee for
19 service and the Omnibus Budget Reconciliation Act of 1990,
20 and then fully fund the NRC through taxes.

21 Obviously if that option was picked and
22 enacted, the concerns that we're talking about here would
23 go away.

24 I'm going to read from the summary on the
25 Commission's preliminary views. In this case the

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1 commission did provide, you know, a fairly clear rationale
2 for their decision, and I'd like to read that rationale
3 just for a few minutes just to give you a basis for the
4 Commission decision, especially on the consideration of
5 fees in making the decision.

6 What the Commission said was, "The commission
7 believes that the NRC public health and safety mission
8 must be the foundation for decision-making activities
9 about activities that the agency should perform. In
10 making decisions on the work which the NRC would perform,
11 the Commission does and will continue to consider the cost
12 of this activity and consistently examine ways to
13 accomplish its mission with a responsible budget.

14 "Whether the NRC's budget is funded by the
15 public through taxes paid to the Treasury or by licensee
16 fees paid to the Treasury, the NRC's decision about its
17 program should be the same. The Commission believes that
18 fees should not be the primary factor in determining work
19 to be performed in response to NRC's health and safety
20 mission. It is the Commission's decision that
21 programmatic decisions should not be fee driven and should
22 be based on their contribution to public health and
23 safety."

24 That was the Commission, and essentially they
25 adopt Option 2, that is, programmatic decisions in

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1 response to NRC mandate would not be driven by fees.
2 Specific activity conducted by the NRC would be evaluated
3 for effectiveness and efficiency, and I think what you've
4 heard today in terms of evaluating our activity for
5 effectiveness and efficiency are set on a path that would
6 give us the most bang for our bucks, is consistent with
7 this.

8 The Commission decision on the funding
9 mechanism is that the commission basically picked
10 Alternative 2. It would continue the agency's current
11 approach whereby applicant and licensees would pay 100
12 percent of the appropriated budget authority.
13 Reimbursement would be used to fund non-mandated
14 activities.

15 The Commission did go on to say that they
16 would continue to look for ways to make the fees fairer
17 and equitable and, in fact, encourage the stakeholders in
18 this process or in written comments to provide any
19 suggestion that they may have that would do that.

20 In relationship to the FTE consideration given
21 that funding approach if we are going to do reimbursable,
22 there is activity within the government to try to look at
23 ways to -- call them enterprise works -- but look at
24 certain activities, business-like activities, and under
25 those circumstances look at the potential for relieving

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1 the agency of the FTE ceiling that is normally associated
2 with the appropriation, and the Commission decided that
3 they would support the agency moving forward to work with
4 OMB to try to relieve that constraint.

5 That's a summation of the issue paper. I
6 guess there's one other point that I'd like to make that's
7 not on the chart that is a very important external factor,
8 and it's been talked about, I think, throughout this
9 stakeholder conference, and that is that budget will be
10 constrained.

11 I'm going to state it a little bit different.
12 The way I like to state it is one constraint is that
13 Congress and the administration will continue to place
14 emphasis on balancing the federal budget, and I think that
15 has two implications.

16 The first implication is that they would
17 continue to like revenues to come in, and the second
18 implication is obviously, you know, they would tend to
19 drive the budgets down.

20 So I think particularly as it relates to this
21 issue, the external factor of balancing the federal budget
22 is one that has to be factored in as we try to come to a
23 decision on how to proceed.

24 With that, I turn it back over to you, and I
25 encourage suggestions that you might have on either of the

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1 two issues and any comments that you might have.

2 MR. BROOKMAN: Questions about the
3 presentation?

4 I thought the presentation was clear, but it's
5 a fairly complicated picture.

6 MR. FUNCHES: Right.

7 MR. BROOKMAN: Questions about the content of
8 this presentation?

9 Not so many. As I understand it, this issue
10 has been afoot for a while.

11 MR. FUNCHES: Yes.

12 MR. BROOKMAN: And there has been a lot of
13 exploration of this issue.

14 MR. FUNCHES: Yes.

15 MR. BROOKMAN: But based on your comment here,
16 the report that you issued to Congress in 1994, I don't
17 expect you to have a crystal ball, but it doesn't sound as
18 though you are especially optimistic that the Congress is
19 going to provide you relief for this 50 to 60 million off
20 your fee base.

