

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001



February 18, 1997

MEMORANDUM TO: Ronald M. Scroggins
Acting Chief Financial Officer

FROM: Shirley Ann Jackson

SUBJECT:

DELEGATION OF AUTHORITY TO CHIEF FINANCIAL OFFICER TO
PROMULGATE PROPOSED AND FINAL RULES THAT DO NOT
INVOLVE SIGNIFICANT POLICY ISSUES

Pursuant to the reorganization approved by the Commission effective January 5, 1997, and within the limits set forth below, the Chief Financial Officer (CFO) is hereby delegated the authority to develop and promulgate rules (as defined in Section 551 of the Administrative Procedure Act, 5 USC 551(4)) needed to carry out his responsibilities, including the annual revisions to the fee regulations in 10 CFR Parts 170 and 171.

The CFO's delegated authority does not extend to the promulgation of proposed or final rules that involve significant questions of policy. Except in cases involving rules that do not raise policy issues or are corrective in nature, the CFO shall consult with the Commission or, in cases involving the Chairman's rulemaking authority, the Chairman. The CFO shall also obtain the concurrence of the Executive Director for Operations, and the Chief Information Officer as appropriate, and obtain a determination from the Office of the General Counsel that it has no legal objection to the revisions. The CFO shall notify the Commission before submitting a final rule to the *Federal Register*.

The authority being delegated herein may not be further redelegated. This delegation supersedes any previously issued delegations that might be read to conflict with it.

cc: Commissioner Rogers
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
SECY
OGC
EDO
Office Directors
Regional Administrators

DOCKETED
USNRC



DOCKET NUMBER
PROPOSED RULE NO. 150.170-171
(66FR 16982)

01 APR 11 P3:03

AUGUSTANA
COLLEGE

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Department of Biology

Tel: 605-274-4712

Fax: 605-274-4718

E-mail: wanous@inst.augie.edu

April 6, 2001

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudication Staff
Washington, D.C.
20555-0001

To the NRC Rulemakings and Adjudication Staff:

I have received the NRC notice dated March 20, 2001 regarding the NRC's proposed FY 2001 FEE RULE. As the Radiation Safety Officer of a small liberal arts College, I wanted to inform you of the impact such a proposed fee rule would have on my institution. The annual fee of \$2,300 would represent a major financial burden to our College. With about 120 faculty and 1600 students, we do not have the resources to pay this amount year after year. We would have to seriously consider terminating our license and ceasing to use radioactive materials for teaching in our science courses and our small research endeavors. This would be very detrimental to the educational quality that we offer to our students. I hope that you will consider the situation of the many small Colleges and Universities around the nation and make such educational institutions exempt from an annual fee.

Sincerely,

Michael K. Wanous
Radiation Safety Officer and Assistant Professor of Biology

Cc: Richard A. Hanson, V. P. for Academic Affairs, and Dean of the College

Template = SECY-067

SECY-02

**RENDEZVOUS ENGINEERING, P.C.**

Civil Engineers and Planners in Wyoming and Idaho

(2)

DOCKETED
USNRC

April 23, 2001

DOCKET NUMBER

PROPOSED RULE

150,170-171
(66FR 16982)

APR 24 A11:22

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rule Making StaffOFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

RTE: NRC Proposed Fee Rule

Our firm operates a single Troxler nuclear density gage to test soil compaction for earthwork projects. Our soil testing work is necessary to support projects we design and monitor. However, soil testing represents very little revenue to our firm.

The proposed fee for our operation is \$2,400. The fee for small businesses having less than \$350,000 annual gross revenue is reduced to \$500. Our gross annual revenue for the year 2000 was just over \$1,000,000. The small business license fee for firms having \$350,000 to \$5,000,000 in annual receipts is \$2,300.

From a small business perspective, the range encompassing \$350,000 to \$5,000,000 is huge. Our firm is at the lower end of this range, yet our fee is the same as another entity with four to five times our gross revenue. The license fee is a significant expense to our firm. Please consider establishing lower licensing fees by creating one or more additional steps between the \$350,000 to \$5,000,000 range. For example:

Gross Annual Receipts	Annual License Fee
< \$350,000	\$500
\$350,000 to < \$1,500,000	\$1,000
\$1,500,000 to < \$3,000,000	\$1,500
\$3,000,000 to < \$5,000,000	\$2,300

A fee rate schedule with more steps for small businesses would help reduce the license fee burden on the smaller entities. Establishing reduced fees by creating more steps in the gross annual receipts bracket makes sense to help small business concerns. Firms near the top of the bracket with significantly higher annual receipts should pay more than those at the bottom.

Thank you for the opportunity to respond to the proposed 2001 NRC fee Rule.

Sincerely,

Matthew F. Ostdiek, P.E.
Vice President - Radiation Safety Officer

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SECY-02

DOCKETED
USNRCDOCKET NUMBER 150,170 + 171
PROPOSED RULE (66FR16982)

③

01 APR 25 A8:57

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFFPortland General Electric
Trojan Nuclear Plant
71760 Columbia River Hwy
Rainier, OR 97048

April 23, 2001

Secretary, U. S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications StaffComments on Proposed Fiscal Year (FY) 2001 Fee Rule

This letter transmits Portland General Electric's (PGE's) comments concerning the proposed revisions to license, inspection and annual fee schedules for FY 2001. The proposed rule was published in the Federal Register [66FR16981] on March 28, 2001.

The Nuclear Regulatory Commission (NRC) is required by the Omnibus Budget Reconciliation Act (OBRA) of 1990, as amended, to collect fees for its budget authority less the appropriations from the Nuclear Waste Fund and the General Fund. Congress reduced the amount of fees to be collected to address fairness and equity concerns related to charging NRC licensees for costs for which they receive no direct benefit. The reduction is being phased in at two percent per year from FY 2001 through FY 2005, with approximately 98 percent to be recovered in FY 2001.

In general, PGE believes that the Omnibus Budget Reconciliation Act of 1990, as amended, provides a reasonable approach towards achieving fairness and stability of fees in most areas. However, PGE believes that the proposed increase in annual fees for spent fuel storage/reactor decommissioning licensees is not equitable and places an undue burden on this particular class of licensees. While most reactor licensees will experience a decrease in their annual fees if this rule is implemented as proposed, spent fuel storage/reactor decommissioning licensees are expected to incur an additional \$66,000 for FY 2001, a 32 percent increase in a single year.

It is an undue burden for decommissioning plants to assume increases in annual fees as they do not generate revenue through the sale of electricity and do not have a guarantee of recovering additional costs by petitioning local public utility commissions. Additional costs must be assumed by existing plant decommissioning funds. These funds, which are gathered during the course of plant operation, are sufficient to cover incurred decommissioning expenses, but they are limited and must be committed to ensuring the health and safety of the plant personnel and the public during decommissioning activities. Increasing costs for decommissioning plants places undue budget constraints that could affect the resources available for performing plant decommissioning activities in a timely manner.

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SECY-02

April 23, 2001

Page 2 of 2

Since the NRC's recoverable budget is being reduced by two percent during FY 2001 and each of the following four years, achieving an equitable arrangement for this class of licensees should include as a minimum only incrementally increasing their annual fees by approximately six percent per year, corresponding with the NRC phased budget reduction. PGE believes that this approach is consistent with the intent of the Omnibus Budget Reconciliation Act of 1990, as amended.

