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NUCLEAR ENERGY INSTITUTE

OFFICE OF SECRETARY
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April 27, 2001

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ATTN: Rulemaking and Adjudication Staff

SUBJECT: Proposed Rule: *Revision of Fee Schedules; Fee Recovery for FY 2001*
(66 Fed. Reg. 16982, March 28, 2001).

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)¹ hereby submits the following comments on the Nuclear Regulatory Commission's proposed rule, *Revision of Fee Schedules; Fee Recovery for FY 2001* (66 Fed. Reg. 16982).

It is difficult to provide meaningful comments on the proposed fee rule when approximately 80 percent of the fees are in a generic category with minimal explanation. We strongly urge the NRC to provide licensees and the public with a more expansive explanation of the specific activities and associated costs that form the bases for Part 171 fees. This will enable stakeholders to provide the NRC with more substantive feedback on the efficiency of regulatory activities.

The NRC's efforts toward becoming a performance-based organization are clearly evident in many of its regulatory initiatives. The new reactor oversight process, implemented last year, has succeeded in timely identification of performance differences among nuclear power plants from the critically important perspective of safety. The 2000 performance indicator data and inspection findings showed that the vast majority of nuclear power plants are performing at very high safety levels. The new oversight process makes it much easier for plant operators, the NRC, and the public to

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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ascertain how nuclear plants are performing and to identify any areas in need of increased agency resources.

The agency's approach to regulatory reform is commendable, but the NRC also should seek opportunities for increased efficiency in its own operation and organization. Regulatory reform and industry consolidation should result in organizational efficiency and the NRC should implement further innovative approaches to optimize its resources. Targets of opportunity for resource optimization include elimination of resources directed to areas that have low safety significance and greater reliance on licensee self-assessment. In short, the revised inspection, assessment, and enforcement process provides opportunities for better use of agency resources while still ensuring that licensees maintain a high level of safety.

The industry's specific concerns with the proposed rule are:

1. NRC should justify proposed Part 171 charges

The industry has previously objected to the NRC's approach to allocation of fees through 10 CFR Part 171, generic fee assessment. Part 171 charges typically account for 80 percent of a licensee's fees. Reactor licensees bear a large share of the Part 171 burden.

The proposed rule does not explain in meaningful detail the association of costs with the proposed generic fee assessments. Without adequate explanation of the bases for the generic costs, licensees cannot evaluate the agency activities that their fees support. In addition, given that licensees are billed for contractor activities under Part 171, the NRC should provide a much more detailed account of the major contracts currently outstanding, their purposes, and their costs. Consistent with the notice and comment rulemaking provisions of the Administrative Procedure Act, stakeholders should be told the costs associated with each component of reactor regulation and all other generic costs in sufficient detail to enable them to provide meaningful comment.

No basis has been provided for the NRC's decision not to detail the costs characterized as generic under Part 171. We strongly urge the NRC to provide licensees and the public with the specific activities and associated costs that form the bases for this fee. Two significant benefits will accrue from such action. First, stakeholders could provide the NRC with far more effective feedback and comment on the efficiency of regulatory activities if Part 171 related costs were described with specificity. Second, by making the cost of actual services and other agency obligations (e.g., overhead) more visible to stakeholders, the Commission would be propelled to exercise its authority to promote increased fiscal responsibility.

2. The overall NRC budget should be reduced by the more efficient use of resources resulting from the agency's revised reactor oversight process

Under the new reactor oversight program, most licensees will require only baseline

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inspections. The inspection hours for baseline inspections are approximately the same, as those required under the previous core inspection program. However, there has been a reduction in the number of regional initiative inspections. These reductions are not accounted for in the proposed fees.

Another technique that could be employed to further improve inspection and assessment efficiency is for the NRC to participate in and oversee licensee self-assessments rather than conduct independent inspections. The NRC has successfully used this approach in the past for oversight of applicant Independent Design Verification Program (IDVP) assessments.

Now that the first year of the program is complete, the agency should review the scope and content of inspection procedures to make them further risk-informed. Inspection resources oriented to minimally safety-significant areas should be eliminated.

The successful implementation of the revised reactor oversight process provides an opportunity for the NRC to re-allocate existing resources to meet the challenges of risk-informing regulations and licensing new reactor designs. One opportunity the agency should consider is consolidating the regional offices in the near term and consider eliminating them in the longer term. The reactor oversight process results indicate that most plants need only the baseline inspection program with a limited amount of supplemental inspection. It is not efficient or cost effective to have duplicate regional organizations, with the attendant overhead costs, to focus on the few plants that warrant significant additional attention.

The industry strongly supports the agency's initiative to broaden application of the risk-informed, performance-based regulatory oversight approach beyond Part 50 and 70 licensees to include, for example, transportation of radioactive materials, decommissioning and uranium recovery operations.

The industry is concerned that there has been little reduction in NRC regulatory resources allocated to uranium recovery (source material) licensees, even though the number of licensees continues to decline precipitously. A decrease in the number of licensees or the number of licensed facilities, coupled with the introduction of the risk-informed, performance-based regulatory approach, should lead to an appreciable reduction in the size of the corresponding NRC regulatory program and staffing needs. No such reductions are apparent in the proposed 2001 fees.

3. Fees charged uranium recovery licensees should be reconsidered

The industry remains concerned with the increasing costs that are billed to fuel cycle licensees. Many of these costs are not explained in the agency's invoice documentation. In the case of uranium recovery licensees where dual and overlapping regulation by the NRC and EPA persists, many NRC costs are incurred simply to resolve differences in interpretation of licensee performance data for both regulatory agencies. The NRC should expedite its efforts to eliminate such costly dual regulation.

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Uranium recovery licensees are considering filing a Petition for Rulemaking to seek exemption from Part 171 annual fees until the long-term market price of U3O8 remains above a benchmark price. The NRC should carefully consider the economic problems of these Part 40 licensees, many of which originated from the federal government's policy to release into the domestic market uranium originating from U.S. and Russian down-blended highly enriched uranium (HEU). However, if relief from Part 171 fees is granted, the potential loss of annual fee revenue (estimated to be \$4 - 5 million) should be recovered through a supplemental congressional appropriation given the national importance of maintaining a domestic fuel supply.

4. Fee wavier provisions should encourage industry to work cooperatively with the NRC on generic regulatory improvements or efforts

The proposed rule also includes a clarification of the fee waiver provision (§ 170.21, Footnote 4, criterion 3 and § 170.31, Footnote 5, criterion(c)). Based on several recent denials of fee wavier requests and the proposed "clarification" change, we are concerned that the NRC is shifting the review expense of generic activities out of a Part 171 fee basis into specific fees under Part 170. The primary intent of the fee wavier criteria is to encourage industry organizations to work with the NRC on a generic basis to support regulatory improvements. Resolving issues on a generic basis reduces resource demands on NRC and expedites resolution of issues on a generic basis. By discouraging generic actions, the proposed change is inconsistent with the agency's strategic goal of making NRC activities and decisions more effective, efficient, and realistic. Accordingly, we encourage NRC to retain the original interpretation of the fee waiver provision in the final rule.

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Conclusion

The NRC is accountable to ensure that the agency is fiscally responsible in the fees it recovers from licensees, as well as how the charges are allocated among categories and among licensees. We encourage the Commission to carefully consider the above recommendations and, at the very least, provide greater explanation of its proposed allocation process before promulgating a final rule.

Sincerely,



Stephen D. Floyd