21 MR. FUNCHES: I don't want to say no because
22 we continue to get questions about it.

23 MR. BROOKMAN: Okay, and obviously you're
24 continuing to gin up interest on it.

25 MR. FUNCHES: Right. Recently we had a

1 question about, you know, the report, and the idea of, you
2 know, do we still support it, from Congress, and I don't
3 think the final answer has gone out, but I think the
4 Commission's answer would be, yes, we continue to support
5 that report.

6 Do I have -- you know, I think there's some
7 chance, but I think the chances are, you know, slim. The
8 chance of not passing it is a lot greater than the chance
9 that you will get something through without, you know,
10 something else happening.

11 MR. BROOKMAN: Okay. Let me turn to the
12 options and the option that the Commission has
13 preliminarily favored, chosen. What about Option 2? Let
14 me ask those of you in the audience. Are you comfortable
15 with the choice? Do you think there's a better one? Is
16 there a different way to look at this?

17 Yes.

18 MR. HILL: I'm Tom Hill, representing the
19 Organization of Agreement Statements and the Conference of
20 Radiation Control Program Directors, both, on this issue
21 here today.

22 You asked about Option 2, and we support
23 Option 2.

24 Let me, before I get down to that particular
25 point, let me get a few other introductory comments, and

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1 also I understand the constraints that have been placed on
2 the agency, you know. Nevertheless, I will make some of
3 these comments that may say, "You don't understand that,"
4 but that's okay. I do.

5 (Laughter.)

6 MR. BROOKMAN: That's fine.

7 MR. HILL: State radiation control programs
8 face the same type problems that NRC faces in fee
9 collection. Several states have been directed by their
10 legislatures to collect fees equal to 100 percent of their
11 radiation control budgets also, and here, too, we assess
12 fees to our licensees and registrants for all of our
13 regulatory costs.

14 Like NRC, we must also recover costs for
15 regulatory activities not attributable to licensees and
16 registrants.

17 One question that came up, and I'm not
18 necessarily asking this question for an answer here today,
19 but it was one in reviewing this. Is NRC unique in the
20 federal government in that it's the only agency being
21 required to collect 100 percent of its budget through
22 fees?

23 We couldn't name another.

24 MR. FUNCHES: Yeah, if I can answer, I don't
25 think we are the only agency. I know, for example, the

1 Patent and Trademark -- I think their requirement is like
2 98 percent, and I don't know why they got picked for 98
3 percent, but their fees, for example, are set in the
4 legislation.

5 There was recent discussion -- and, Jim,
6 please chime in here -- there was recent discussion, I
7 think, about FERC increasing to 90 percent.

8 MR. HOLLOWAY: Yeah, I'm Jim Holloway.

9 It's my understanding that FERC, the Federal
10 Energy Regulatory Commission, charges 100 percent of their
11 budget through fees, fee assessments.

12 MR. FUNCHES: And I know the Securities and
13 Exchange Commission assesses fees for 100 percent, but
14 they've got a little bit different legislation. They can
15 retain some of their fees and hire extra inspectors, but I
16 think they can only use the money that they retain to hire
17 extra inspectors. I think that's the way, but I do know
18 that the Securities and Exchange Commission is 100 percent
19 fee because for a while they were getting more than 100
20 percent, as I recall.

21 MR. HILL: Well, we couldn't think of any, and
22 I appreciate that.

23 MR. FUNCHES: Okay.

24 MR. HILL: It's our opinion that Congress
25 should recognize and appropriate NRC funds for areas for

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1 which fees should not be collected from licensees, such as
2 agreement state oversight and international programs.

3 As I stated, we support Option 2 because
4 payment of fees should not be considered in deciding
5 whether or not to perform mandated activities.

6 Funds for mandated activities were initially
7 allocated from appropriations. Therefore, recouping the
8 costs of performing those activities should not be a
9 determining factor.