PGE is opposed to the inequities created by the proposed revised annual fee schedules. The revised fee schedules place an inequitable and unfair burden on the spent fuel storage/reactor decommissioning class of licensees as compared to other classes of licensees. If you have any questions concerning these comments on the proposed FY 2001 fee rule, please contact me at (503) 556-7409.

Sincerely,

Lansing G. Dusek
Licensing Manager

DOCKET NUMBER

PROG. & UTIL. RAC.

PR 150.170 +171
(66FR 16982)

4

DOCKETED
USNRC

April 26, 2001

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
11555 Rockville Pike
Rockville, MD 20852

01 APR 26 P4:35

OFFICE OF THE SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Madam:

I wish to comment on the proposed FY2001 fee rule regarding NRC plans not to send small entity forms to licensees because a small number of licensees are filling out the form just because it was mailed to them. It is my understanding that only 7% of the small entity forms that are filed are denied. I do not know how many of these should not have been filled out because the licensee obviously did not qualify under any category or how many were denied and were subsequently qualified under another category.

Secretary
U.S. Nuclear Regl
ATTN: Rulemakings
11555 Rockville
MD 20852
Dear Madam

I have looked at the number of small entities approved from 10/1/00 through 3/31/01 (6 months) and find that 552 have been approved as small entities. This would equate to approximately 1,100 per year. We currently bill 5,000 licensees a year. This means that 22% qualify as small businesses. By not sending the small entity form, 1,100 licensees would have a burden placed upon them to obtain the form by some other means than by having it enclosed with the invoice. Because only 7% of the total number who fill out the form do not qualify, it seems unfair to penalize those who do qualify and should receive the form with their invoice. Many of the small materials licensees are "mom and pop" operations and may not have access to the internet. This will place an additional burden on staff to fax or mail the form to those licensees.

This is to
March 20,

The NRC requires licensees to complete the small entity form (NRC Form 526) in order to be qualified as a small business. Since the NRC requires this form for certification as a small entity, the NRC is obligated to supply that form by a means accessible to all licensees.

Many licensees will still pay the lower fee and just not submit the form. A burden will be placed on staff to obtain a small entity form for those who do not qualify. I believe a redesign of the form to make it very clear who qualifies and who does not would be more effective than not sending the form to the licensees.

Sincerely,

Leah P. Tremper
Leah P. Tremper

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SECY-02

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DOCKET NUMBER
PROD. & UTIL. FAC. PR 150,170-171
(66FR 16982)

DOCKETED
USNRC

April 26, 2001

01 APR 26 P4:35

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
11555 Rockville Pike
Rockville, MD 20852

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Sir or Madam:

This is to comment on the proposed changes to Part 170 for the FY 2001 Fee Rule dated March 20, 2001, specifically Number 2 under "The most significant proposed changes to Part 171...", regarding not sending out the NRC Form 526 small entity certification form with each materials license annual fee invoice.

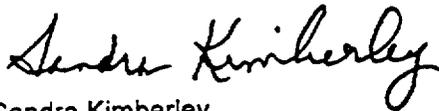
While the proposed action is trying to minimize the number of improperly filed certifications, the number of telephone calls requesting faxes of the small entity form would greatly increase, thus placing an unusually unfair burden upon the license fee analysts.

In the past, when an improperly filled out form has been received, a quick call to the hospital or entity has resolved the situation.

If the proposed action is initiated, licensees who filed in the past would telephone us asking where the form is, then if they had questions once they receive the form, they would call again.

A great many licensees do not read the information sent to them, specifically the proposed and final rule, therefore they would not know why the small entity form has not been included with the invoice and will not know where to get the invoice. The fact that the rule is not read by the majority of licensees is evidenced by the continuing number of refunds for renewals and amendments that have been processed for licensing actions by the analysts since renewal and amendment fees have been deleted from Part 170.31.

Sincerely,



Sandra Kimberley

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SECY-02

DOCKET NUMBER
PROPOSED RULE # 150170+171
(66FR 16982)

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USNRC

6

01 APR 27 P1:54

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

April 26, 2001

Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001
ATTN: Rulemakings and Adjudications Staff

Gentlemen:

Subject: Kennecott Uranium Company – Comments on the Proposed Revisions to 10 CFR Parts 170 and 171 on License, Inspection and Annual Fees for FY 2001

Kennecott Uranium Company is the operator and manager of the Sweetwater Uranium Project located in Sweetwater County, Wyoming and licensed under Source Material License SUA-1350. The Sweetwater Uranium Project contains a conventional uranium mill that is currently on standby and a tailings impoundment. Kennecott Uranium Company has the following comments on the *Proposed Revisions to 10 CFR Parts 170 and 171 on License, Inspection and Annual Fees for FY 2001*:

Annual Fee for Class I Facilities

Kennecott Uranium Company supports the proposed reduction in the Annual Fee for Class I facilities from \$132,000.00 per year (Fiscal Year 2000) to \$94,300.00 per year (Fiscal Year 2001). This is a positive step for the uranium recovery industry however it does not go far enough given the current state of the industry and its importance to the energy security of the United States. In addition, Kennecott Uranium Company supports the use of a quarterly billing schedule for Class I and Class II licenses.

Average Cost Per Professional Staff Hour

The average cost per professional staff hour has been proposed at \$144.00 per hour (Fiscal Year 2001 proposed – Nuclear Materials and Nuclear Waste Program) which is an increase from the level of \$143.00 per hour (Fiscal Year 2000). Kennecott Uranium Company does not support this increase because the hourly rate being charged per professional staff hour is already far in excess of the hourly rates per professional staff hour charged by major national consulting firms. In addition to the hourly charges, the Nuclear Regulatory Commission (NRC) also collects license fees. Consulting organizations can only collect hourly charges plus reimbursement for expenses. Thus, given the fact that the Nuclear Regulatory Commission (NRC) is collecting

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hourly charges above and beyond annual license fees, an hourly rate of \$144.00 per hour is not justified, and should be substantially reduced, not increased.

Project Manager Charges

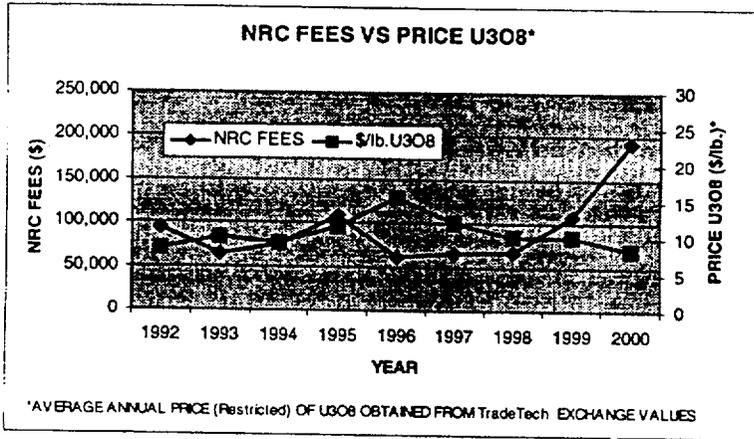
Beginning in Fiscal Year 2000, the Nuclear Regulatory Commission (NRC) began invoicing licensees for hourly charges for the licensees' Project Manager (PM), other than for work directly related to the license, such as training and general administrative work. In the case of a Project Manager (PM) who managed several licenses, these charges not directly related to license work were split among the licensees the Project Manager (PM) managed. These charges have become a significant additional expense that uranium recovery licensees, given the current state of the industry can ill afford. This problem is further exacerbated when a Project Manager (PM) "manages" only one licensee, with the result that the given licensee must pay all of the overhead costs associated with this individual. Kennecott Uranium Company supports the redesignation of Project Managers (PMs) assigned to uranium recovery licenses as Points of Contact (PC) to avoid these charges. At the very least, this change should be made for those licensees who are currently not operating.

