

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

December 23, 1988

MEMORANDUM FOR: Victor Stello, Jr.
Executive Director for operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION
AND VOTE, 3:30 P.M., THURSDAY, DECEMBER 15,
1988, COMMISSIONERS' CONFERENCE ROOM, ONE
WHITE FLINT NORTH, ROCKVILLE, MARYLAND
(OPEN TO PUBLIC ATTENDANCE)

I. SECY-88-322 - Promulgation of Final Rule Required by the
Omnibus Budget Act of 1987

The commission, by a 5-0 vote, approved a final rule amending
10 CFR Parts 170 and 171 to require that those licensees
requiring the greatest expenditure of Commission resources pay
the greatest annual fees and to increase the total fees
collected to at least 45 percent of the NRC budget as required
by current legislation, as modified on the attached pages.

(Subsequently, on December 22, 1988, the Secretary signed the
rule.)

The staff is also requested to provide the Commission with
periodic reports on activities for which fees exceed 150
percent of the currently capped amounts.

Attachment:
As stated

cc: Chairman Zech
Commissioner Roberts
Commissioner Carr
Commissioner Rogers
Commissioner Curtiss
OGC

GPA
PDR - Advance
DCS - Pl-124

Enclosure
[7590-01

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NUCLEAR REGULATORY COMMISSION
10 CFR Parts 170 and 171
Revision of Fee Schedule

AGENCY: Nuclear Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (Commission or NRC) is amending its regulations by revising its fee schedules contained in 10 CFR Parts 170 and 171. The revised fee schedules will result in those power reactor, fuel cycle facility and materials applicants and licensees requiring the greatest expenditure of NRC resources paying the greatest fees. This permits NRC to more completely recover under 10 CFR Part 170 costs incurred for identifiable services for power reactor, fuel cycle facility and major materials applicants and licensees. This action also implements fee legislation enacted by Congress in December 1987. All applicants and licensees currently subject to fees under 10 CFR Parts 170 and 171 are affected by this rule.

EFFECTIVE DATE: (30 days from publication).

inspection fee budget costs remains essentially unchanged.

3. Fees for standardized design. Nuclear power industry commenters questioned the Commission's proposal to defer fees for review of standardized reference designs until referenced by an applicant, or at the end of 5 years (10 years if a design is certified) after design approval, whichever comes first. A few commenters felt that fees should not be charged or should be waived for standardized design reviews to remove any disincentive for the standardization program and what could possibly be unusually extensive costs as a result of the review being a "first-of-a-kind" that might require extensive safety reviews.

Response: The Commission's decision to defer fees for standard reference design reviews is based upon a balancing of policy considerations. On the one hand, it is clearly the policy of the Government, and the intent of the Congress, that the Commission collect fees for services rendered to applicants. Thus, standard reference design reviews are not to be performed free of charge. On the other hand, there is a sound and persuasive public policy need to avoid a disincentive to the submittal of standard designs by vendors incorporating the best safety features available for a future generation of reactors. For years, the Commission has supported the use of standard designs. See, e.g., 10 CFR Part 50, Appendix O, and 10 CFR 2.110. On balance, the Commission believes that the deferral of fees for standard design reviews is a reasonable compromise that serves the public interest. Accordingly, the

Response: Congress provided the Commission with the discretion to

determine which categories of licensees or other persons should be charged an annual fee by the Commission. The Commission's decision not to charge materials licensees annual fees was upheld in Florida Power & Light v. United States, supra. The Commission has reaffirmed its determination that it will not impose an annual fee on its materials licensees. The Commission has more than 8,000 materials licensees. Regulation of these entities requires a minimal expenditure of NRC resources (less than 3 percent of the NRC budget). Moreover, these licensees are an extremely varied class, ranging from large uranium processing operators to small operators involving well logging, radiography, or the use of gauging devices. In light of the relatively minor resources devoted to regulating these entities and the obvious administrative difficulties in determining how to calculate appropriate annual fees for this large, diverse class of licensees, the Commission will not impose an annual fee on these licensees at this time.

3. Some commenters asserted that the cost basis for annual fees should exclude costs serving an independent public benefit.

Response. The concept that costs related to an independent public benefit should not be charged to licensees derives from the case law on application of the Independent Offices Appropriation Act of 1952, 31 U.S.C. 9701 (IOAA). It is not a concept applicable to annual fees charged under CIOBRA, as

Response. It is the position of the Commission that research devoted to the continued safety of nuclear power reactors is a present service and benefit. This research either confirms that reactors are safe, that some

changes will improve safety, or that certain regulations may no longer be necessary for safe operation. The conduct of research resulting in any of these outcomes is a present benefit. This research provides continuing confidence that licensed reactors can be operated consistent with the public health and safety and the Commission's regulations. We again note that the DC Circuit Court of Appeals in *Florida Power & Light v. United States*, supra, upheld the Commission's decision to include such costs in its annual fee base.

6. One commenter felt that monies from the collection of fines, penalties and interest should be included in the 45 percent required to be collected.

Response. Although related here in the 45 percent level of collection, the same comment was presented with respect to the rule promulgating the 33 percent ceiling. The Commission adheres to its prior position. Fines, penalties and interest are not cost recovery measures, but are disciplinary and intended to deter ----- persons who violate Commission regulations and orders, as well as other licensees, from future violations. Public policy dictates that those paying penalties, fines or interest should not benefit by recovering a portion of a penalty, fine or interest through a reduced fee. Again, this Commission decision was upheld in *Florida Power & Light v. United States*, supra.