10 As stated in the discussion of this option,
11 training for agreement states is a mandated activity. NRC
12 should not consider charging the agreement states for
13 training or other services provided to the agreement
14 states, such as technical assistance. Doing so would only
15 force the agreement states to adopt the same philosophy
16 and charge NRC for services provided.

17 That was talked about yesterday under DSI No.
18 4 for tit-for-tat, I think was the way it was worded then.

19 State radiation control programs have, for the
20 most part, technical competence and adequate resources to
21 address problems that arise in the states, but
22 occasionally technical assistance from NRC is necessary.

23 However, if NRC chooses to charge for this
24 service, state programs would be inclined to charge NRC
25 for any technical assistance we provide. An example of

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1 technical assistance we've provided is the assistance in
2 the survey and coordination work done by the states during
3 the Mexican steel contamination incident and during the
4 polonium air ionizer incidents.

5 Further, states would need to charge NRC for
6 rule development done on the well logging and industrial
7 radiography rules that were used as models for NRC rule
8 promulgation.

9 And I believe also yesterday in the DSI-4
10 discussion, we listed several different other activities
11 also.

12 The funding mechanism for fee recovery should
13 remain as current. However, it seems that the NRC -- and
14 here's where I may depart a little bit from the
15 constraints -- should be charging fellow federal agencies
16 for regulatory costs incurred. This should be done either
17 as contract work for special projects or, if the federal
18 agencies function the same as licensees, VA hospitals, DOE
19 facilities, U.S. Army, et cetera, the applicable license
20 fee should be charged.

21 Interagency contracts are used in state
22 agencies to account for work done and costs incurred. In
23 many states, fellow state agencies that function as
24 licensees and registrants are charged the applicable
25 license or registration fee. Our state Departments of

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1 Transportation use moisture density gauges to pay fees to
2 our programs. Our universities, state universities with
3 broad licenses for their medical academic research, at
4 cetera, pay fees.

5 Even though at times payments involve simply a
6 movement of state funds, it represents an accurate
7 accounting and cost for all agencies. We encourage NRC to
8 develop such cost accounting rather than passing on the
9 cost of regulating federal agencies and institutions to
10 the fee paying licensees.

11 As an example, in our program, our lab,
12 environmental lab, is in the same branch that our program
13 is, and we invoice them for the annual fee, licensing and
14 inspection, and they call accounting, and they transfer
15 the fees. You know, so it's accounted that way.

16 In addition to those comments for OAS and
17 CRCPD, I would like to add another comment on behalf of
18 the agreement states.

19 For the agreement states, there is an issue of
20 practicality of funding for out-of-state travel for
21 training. Staff of many radiation control programs
22 frequently can receive authorization for out-of-state
23 travel only when the travel is funded by sources outside
24 the state government, whether that's NRC, CRCPD, FEMA, EPA
25 or whoever.

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1 MR. BROOKMAN: Would you be a little more
2 specific about that? It's only to attend training offered
3 by or authorized by or --

4 MR. HILL: It could be training; it could be
5 meetings; whatever. To get out-of-state travel, period,
6 for whatever reason, whether it's training or whether it's
7 to attend a meeting or a workshop or whatever, if it's
8 funded by outside the state agency, then you can receive
9 authorization to travel out of state.

10 MR. BROOKMAN: I see. You covered a lot of
11 ground there. Do you have more to contribute?

12 MR. HILL: That's what I had unless there was
13 an explanation or clarification that I might give to what
14 I've said.

15 MR. BROOKMAN: I noted that, for example, one
16 question I had: you said that you charge all licensees
17 and registrants, or something like that, and, Jesse, I
18 wanted to ask you: licensees pay the bulk of the fees,
19 and there's a class of facilities for which there are no
20 fees.

21 MR. FUNCHES: Right. Let me just -- I think
22 the question of -- I'll make two comments.

23 The question, obviously the Commission has
24 solicited comments on the question of the agreement state
25 training, traveling, tech. assistance, and I really

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1 appreciate those comments, and I think, you know, again,
2 they'll feed into the Commission decision on DSI-4 as it
3 relates to that, and I appreciate those, and I think it
4 will be very useful to the Commission in, you know,
5 revisiting its preliminary decision and making a final
6 decision.