Invoicing Procedures

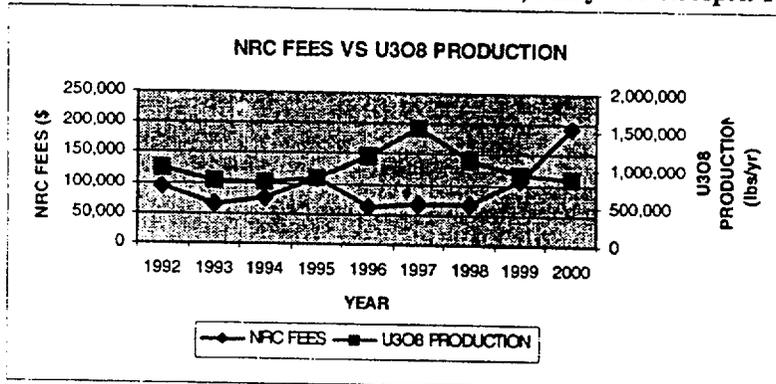
Kennecott Uranium Company believes that Nuclear Regulatory Commission (NRC) should continue its efforts to provide invoices that contain more meaningful descriptions of the work done by NRC staff and NRC Contractors. With hourly rates as high as \$144.00 per hour, the agency should be held to at least the same standard of accountability to its licensees as a private sector consultant is to his clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified.

Status of the Uranium Recovery Industry

Uranium prices are low. The current price is \$8.25 per pound (Uranium Exchange (UX) – April 23, 2001). In spite of the depressed uranium prices fees charged to licensees have risen steadily since 1998 as shown in the chart below.



Note: Chart courtesy of the National Mining Association (NMA) and presented at a briefing of the Commissioners in Rockville, Maryland on April 10, 2001.



In addition, fees have increased steadily since 1998 in spite of declining production since 1997, as shown in the chart below.

Note: Chart courtesy of the National Mining Association (NMA) and presented at a briefing of the Commissioners in Rockville, Maryland on April 10, 2001.

The issue of fees was discussed in depth at the Commissioner's briefing provided by the National Mining Association (NMA) in Rockville, Maryland on April 10, 2001. At this briefing, the potential for regulatory relief from fees through a petition for rule making and/or legislative relief from fees in the form of a suspension of fees pending an improvement in the uranium market was discussed. Kennecott Uranium Company would support an industry wide effort through the National Mining Association (NMA) or other organization to obtain some form of relief from licensee fees.

The uranium recovery industry is vital to the long term energy security of the United States especially given the recent renewed consideration of the nuclear option by utilities. Senate File 472 - A Bill to ensure that nuclear energy continues to contribute to the supply of electricity in

the United States raises this issue stating, "... the United States must ensure that the domestic uranium mining, conversion and enrichment service industries remain viable." The fees levied against uranium recovery licensees threaten the viability of this vital industry. Licensees need relief from fees in order to survive to the time when the industry as a whole recovers.

Conclusions

Kennecott Uranium Company supports the reduction in licensee fees proposed by the Nuclear Regulatory Commission (NRC) but does not believe that the reduction goes far enough in providing the relief required by the industry in order to survive. The uranium recovery industry is vital to the energy security of the United States given the increased interest in nuclear power expressed by some utilities. The industry should not be driven to extinction by excessive fees. Kennecott Uranium Company believes that the hourly rate charged by the agency is excessive and greatly exceeds the rates charged by major national consulting firms. The rate should be substantially reduced, not increased. In addition, Kennecott Uranium Company believes that the Project Manager (PM) charges invoiced by the agency have become an increasing burden on the industry and are especially unfair to those licensees who have a Project Manager (PM) assigned solely to them. Kennecott Uranium Company believes that current Project Managers (PMs) should be redesignated as Points of Contact (PCs), for at least some (inactive or standby) licensees, with a savings in Project Manager (PM) charges for those licensees. Kennecott Uranium Company believes that the agency should continue its efforts to produce invoices containing more meaningful descriptions of work performed.

If you have any questions please do not hesitate to contact me.

Sincerely yours,

Oscar Paulson
Facility Supervisor

cc: Katie Sweeney – National Mining Association (NMA)
Marion Loomis – Wyoming Mining Association (WMA)
Rich Atkinson – Kennecott Energy Company



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National Mining Association
Foundation For America's Future

DOCKETED
USNRC

01 APR 27 P1:55

Katie Sweeney
Associate General Counsel
Legal & Regulatory Affairs

DOCKET NUMBER
PROPOSED RULE DO 150,170-171
(66 FR 16982)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

April 26, 2001

Secretary
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Re: Proposed Revision of Fee Schedules -- FY 2001

Dear Sir:

The National Mining Association (NMA) submits these comments in response to the Nuclear Regulatory Commission's (NRC) proposed revisions to the licensing, inspection and annual fees for Fiscal Year (FY) 2001. 66 Fed. Reg. 16982 (March 28, 2000). NMA notes that the annual fees for uranium recovery licensees will decrease for FY 2001. Yet NMA remains concerned about the underpinnings of the fee structure, in particular, the serious inequities caused by the Omnibus Budget Reconciliation Act of 1990 (OBRA) mandate that NRC recover close to 100 percent of its budget each year. Even though the decrease in Annual Fees for uranium recovery facilities is substantial, the licensees will likely still experience significant fee increases due to the recovery of Project Manager costs via the hourly fees. In light of the current circumstances facing the uranium recovery industry, NMA is very concerned by the proposal's potential impact on the uranium recovery industry. NRC must immediately revise the Project Manager cost recovery system and pay careful attention to the potential further adverse impact of these new fees on the financial health of the uranium recovery industry as it proceeds with this rulemaking process.

NMA represents producers of most of America's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to coal and hardrock mining. These comments are submitted by NMA on behalf of its member companies who are NRC licensees and who are adversely affected by the NRC fee regulations. These members include the owners and operators of uranium mills and mill tailings sites and in situ uranium production facilities.

NMA has commented extensively in the past on NRC's fee allocation system. The issues raised by the FY 2001 proposal are similar to those of prior years, and therefore, these comments

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SECY-02

incorporate by reference NMA's prior comments (and those of its predecessor organization the American Mining Congress).¹

Annual Fees

NMA's primary concern with the fee system continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program and the benefit derived from such services. As NMA has commented in the past, it is a fundamental principle of law that there must be a reasonable relationship between the cost to licensees of a regulatory program and the benefit derived from regulatory services.²

NMA acknowledges that the passage of the NRC Fairness in Funding Act, which could not have been accomplished without strong NRC support, attempts to address some of NMA's fairness and equity concerns regarding charging licensees for activities that provide licensees no direct benefit. That act amends OBRA by reducing the amount of NRC's budget that NRC must recover from its licensees. OBRA originally mandated that NRC recover approximately 100 percent of its budget authority each fiscal year (FY). This year, NRC is required to recover approximately 98 percent of its budget. The OBRA amendment further decreases the fee recovery amount by an additional two percent per year beginning in FY 2002 until the fee recovery amount is 90 percent by FY 2005. While this Act will alleviate some of NMA's equity concerns, it will not guarantee a reasonable relationship between costs and benefits.

