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Mr. John W. Lubinski
Director, Office of Nuclear Material Safety and Safeguards

Mr. Howard K. Osborne
Chief Financial Officer
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Industry Comments on How NRC Could Fund Shortfalls in the Fuel Cycle Business Line Budget

Project Number: 689

Dear Mr. Lubinski and Mr. Osborne,

The Nuclear Energy Institute (NEI)[1], on behalf of its fuel cycle facility members, appreciates the continued dialogue between Nuclear Regulatory Commission (NRC) staff and the public on the Fuel Cycle Business Line. We offer some options for its funding to prevent large fluctuations in licensee annual fees despite careful program planning by the NRC staff. Our comments: 1) highlight ongoing observations and specific concerns from operating fuel cycle licensees and applicants; 2) follow up on my August 1, 2023, letter to the NRC and your October 1, 2023, letter response; and 3) are intended to build on discussions between NRC managers and industry representatives held during the November 8, 2023, Fuel Cycle Facility Stakeholders' Meeting. We value candid exchanges on these important matters.

Fundamental Facts & Concerns

- Continued unpredicted, significant 10 CFR Part 171 annual fee increases for the existing fuel cycle facility fleet are not sustainable at a time when the domestic industry is growing to support the increased global electricity demand. Further, as acknowledged by the current Administration, a safe and secure domestic fuel supply chain is a matter of national security.

[1] The Nuclear Energy Institute (NEI) is responsible for establishing unified policy on behalf of its members relating to matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect and engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations involved in the nuclear energy industry.

- Any significant reduction in collected billable hour work under 10 CFR Part 170 perturbates the total fee collection system supporting this small operating fleet of eight licensees, and results in a disproportionate annual fee negative impact which cannot individually or collectively be absorbed or passed on.

- More specifically, the unpredicted and untenable 19% FY2023 annual fee increase over FY2022 levels for fuel cycle facilities is not sustainable. Such annual fee increases cannot be “passed on” to fuel customers or suppliers under existing service contracts. Rather, the fuel cycle facilities must absorb and fund these costs from current calendar year operating budgets. In some cases, funds must be diverted from program modifications or equipment replacement or upgrades.

- Also, in the past, the NRC recognized that the current fuel cycle facility fleet represents a lower risk profile than operating commercial reactors and, along with other factors, reduced the annual fee amount accordingly. This fiscal year, the Category I fuel facility annual fee is only $0.3M less than that of operating power reactors. Therefore, if history repeats itself in FY2024, the Category I annual fee will once again exceed that of operating power reactors. This discrepancy must be rectified.

FY2024 and Beyond

These fairness and inequity issues are compounded by the fact that the NRC’s Fuel Cycle Business Line request in the FY2024 Congressional Budget Justification increases by another $4.5M and 9.1 Full-Time-Equivalent above FY2023 levels. The requested amount is likely too high based on unexpected delays in FY22-23. Therefore, if the NRC is not able to recover Part 170 billable hour fees as estimated, these same facilities will be subject to an additional significant annual fee increase in FY2024.

To help inform a path forward, we request that the NRC share publicly more detailed Part 170 budget execution data. For example, based on our latest discussions with the NRC staff it is unclear: 1) how NRC manages the utilization of its fuel cycle business line licensing staff when billable hours are less than expected; 2) whether, when and how underutilized staff are re-assigned across business lines; and 3) if so, whether fuel cycle facilities’ annual fees are billed to recoup these costs regardless of whether other licensees are billed under Part 170 for this staff time. As NRC’s bill payers, we request transparency of such matters.

In addition, we suggest the following options be considered to manage this issue and mitigate the impact to this small fleet when Part 170 fees collected fall short of NRC’s required collection amount:

- Use carryover funds. In FY24[2], $27.1M carryover funds are being applied to nuclear reactor safety business line to support development of the Advanced Reactor regulatory framework. An

[2] NRC Slides on FY2024 Congressional Budget Justification posted on NRC’s website.

analogous approach could be used in the Fuel Cycle Business Line where carryover funds are applied to fund the Part 170 fee collection shortfall in any one year as needed. Filling the funding gap would demonstrate clear support for the fabrication of advanced fuels and related technologies and work.

- Create a new special purpose fund. This would be funded through the General Fund and not be collected by licensees. It would be allocated only when needed, e.g., when annual fees increase more than 3% in any given year.

- Create a fee cap for fuel cycle facilities. This approach would be similar to what is in place for nuclear power plants.

In closing, the industry appreciates the continued dialogue and will continue to engage with the NRC on this issue. We are also eager to discuss any options currently under NRC's consideration. Our goal is to mitigate the impact of yet another potential increase in annual fees for FY2024 and beyond. Hence, we look forward to our next discussion later this year or early 2024.

Sincerely,

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