7 Go back to the charging a federal agency and
8 make one clarification. We do charge a federal agency an
9 annual fee, and this again is a quirk of the law. We can
10 charge them an annual fee if they have a license. So we
11 are now charging them all annual fees.

12 What we're not able to charge them is the fee
13 for service because the fee for service is established by
14 another law, and that explicitly says that you will not
15 charge.

16 We can't do the work with them on the
17 contract, and I don't want to sound like I'm being a
18 bureaucrat, but we can't do the work for them under the
19 contract because the appropriation la says if as part of
20 your mission or as part of your enabling legislation
21 you're required to perform a review of a license for --
22 and we'll just use VA hospital as an example -- but of a
23 VS hospital and they must be licensed by NRC, then I'm not
24 going to put that in an appropriation. I'm going to get
25 that money from somewhere else. I can't say I'm going to

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1 go and do it under reimbursable or do it under contract.

2 And the reason I can't is basically what
3 they're saying is you can't supplement your appropriation
4 for the authorized mission I've given you to do, and so
5 we're kind of caught in the middle. We have gotten -- I
6 mean we didn't get legislation. When they gave us TVA
7 facilities, they basically said, "You don't have to follow
8 that." So we charged TVA. When they gave us USCC, they
9 also gave us an exemption for USCC.

10 So I think to implement what you're saying,
11 and I'm, you know, not disagreeing with you, I think
12 you're saying that maybe we ought to go to get something
13 that would allow us to charge other federal agencies, even
14 though you're moving money from one account to another,
15 but you know, that's to kind of place accountability where
16 it is, and if you're using the service, you pay for the
17 service, and that's the way I understand the comment
18 you're saying, and that's the way we would have to
19 implement that.

20 I think, you know, it would be good if we had
21 some other flexibility, but we have looked, and we don't
22 have it right now. I think that, you know, the
23 temperament of that option would require us to go get
24 legislation, and I'll take that comment from that
25 perspective.

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1 MR. BROOKMAN: Okay. Thank you.

2 MR. FUNCHES: Thanks, again, for your comment.

3 MR. BROOKMAN: Did your last comment address
4 his point about cost accounting?

5 MR. FUNCHES: Yeah, I think that's what you're
6 saying. You get the legislation, and what he's basically
7 saying even though you're moving money from DOE account to
8 NRC account and it's all within the big checkbook of the
9 government, it still puts some accountability on the
10 person who is requesting the services.

11 MR. BROOKMAN: Okay. How about some of the
12 rest of you? We have both the mandated activities for
13 which the review has chosen preliminary Option 2, and then
14 the funding mechanism, Number 2, the current approach.

15 Since they did provide you the ability to --
16 did you say it was assess fees for USCC?

17 MR. FUNCHES: Yes.

18 MR. BROOKMAN: Does that seem to be a trend
19 and do you think that's likely to continue?

20 MR. FUNCHES: It's definitely a trend that for
21 any new work they give us, part of the alternative is that
22 we will push to explicitly have them address fees.

23 I mean we might say, "Well, we've addressed
24 them, and the answer is we're not going to allow you to
25 charge them," but we would push to explicitly request that

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1 Congress and the administration who will pay for the
2 activity.

3 And I think if you sat through the DOE -- oh,
4 it's the regulatory oversight or DOE issue paper -- that's
5 a big concern for us as part of that issue. That is, if
6 we are given responsibility for regulatory oversight of
7 DOE, we must address the fees question or basically where
8 the money comes from to do such regulation.

9 It would, you know, be unfortunate if we say
10 you got another \$200 million -- I'm just picking a number
11 -- but program, and then you have to try to assess that to
12 the existing licensee. So we have explicitly addressed
13 that in the comments, that we are going back and that that
14 issue must be addressed.