Too heavy a burden is falling on uranium recovery facilities, particularly those sites awaiting NRC approval of reclamation plans or those on "standby." Given the complex regulatory scheme and numerous license conditions imposed on these sites, it is rarely a matter of licensee discretion when to operate or finalize closure of a site. Indeed, the realities of the uranium market are a large determinant in whether a licensee ceases operations, goes on standby or begins decommissioning. Sites that are on standby or awaiting approval of reclamation plans require minimal oversight yet must continue to pay an annual fee that is clearly not commensurate with the benefit of holding the license.

In addition, NRC needs to determine an equitable way of dealing with the scenario that could result in the last licensee having to pay for the entire program that is beginning to play out

¹ These comments are dated May 13, 1991, May 29, 1992, February 4, 1993, May 24, 1993, July 19, 1993, August 18, 1993, June 9, 1994, April 19, 1995, February 27, 1996, March 27, 1997, May 3, 1999 and April 26, 2000.

² NRC's authority to prescribe fees for "regulatory services" under 10 CFR 170 is based on the Independent Offices Appropriation Act of 1952 (IOAA), 31 USC 9701. To be valid under the IOAA, a fee must "be reasonably related to, and may not exceed the value of the service to the recipient, whatever the agency's costs may be." Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985).

in the uranium recovery area. For example, there are only three conventional mills and the number of in-situ leach licensees has decreased since 2000.

Project Manager Costs

Under the proposed rule, the hourly rate applicable to the uranium recovery category of licensees will increase from \$143 in FY 2000 to \$144 for FY 2001. NMA outlined concerns regarding charging licensees for "Project Manager Costs" in its comments on the FY 1999 and FY 2000 fee proposals. More specifically, NMA was concerned that the changes to "Project Manager Costs" could double the hourly rate costs incurred by licensees. As evidenced by licensees' bills for 2000 and in the chart below, such "Project Manager Costs" far exceed our most conservative estimates of such costs, mostly due to the fact that licensees are being charged for Project Managers' (PM) "generic activities" in spite of the fact that the final 1999 fee rule indicated licensees would not be charged for PM involvement in such "generic activities."

Facility	9/26/99- 12/30/00 Review Costs	9/26/99- 12/30/00 Project Manager	9/26/99- 12/30/00 Total
Smith Ranch	\$71,628	\$65,137	\$136,765
Ambrosia Lake	\$65,210	\$47,302	\$112,512
Lisbon	\$49,095	\$47,302	\$96,397

(See attached April 10, 2001 NMA Briefing of the Commission for additional detailed information on impacts of PM fees on licensees.)

Specifically, the final FY 1999 rule gave a fairly detailed example of the new types of activities subject to cost recovery:

Examples of PM activities which will be subject to Part 170 cost recovery are **those associated with oversight of the assigned license or plant** (e.g., setting work priorities, planning and scheduling review efforts, preparation and presentations of briefings for visits to NRC by utility officials, interfacing with other NRC offices, the public, and other Federal and state and local government agencies, and visits to the assigned site for purposes other than a specific inspection), and training. (Emphasis added.)

64 Fed. Reg. 31460. Certainly, nothing in the final rule indicates that licensees would be charged for PMs' activities such as work on the Starfire accounting program or work for another branch/office. The only time the final rule mentions "other NRC offices" is in the above quoted language where interfacing with other NRC offices is given as an example of an activity associated with oversight of the assigned license or plant. In no way can that language be stretched to mean the licensee should expect to pay for their Project Manager's activities to

support other offices having nothing to do with the assigned license. In reviewing the NRC directive on "Fee Billing for DWM Project Managers," it seems virtually no activities the PM engages in are excluded from cost recovery. Despite the language in the FY 1999 final rule that rulemaking activities will not be subject to PM fee recovery, in the directive there is a RITS [Regulatory Information Tracking System] code for "rulemaking oversight."

As discussed in some detail in these comments, costs that have no relationship to, nor provide no benefit to the licensee should not be charged to the licensee. To the extent that NRC is required to recover such costs under the Omnibus Budget Reconciliation Act, these costs are more appropriately recovered via the Annual Fee. Recovery through the Annual Fee allows such costs to be spread more equitably across a range of licensees, rather than punishing a licensee who, though no fault of its own, has been assigned a PM engaged in a lot of "extracurricular activities." This problem is further exacerbated when a PM "manages" only one licensee with the result that the licensee must pick up all of the overhead type costs associated with this individual PM. A similar inequity results when a licensee's PM is only a "part-time" PM, a technical person who has been assigned a licensee or two but who spends the majority of his/her time doing technical work not related to the licensed site(s) they manage. If that technical person was not also a part-time PM, the licensee would not be charged for the technical work that does not relate to its license but under this new rule, it appears the licensee(s) will be charged all of it.

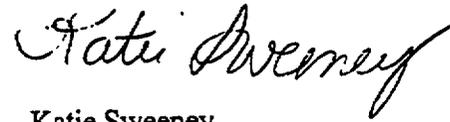
NRC is supposed to be working to solve the current inequities with its fee system, not creating new inequities. NRC cannot defend this proposal on any reasonable basis much less as an attempt to shift costs from Annual Fees to Hourly Fees since there is no offsetting decrease in Annual Fees that corresponds to the incredible increase in hourly fees that licensees discovered in the latest quarterly bills. NRC must cease this wholly unjustified and *ultra vires* implementation of its OBRA responsibilities at once. NRC needs to investigate further designating PMs as "points of contact" under certain circumstances to reduce PM charges

NMA requests that NRC continue its efforts to provide invoices that contain more meaningful descriptions of the work done by NRC staff and NRC Contractors. With hourly rates as high as \$144, NRC should be held to at least the same standard of accountability to its licensees as the private sector is to its clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified. NMA recognizes that implementing such a system would require major revisions to NRC's entire computer billing program, but it is a change that would serve well NRC, its licensees and the public. NRC will not accept licensee inconvenience as an excuse for failure to properly fulfill its license responsibilities so inconvenience provides NRC with no excuse either.

The Commission must revise the PM cost recovery system because that system is contrary to OBRA and is creating unexpected additional inequities. Given the current state of the domestic uranium recovery industry, the new inequities posed by the PM cost recovery system

could be the last nail in the coffin. If you have any questions or if we can be of assistance, please contact me at 202/463-2627.

Sincerely,

A handwritten signature in cursive script that reads "Katie Sweeney".