15 And there's two ways to deal with the issue.
16 One is to do like they did for USCC and basically say
17 you're allowed to charge them. Another one is to say,
18 okay, that amount of money will not be part of your fee
19 base. We'll take it from the Treasury, and therefore, the
20 issue goes away, and we don't have a strong view either
21 way. You know, there's some benefits both ways.

22 But either one of those options would solve
23 the problem.

24 MR. BROOKMAN: I see. Two other issues that
25 you referenced were how to recover in a fair and equity

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1 way.

2 MR. FUNCHES: Right.

3 MR. BROOKMAN: And the other one was related
4 to FTEs. Maybe we could go with the first one first. I
5 was wondering if the organization of agreement states had
6 additional ideas, for example, on how to recover these
7 fees in a fairer and more equitable way, just to put you
8 on the spot.

9 MR. HILL: Thank you for that.

10 I guess our thought is that the mandated
11 activities that, like international programs, like
12 oversight, should be removed from the fee base.

13 MR. FUNCHES: So you would --

14 MR. HILL: I think it should be, and that FTE
15 should be removed from it.

16 MR. BROOKMAN: Can you give us a sense of your
17 rationale?

18 MR. HILL: Well, I will go back to a little
19 bit of NRC's comments and positions, as I understand some
20 of them have been, that they are mandated by the Atomic
21 Energy Act to have a national type program, and so
22 activities that are performed by the agreement states
23 helps NRC in meeting that mission, protecting public
24 health and safety on a national basis.

25 And so that, I think, is the simplest way, a

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1 kind of a baseline rationale for that.

2 MR. FUNCHES: And I believe that's more like
3 Option 1 on the funding mechanisms, I guess, funding
4 authority Mechanism 1 where we would say those types of
5 activities would be in the collective interest of the
6 public and, therefore, should not be funded through fees,
7 but through -- yeah.

8 MR. BROOKMAN: Can you say just briefly? You
9 chose funding Mechanism 2. Kind of some of the tension
10 between two and one at the Commission level.

11 MR. FUNCHES: We recommended one. We went
12 forward with the study to Congress basically, and that was
13 a Commission recommendation. I can't, you know, under
14 this particular funding mechanism. The Commission didn't
15 state their rationale, but I could probably say some of
16 the factors that obviously they would have considered in
17 making that decision.

18 And one is I think one actually factor that is
19 there, and it was presented in a paper, was the fact that,
20 you know, there's this tension to balance the federal
21 budget and that means revenues plus decreases, and I think
22 when we made the report to Congress and when we actually
23 testified, I think, you know, Congress being sympathetic,
24 they asked for the study. They had the report. They
25 asked for the hearing, and I think I can remember one

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1 comment during that hearing was like, "Well, if I take
2 this revenue off, where do I make it up?" Or stated
3 another way, they're dealing with what they call caps on
4 the amount of budget they can handle for discretionary,
5 and if NRC is bringing revenues in and offset, if I stop
6 those revenues from coming in, then they've got to find a
7 cut somewhere else.

8 And the question was: well, if I have you
9 that \$50 million fee base, where do I find the \$50 million
10 from? And I think that's the tension that Congress was
11 going through when they were looking at this.

12 You know, from a practical point of view
13 obviously has made the recommendation a couple of times,
14 and at that point nothing had happened, but you know,
15 specifically why they picked this one, you know, I don't
16 want to speculate because I wasn't, you know, involved in
17 the detailed discussion at the Commission level.

18 MR. BROOKMAN: Are there other ideas on how to
19 recover fees in a fair, in a more fair, I guess, and
20 equitable way? Other ideas from individuals or groups?

21 What about the question of FTEs? I note in
22 your paper you list three different types of work that the
23 NRC performs. Do you need to have or does that then mean
24 that you might have a different perspective with respect
25 to full-time equivalents for each of the three?

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1 MR. FUNCHES: I think the FTE question really
2 boils down to or again it's back to again I can get money
3 to fund these things as somebody asked me to do. If -- I
4 don't know -- NASA comes in and says, "I have a space
5 mission that involves -- I don't know -- a nuclear source,
6 and I'd you to help me review it," and they say, well,
7 NASA has billions of dollars here. So, you know, \$200,000
8 to go do it.