Katie Sweeney

Attachment

NMA Briefing on Selected Uranium Recovery Issues

NMA Views on Alternatives for Rulemaking

Staff Paper Presents Three Options

- **National Materials Program Pilot**
- **Continue to Develop Part 41 Rulemaking**
- **Discontinue the Part 41 Rulemaking**

Views on Option 1: Pilot Program

NMA Concerns

- Cost
- Timing
- Uncertain Expertise
- Consensus Format Inappropriate for Addressing Complex Technical and Legal Issues

Views on Option 2: Continue to Develop Part 41

Part 41 Would Have Some Advantages

- Codification of Performance-Based License Concept
- Rulemaking Provides Legal Certainty
- Reorganize to Delete Inappropriate or Unnecessary Requirements
- Add Appropriate and Necessary Requirements

Views on Option 2 (Con't)

Concerns Regarding Development of Part 41

- **Costs Overwhelms Advantages**
- **Industry Cannot Afford**

Views on Option 3: Discontinue the Part 41 Rulemaking

- **NMA's Preferred Approach**
 - **Discontinue Rulemaking Efforts**
 - **Update Existing Guidance Documents**

Going Forward -- Updating Guidance Documents

- NMA Will Provide NRC with Information Pertinent to Updating the Non 11e.(2) Guidance
- NRC Can Address Listed Hazardous Concern in Updated Alternate Feed Guidance

Going Forward -- Non 11e.(2) Guidance

- NMA and Fuel Cycle Facilities Forum Developing Generic Criteria for Acceptance of Non-11e.(2) Material for Disposal in Tailings Piles
 - Criteria Will Ensure No Greater Health and Safety Concerns Will Be Presented by Added Materials
 - Criteria Will Identify Potential Jurisdictional Hurdles

Going Forward -- Alternate Feed Guidance

- NRC Has Expressed Concerns About Listed Hazardous Wastes
 - Staff Should Review the State of Utah/IUC Protocol on Listed Hazardous Waste

Dual Regulation Issues

- Non-Agreement State/NRC Jurisdiction in Light of Concurrent Jurisdiction Decision
- Jurisdiction over *In Situ* Leach Facilities
 - EPA/NRC Jurisdiction
 - State/NRC Jurisdiction

Non-Agreement State Jurisdiction Over the Nonradiological Components of 11e.(2) Byproduct Material

- Some Non-Agreement States Appear Unwilling to Accept Commission Decision on Preemption
- NRC Should Clarify By Letter that the Commission's Preemption Decision is in Effect

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Dual Regulation of *In Situ* Leach Uranium Recovery Facilities

- Overlapping Regulation by NRC/EPA (or State with Delegated UIC Program)
- Overlapping NRC Regulations and State ISL Regulations
 - Some States Have Extensive ISL Regulatory Programs
 - Submittals to State under ISL Program and to NRC Are Often Almost Identical

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Moving Forward -- Dual Regulation of ISL Facilities (con't)

- MOUs
- Reliance on State ISL Program
 - Wyoming Governor Geringer Letter and Wyoming DEQ Letter
- Reconsideration of NRC Jurisdiction Over ISL Program
 - Asserting Jurisdiction Over All Wellfields Created Problems
 - Making All Fluids 11e (2) Created Additional Problems

Consequences of Effluent Disposal Decision

- Decision to Treat Process and Restoration Fluids as 11e (2) Byproduct Material is Inconsistent with Definitions of Byproduct Material, NPDES Regulations, and Ignores §62 of the AEA
- Distinction Between Process Fluids and Restorations Fluids is Not "Artificial"
- Ore Body is Not 11e (2) Byproduct Material

Consequences of Effluent Disposal Decision Con't

- NPDES Regulations Do Not Allow Discharge of Process Fluids From Mills or ISL Operations, but Do Allow Discharge of ISL Restoration Fluids, 40 C.F.R. §440.34.
- §62 Requirement Regarding "Removal from Its Place of Deposit in Nature" and Exemption for "Unimportant" Quantities

Consequences of Effluent Disposal Decision Con't

- Decision Creates Complex, Burdensome and Unlawful Regulatory Scheme
 - Places All ISL Operations with NPDES Permits in Violation of Those Permits Ex Post Facto
 - Impacts Conventional Tailings Sites Also
 - Some Uranium Recovery Operators Have Received Implied NOV's
 - Requires NRC to Regulate Ore Body as 11e.(2) Byproduct Material until Restoration is Complete

Moving Forward -- Effluent Disposal

Move Forward by Moving Back -- Reconsider Decision That All ISL Fluids Are 11e.(2) Byproduct Material

Fee Structure for Uranium Recovery Licensees

- Economic State of the Industry
- Fees
 - Annual
 - Hourly
 - Project Manager Designation
- Possible Solutions

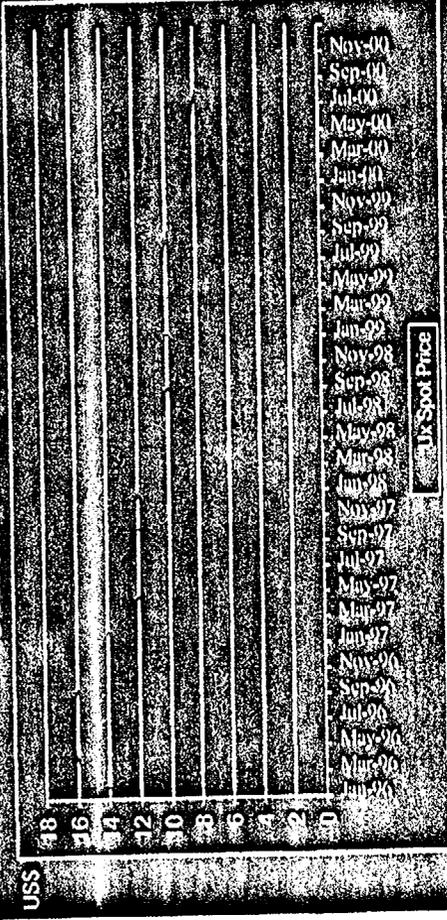
Economic State of the Industry

- Price of U_3O_8
- Uranium Production
- NRC Fees
- What Fees Represent

Price of U_3O_8

- Price Currently Hovers Around \$8/lb
- NRC Fees May Be Last Nail in Coffin for Companies Just Holding On

Decline of Uranium Spot Price Since Mid 1996



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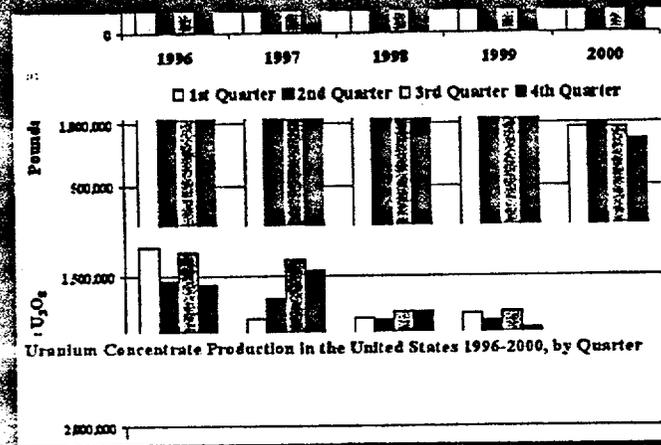
Uranium Production

Total Production of Uranium Concentrate in the United States
(Pounds U₃O₈)

	1996	1997	1998	1999	2000
Calendar Year	1,244,227	1,149,050	1,151,887	1,196,225	900,386
1st Quarter	340,688	321,079	343,942	332,566	1,004,090
2nd Quarter	301,396	363,384	300,042	304,984	959,296
3rd Quarter	334,225	454,052	320,003	497,897	860,389
4th Quarter	268,118	560,515	287,898	160,776	3,784,161
Calendar Year Total	1,244,227	1,149,050	1,151,887	1,196,225	900,386

Source: Energy Information Agency
* Figures are preliminary data

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NRC Fees

- NRC Required by Law to Recover Nearly 100 % of Costs -- Results in Licensees Charged for Activities Not Related to the License (Recent Changes are Not Enough)
- Hourly Fees Are Site-Specific but Are Quite High
- Project Manager Fees -- Recovery Began Last Year -- Bills Skyrocketed
- Unnecessary Duplication Further Boosts Fees Without Commensurate Benefit

What Fees Represent

Example 1 -- Operating ISL Facility

- 2000 Fees Represent Approximately 12% Actual Payroll of All Site Employees
- 2000 Fees Represent Approximately 31% of the Actual Site Administrative Costs
- 2000 Fees Represent Approximately \$0.25 Per Pound of Direct Production Costs
- 2000 Fees Represent Approximately 7.8 FTEs

25

What Fees Represent -- Con't

Example 2 -- Tailings Site in Reclamation

- 2000 Fees Represent Approximately 8% of Entire Site Reclamation Costs
- 2000 Fees Represent Approximately 32% of Actual Payroll for All Site Employees
- 2000 Fees Represent Approximately 7 FTEs

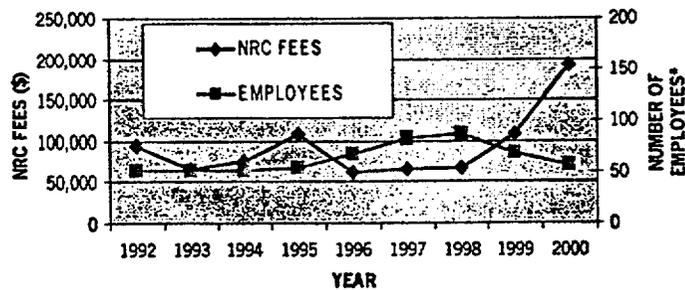
26

What Fees Represent -- Con't

Example 3 -- Tailings Site in Reclamation

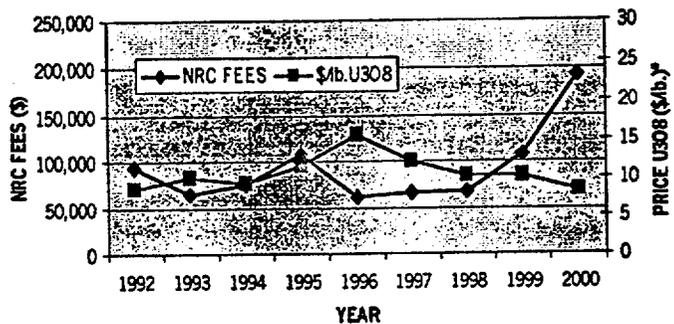
- 2000 Fees Represent Approximately 12% of Entire Site Reclamation Costs
- 2000 Fees Represent Approximately 43% of Actual Payroll for All Site Employees
- 2000 Fees Represent Approximately 1.2 FTEs

NRC FEES VS NUMBER OF PRIEMPLOYEES*



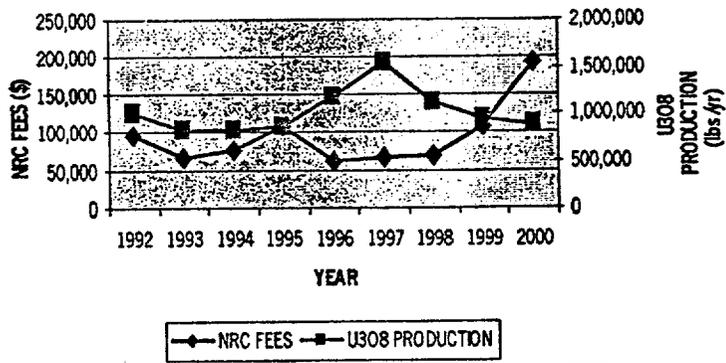
* NUMBER OF PRIEMPLOYEES INCLUDES THE HUP AND CASPER OFFICE (Closed in Sep 2000)

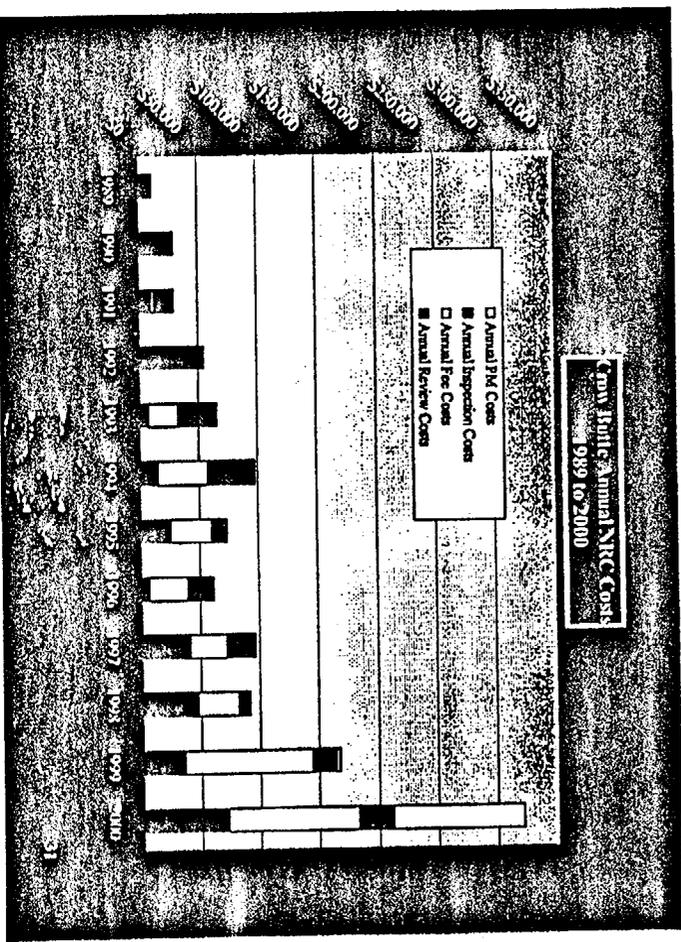
NRC FEES VS PRICE U308*



*AVERAGE ANNUAL PRICE (Restricted) OF U308 OBTAINED FROM TradeTech EXCHANGE VALUES

NRC FEES VS U308 PRODUCTION





Fees 1996-2001

Fiscal Year	1996	1997	1998	1999	2000	2001
Class I Annual Fee	\$7,000	\$61,600	\$61,800	\$131,409	\$122,000	\$94,500
Class II Annual Fee	\$32,200	\$34,800	\$34,900	\$109,000	\$111,600	\$79,000
License Fee	\$120	\$125	\$121	\$140	\$143	\$144

Moving Forward - NRC Fees

- NMA Will Pursue Legislative Solution
- NMA Will Pursue Regulatory Exemption
- NRC Should Further Investigate Coding of Project Managers Time
- NRC Should Eliminate Unnecessary Duplicate Oversight to Minimum Necessary to Fulfill its Responsibilities

Project Manager Fees -- 2000

Project Manager Fees Are Significant Portion of Hourly Fees

Facility	Review Costs	Project Manager	Total
Facility	92699-123000	92699-123000	92699-123000
Smith Ranch	\$71,028	\$65,137	\$136,765
Antrosal Lake	\$65,210	\$47,302	\$112,512
Idaho	\$49,095	\$17,302	\$66,397



DOCKET NUMBER
PROPOSED RULE # 150,170-171
(66 FR 16982)

DOCKETED
USNRC

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

April 27, 2001
GDP 01-0084

Secretary
U. S. Nuclear Regulatory Commission
Attention: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
Docket Nos. 70-7001 & 70-7002
USEC Comments on NRC Proposed Rule, "Revision of Fee Schedules; Fee Recovery for FY 2001," (66 FR 16982)

The United States Enrichment Corporation (USEC) appreciates the opportunity to provide comments on the NRC Proposed Rule, "Revision of Fee Schedules; Fee Recovery for FY 2001." The annual fees for the fuel facility class of licensees have substantially increased despite recent changes to the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) reducing the fee recovery rate from 100 percent to 98 percent for FY 2001. The NRC's description of the proposed action does not reveal the rationale behind why the FY 2001 budgeted costs to be recovered in fuel facility annual fees has increased over 6% while budgeted costs for almost all other classes of licensees have decreased. Without a clear understanding of the basis of these increased budget allocations, it is difficult to ascertain whether they are fair and equitable.