9 That's good if I can go contract another
10 agency, you know, contract for that because then they can
11 get the expertise and there's no cost, but if I'm limited
12 to the number of people that I can have, if my limitation
13 is to the number of people, then it causes a concern in
14 that if I use that person, even though I've got the money
15 to pay that person or extra money to pay for extra people,
16 then I've got to take that person off some other work, and
17 it creates a -- you know, you have to make a priority
18 decision, especially if you are really constrained by the
19 number of people you can have on board. As the FTE
20 ceiling gets lower and lower, those constraints become
21 more of a problem for us.

22 And what it does is puts you in competition
23 for delivered FTEs, not the fact that you couldn't fund
24 more. It's just you don't have the numbers there, and OMB
25 controls us by the number of FTEs.

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1 MR. BROOKMAN: Yeah.

2 MR. FUNCHES: There were some proposals in the
3 past that, hey, don't worry about the FTEs. Just worry
4 about the dollars, and I think it was made by the National
5 Performance Review Group, but that so far has not been
6 agreed to by the administration.

7 MR. BROOKMAN: I see. I was wondering if the
8 agreement states or other people thought there were
9 additional funding mechanisms that the NRC could pursue
10 that they haven't yet pursued, if there are other ways to
11 fill the coffers, add to the coffers.

12 MR. PEVELER: This is Ken Peveler. I'm
13 speaking as a private citizen here.

14 I had a whole bunch of thoughts here. They're
15 probably rambling. So maybe I'll just provide some food
16 for thought for others here.

17 We're talking about collecting fees. What
18 we're really talking about is collecting money to perform
19 a task. The task is a mandated effort to protect the
20 public health and safety.

21 In collecting fees, where does the money come
22 from? It comes from the consumer. Tax on the utilities,
23 so to speak, for the fee only causes us as a utility to
24 pass on that funding request to the consumer, which is
25 basically equivalent to a tax that the government would

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1 collect.

2 So, in essence, all we've done is rearrange
3 what we call it to collect the funds to support an
4 activity. So I guess along that thought, to me the
5 beneficiary is the public, and the public is the one who's
6 paying the price.

7 How are you going to tie it back to the
8 mission and making sure that the activities we're
9 performing are those necessary to meet the mandate of the
10 mission?

11 So it seems to me that this DSI would tie it
12 back to the risk and performance based regulation, the
13 role of industry, et cetera. It probably ties back to all
14 of them.

15 And when you asked the question of reputable
16 collection, and if you look at the industry and the way
17 it's evolving right now, I think you're really putting the
18 nuclear industry in an anti-competitive position to a
19 small degree. It's not a large cost, but it is a cost.
20 It is a delta in the cost between a fossil plant and a
21 nuclear plant, and therefore, you continue to drive the
22 nuclear industry in a negative direction.

23 So I think as we see more plants go down, your
24 fees are going to go up because you're going to have less
25 plants to pull the fees from.

1 So I think we've got to be concerned a little
2 bit about our mix of electric generation to some degree
3 and the way we're driving the industry.

4 Thank you.

5 MR. FUNCHES: Yeah, I appreciate that comment.
6 Early on I know that a similar discussion/debate was going
7 forth to Congress after the earlier days are over about
8 the -- and it really is a public policy question of how
9 you raise revenues. You know, we were kind of given a
10 mandate from, say, for this industry you're required to
11 collect fees, and how they approach the other industry,
12 you know, I guess they don't charge fees for the people
13 that regulate coal.

14 But it is a factor, I think, that's important
15 in the public policy debate about how you assess fees or
16 do you assess fees or do you recover costs through taxes,
17 and I appreciate the comment.

18 MR. BROOKMAN: From the standpoint of the
19 consumer, certainly, fees are not as straightforward as --
20 I mean the taxpayer -- not as straightforward as taxes.

21 MR. PEVELER: They don't seem as
22 straightforward.

23 MR. BROOKMAN: Exactly.

24 MR. FUNCHES: Right.

25 (Laughter.)