During the past year, USEC has undertaken major actions to reduce operating costs. These actions have included significant workforce reductions at our production facilities and headquarters and the commencement of enrichment cessation at the Portsmouth Gaseous Diffusion Plant. The NRC's proposed fee increase imposes a financial burden that counteracts our own cost control efforts. USEC is disappointed that the NRC continues to escalate fuel facility fees at a time when fuel facility licensees and certificate holders are implementing major cost control and reduction efforts in order to effectively compete in world markets.

USEC Inc.
6903 Rockledge Drive, Bethesda, MD 20817-1818
Telephone 301-564-3200 Fax 301-564-3201 <http://www.usec.com>

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SECY-02

Secretary, U. S. Nuclear Regulatory Commission
April 27, 2001
GDP 01-0084, Page 2

If you have any questions please contact Lisamarie L. Jarriel at (301) 564-3247.

Sincerely,


S. A. Toelle

Steven A. Toelle
Director, Nuclear Regulatory Affairs

cc: E. Leeds, NRC Special Projects Branch
P. Hiland, NRC Region III
D. Hartland, NRC Resident Inspector - PORTS
C. Blanchard, NRC Resident Inspector - PGDP



DOCKET NUMBER
 PROPOSED RULE **150.170+171**
 (66 FR 16982)

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WYOMING MINING ASSOCIATION TO APR 30 P2:48

OFFICE OF THE SECRETARY
 RULEMAKING AND
 ADJUDICATIONS STAFF

EMAIL wma@vcn.com
 On the Web at:
 www.wma-minelife.com

HITCHING POST INN

April 27, 2001

P.O. Box 866
 Cheyenne, Wyoming
 82003

Secretary
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555-0001
 ATTN: Rulemakings and Adjudications Staff

Gentlemen:

Subject: Wyoming Mining Association - Comments on the Proposed Revisions to 10 CFR Parts 170 and 171 on License, Inspection and Annual Fees for FY 2001.

The Wyoming Mining Association (WMA) is an industry association of mining companies and associates (suppliers, contractors, service companies, vendors, etc.) in the State of Wyoming. The association's membership includes a number of uranium recovery licensees licensed by the Nuclear Regulatory Commission. The association has reviewed the above mentioned Proposed Revisions to 10 CFR Parts 170 and 171 on License, Inspection and Annual Fees for FY 2001 and has the following comments:

Annual Fee for Class I and II Facilities

The WMA supports the proposed reduction in the Annual Fee for Class I facilities from \$132,000 per year (Fiscal Year 2000) to \$94,300 per year (Fiscal Year 2001) and for Class II facilities from \$111,000 per year (Fiscal Year 2000) to \$79,000 per year (Fiscal Year 2001). This is a positive step for the uranium recovery industry, however it does not go far enough, given the current state of the industry and its importance to the energy needs of the United States. In addition, the WMA supports the continued use of a quarterly billing schedule for Class I and Class II licenses.

The WMA also acknowledges that the passage of the Fairness in Funding Act, which could not have been accomplished without strong NRC support attempts to address some of the concerns of the uranium recovery licensees. It is however a fundamental principle of law that there must be a

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SECY-02

reasonable relationship between the costs to the uranium recovery licensees of a regulatory program and the benefit derived from the regulatory services delivered. The NRC's authority to prescribe fees for "regulatory services" under 10 CFR 170 is based upon the Independent Offices Appropriation Act of 1952 (IOAA), 31 USC 9701. To be valid under IOAA, a fee must "be reasonably related to, and may not exceed the value of the service to the recipient, whatever the agency's costs may be." (Central & S. Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 729 (D.C. Cir. 1985)). To heavy a burden is falling upon uranium recovery licensees. Sites that are on standby or awaiting approval of reclamation plans require minimal oversight yet must continue to pay an annual fee that is clearly not commensurate with the benefit of holding the license.

Average Cost Per Professional Staff Hour

The average cost per professional staff hour has been proposed at \$144 per hour (Fiscal Year 2001-proposed - Nuclear Materials and Nuclear Waste Program) which is an increase from the level of \$143 per hour (Fiscal Year 2000). The WMA does not support this increase.

Project Manager Charges

Beginning in Fiscal Year 2000, the Nuclear Regulatory Commission (NRC) began invoicing licensees for hourly charges for the licensees' Project Manager (PM), other than for work directly related to the license, such as training and general administrative work. In the case of a Project Manager (PM) who managed several licenses, the charges not directly related to license work were split among the licensees the Project Manager (PM) managed. These charges have become a significant additional expense that uranium recovery licensees, given the current state of the industry, can ill afford. This problem is further exacerbated when a PM "manages" few (only one or two licensees) with the result that the given licensee(s) must pay all of the overhead costs associated with this individual. The WMA supports the redesignation of Project Managers (PMs) assigned to uranium recovery licenses as Points of Contact (PCs) to avoid these charges. At the very least, this change should be made for those licensees who are currently not operating.

Invoicing Procedures

The WMA believes that the NRC should continue its efforts to provide invoices that contain more meaningful descriptions of the work done by NRC staff and NRC Contractors. With hourly rates as high as \$144 per hour, the agency should be held to at least the same standard of accountability to its licensees as a private sector consultant is to its clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified.

Status of the Uranium Recovery Industry

Uranium prices are low. The current price is \$8.25 per pound (Uranium Exchange (UX) - April 23, 2001). The issue of fees was discussed in depth at the Commissioner's Briefing provided by the

National Mining Association (NMA) in Rockville, Maryland on April 10, 2001. At this briefing, the potential for regulatory relief from fees through a petition for rule making and/or legislative relief from fees in the form of a suspension of fees pending an improvement in the uranium market was discussed. The association would support an industry wide effort through the NMA to obtain some form of relief from licensee fees. In spite of the depressed uranium prices, fees charged to licensees have risen steadily since 1998 as shown in the chart entitled NRC Fees vs. Price U3O8 presented at the Commissioners Briefing on April 10, 2001. In addition, agency fees have increased steadily since 1998 in spite of declining uranium production.

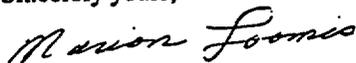
The uranium recovery industry is vital to the long term energy security of the United States especially given the recent renewed consideration of the nuclear option by utilities. Senate File 472 – A Bill to ensure that nuclear energy continues to contribute to the supply of electricity in the United States raises this issue stating, "... the United States must ensure that the domestic uranium mining, conversion and enrichment service industries remain viable." The fees levied against uranium recovery licensees threaten the viability of this vital industry. Licensees need relief from fees in order to survive to the time when the industry as a whole recovers.