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1 MR. BROOKMAN: A notable distinction.

2 Additional thoughts on either the question --
3 I'm not sure we finished fully or covered fully the
4 question of FTEs. I thought your explanation was good.
5 I'm wondering if there are other alternatives to be
6 explored there or are there thoughts on the question of
7 fair and equitable?

8 MR. FUNCHES: You know, I think most of the
9 people here, we have opportunity to communicate once a
10 year, and over time, you know, a lot of issues have been
11 dealt with as it relates to fees, and I'll say I
12 appreciate those comments also, sometimes as hard as they
13 were.

14 (Laughter.)

15 MR. BROOKMAN: As an outside observer, it
16 seems as though your understanding of these in the
17 exchange is pretty mature at this point. You know, that's
18 how it strikes me.

19 Okay. Yes.

20 MR. HOLLOWAY: One added comment. Jim
21 Holloway.

22 When the report was sent to Congress, as Jesse
23 said, we had congressional hearings on that subject. Not
24 only did we go down and testify, but the utility industry
25 was there and made comments, as well as the National

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1 Mining Association, if I recall.

2 MR. FUNCHES: Right.

3 MR. HOLLOWAY: So there was input from
4 industry, about the same as we get. Take ten percent of
5 the money off the fee base if you really want to be more
6 fair and equitable in assessing fees. So there was input
7 from the industry at the time.

8 MR. BROOKMAN: Let me just turn --

9 MR. FUNCHES: No, I was just -- that was a
10 good point.

11 MR. BROOKMAN: Just to the larger issue paper,
12 as I think about these four questions, let me ask you
13 collectively if you think any major consideration have
14 been omitted or if major important internal or external
15 factors haven't been considered here, or if you think the
16 issue paper does actually respond well to the current
17 environmental and challenges.

18 Let me just toss those out for your
19 consideration. Any omissions? Does this really speak to
20 the current environment and challenges? And does this
21 really adequately address the internal and external
22 factors?

23 (No response.)

24 MR. BROOKMAN: I don't see anybody saying
25 anything additional. I guess you guys must have done a

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1 good job.

2 MR. FUNCHES: Oh, thank you.

3 (Laughter.)

4 MR. BROOKMAN: I'm getting the sense, Jesse,
5 that you've gotten the input that you're going to get from
6 this group.

7 MR. FUNCHES: And I appreciate it, and thank
8 you very much for the comments, and you know, the
9 Commission will continue to deal with this issue, I'm
10 sure, in the future.

11 MR. BROOKMAN: Thanks to all of you very much
12 for your comments.

13 (Whereupon, at 2:10 p.m., the Managing NRC
14 Finances session was concluded.)

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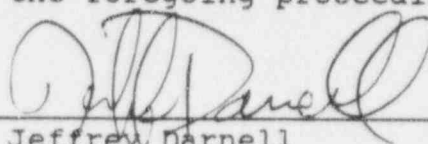
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T



Direction Setting Issue No. 21

Fees

October 24-25, 1996

Sponsor: Jesse L. Funches, OC

Writer: James Holloway, OC



DSI 21

- ★ In Making Decisions About What Activities the NRC Should Perform in Support of Its Mission, to What Extent Should Fees Be Considered?



Other Issues

- ★ What Funding Mechanism Should NRC Pursue, in Addition to Annual Appropriations With Fee Recovery, to Fund Activities That Are Not Required to Be Funded Through Appropriations?
- ★ In Performing Reimbursable Work, How Should NRC Address the Full Time Equivalent (FTE) Consideration That Limit the Number of NRC Staff?

Key Factors

- ★ NRC receives funds from appropriations and reimbursements from others.
- ★ Omnibus Budget Reconciliation Act of 1990 (OBRA-90) requires NRC to recover approximately 100 percent of its budget authority by assessing fees.
- ★ Fees have been highly controversial.
 - Report to Congress in 1994.



Options

- ★ For most mandated activities, do not consider fees in making decisions; for non-mandated activities, consider fees in making decisions.
- ★ No consideration of fees for mandated activities; for non-mandated activities, requestor will reimburse the NRC for cost of performing activities.

Options (cont)

- ★ No consideration of fees in making decisions about any NRC activities.
- ★ Consider the payment of fees in making decisions about all activities performed by the agency.



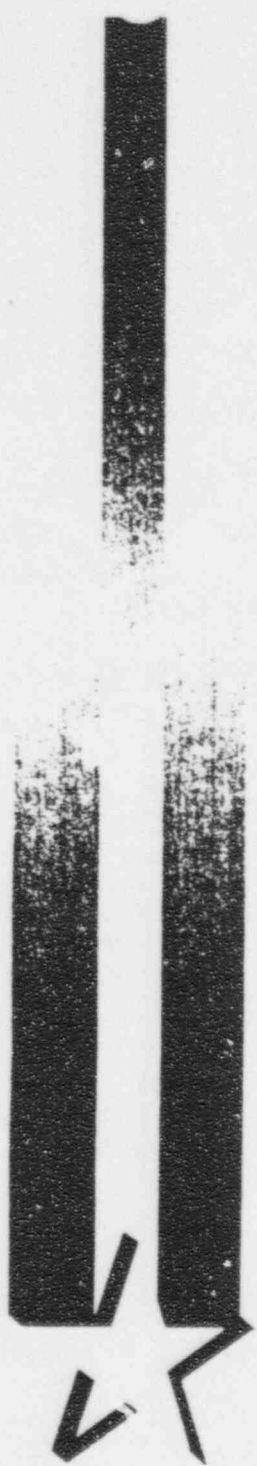
Alternative Funding Mechanisms

- ★ Recover the cost of providing requested services from the requestor using fees and reimbursable agreements. Cost of activities that serve the collective interest of the general public would be recovered from general revenues raised by taxes.



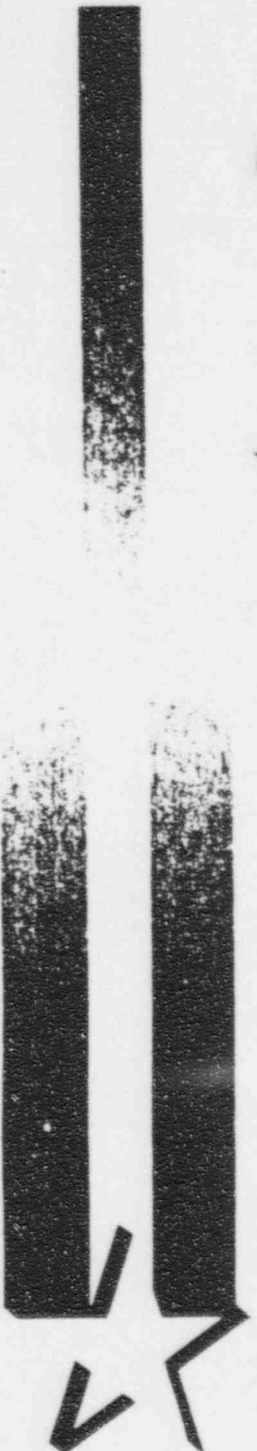
Alternative Funding (cont)

- ★ NRC applicants and licensees would continue to pay for approximately 100 percent of the appropriated budget authority. Reimbursable agreements would be used to fund all non-mandated activities.
- ★ Amend OBRA-90 and AEA Act of 1954 to give NRC maximum flexibility to assess fees.
- ★ Rescind IOAA of 1952 and OBRA-90 so that NRC would be fully funded through taxes.



Commission's Preliminary Views

- ★ Programmatic decisions in response to NRC mandates will not be driven by fees and should be based on their contribution to public health and safety.



Commission's Preliminary Views (cont)

- ★ Continue agency current approach whereby applicants and licensees continue to pay for approximately 100 percent of the appropriated budget authority. Reimbursable agreements would be used to fund non-mandated activities.
 - FTE consideration - support removing FTEs associated with reimbursable work from the NRC ceiling.