Licensee fees, hourly charges, review charges, inspection costs, and PM costs have increased dramatically through the years. These charges have become a significant portion of operating costs as shown in the table entitled Rio Algom Mining Corporation – NRC Costs September 26, 1999 to December 30, 2000 prepared by Rio Algom Mining Corporation (RAMC) for its licensed facilities and presented at the Commissioners Briefing on April 10, 2001.

In summary, WMA supports the reduction in licensee fees proposed by NRC, but does not believe that the reduction goes far enough in providing the relief required by the industry. The uranium recovery industry is vital to the energy security of the United States especially given the current U.S. electricity situation. The industry should not be driven to extinction by excessive fees. The WMA believes that the hourly rate charged by the agency is excessive. In addition, the association believes that the PM charges invoiced by the agency have become an increasing burden on the industry and are especially unfair to those licensees who have a PM assigned solely to them. The WMA believes that current PMs could be redesignated as PCs at least for some (inactive or standby) licensees with a savings in PM charges for those licensees. The association believes that the agency should continue its efforts to produce invoices containing more meaningful descriptions of work performed.

WMA appreciates the opportunity to comment on this critical rule making. If you have any questions please do not hesitate to contact me.

Sincerely yours,



Marion Loomis
Executive Director

Cc: Katie Sweeney – National Mining Association (NMA)

DOCKET NUMBER
PROPOSED RULE **150-170-171**
(66 FR 16982)

DOCKETED
USNRC

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William Paul Goranson, P.E.
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Oklahoma City, OK 73118
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tel 405.858.4807
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Rio Algom

Electronically Submitted
April 23, 2001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudication Staff

Subject: **NRC's Proposed FY 2001 Fee Rule**

Dear Sir or Madam:

Rio Algom Mining Corp. is providing comments to the proposed NRC Fee Rule for FY 2001. Rio Algom currently holds three source material licenses for uranium recovery facilities that fall under the proposed fee rule. In the calendar year, 2000, the cumulative fees paid by Rio Algom total \$567,674, and relative to the current state of the uranium recovery industry, these fees have become a significant burden to the cost of operating these facilities. Additionally, given the relatively low risk of the nature of operations at these facilities, Rio Algom believes that these fees, including the current proposed fees, are unrealistic in their application.

Hourly Fees

Of the fees proposed in the new rule, the hourly (Part 170) charges are of greatest concern to Rio Algom. In 2000, hourly fees represented 61% of the annual and hourly fees assessed for all three facilities. As provided in the bills for these hourly fees, the charges are split into two general categories, (a) inspection and review costs and (b) project manager costs. The costs classified as inspection and review costs represent staff time spent directly on actions related to the facility license. Some of those review charges are initiated by Rio Algom's licensing actions, but NRC staff initiates many with Rio Algom having no input or control over the time charged for the actions. These hourly charges by their nature of review development, subsidizes NRC's other non-revenue operations.

However, the charges classified as project manager costs are the most alarming to Rio Algom. These charges represent generic administrative charges assessed to the licensee that may or may not be directly related to that licensee's operations. Examples of typical project manager costs include being charged for project manager training, rulemaking, work performed to other government agencies, etc. The proposed FY 2001 fee rule remains silent on the assessment of project manager charges, and Rio Algom is left to assume that the previous two class billing structure remains. For all three of Rio Algom's facilities, the Part 170 fees for 2000 were assessed at \$345,674, and \$159,741 or 46% of the hourly charges were assessed as project manager fees. The project manager fees are of particular concern to Rio Algom since there is no way to control the costs associated with them since these charges are simply allocated evenly amongst the licensees for that project manager.

NRC staff has been working with the uranium recovery industry to help control the project manager costs. This effort has yet to be manifested on any of the Part 170 bills to Rio Algom, and as a result, there is no means to determine if that effort has resulted in any cost reduction for the licensee. However, Rio Algom believes that the application of this method of using two categories of assessing fees for hourly charges is unfair and inappropriate, and, as a minimum, NRC should revert to the former method of billing strictly for review time. This approach would alleviate some

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of the concerns by the uranium recovery industry as a whole and make the bills more understandable by the licensees.

Annual Fees

Rio Algom's primary concern with the fee system continues to be the lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory oversight program and the benefit derived from those services. Rio Algom believes and has commented in the past, that it is that there must be a reasonable relationship between the cost to licensees of a regulatory program and the benefit derived from regulatory services.

Rio Algom does acknowledge that the reduction in the annual fees for in-situ uranium recovery facilities from \$111,000 in FY 2000 fee rule to \$79,000 in the proposed FY 2001 fee rule is a welcome change. However, that reduction does not make up for the dramatic increases in the total actual charges to uranium recovery licensees over the last two years as the result in the restructuring of the assessment of the hourly charges. Using the total annual and hourly fees assessed in 2000 to Rio Algom's operations, the proposed annual fee reduction would result in only an 11% reduction in the total fees assessed for 2001. That assumes the hourly charges remain at 2000 levels. The total hourly and annual fees remain at levels that significantly impact the cost of doing business at Rio Algom's operations.

Too heavy a burden is falling on uranium recovery facilities, particularly those sites awaiting NRC approval of reclamation plans or those on "standby." Given the complex regulatory scheme and numerous license conditions imposed on these sites, it is rarely a matter of licensee discretion when to operate or finalize closure of a site. Indeed, the realities of the uranium market are a large determinant in whether a licensee ceases operations, goes on standby or begins decommissioning. Sites that are on standby or awaiting approval of reclamation plans require minimal oversight yet must continue to pay an annual fee that is clearly not commensurate with the benefit of holding the license. In addition, NRC needs to determine an equitable way of dealing with the scenario that could result in the last licensee having to pay for the entire program that is beginning to play out in the uranium recovery area.

Invoicing

Rio Algom requests that NRC continue its efforts to provide invoices that contain more meaningful descriptions of the work done by NRC staff and NRC Contractors. With hourly rates as high as \$144, NRC should be held to at least the same standard of accountability to its licensees as the private sector is to its clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified. Rio Algom recognizes that implementing such a system would require major revisions to NRC's entire computer billing program, but it is a change that would serve NRC, licensees and the public well.

Rio Algom believes that the Commission must revise the project manager cost recovery system because that system is creating unexpected additional inequities and places the ability for a licensee to control or predict costs in jeopardy. Given the current state of the domestic uranium recovery industry, the new inequities posed by the project manager cost recovery system could be the deciding factor on the financial viability of a licensed operation. If you have any questions please call me at (405) 858-4807.

Sincerely,

William Paul Goranson, P.E
Manager, Radiation Safety,
Regulatory Compliance and Licensing

Cc: Marvin Freeman, RAMC
Katie Sweeney, NMA

Secretary
U.S. Nuclear Regulatory Commission
April 27, 2001
Page 1

DOCKET NUMBER
PROPOSED RULE **150.170-171**
(66 FR 16982) DOCKETED
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NUCLEAR ENERGY INSTITUTE

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Stephan D. Floyd
SENIOR DIRECTOR,
REGULATORY REFORM
NUCLEAR GENERATION

April 27, 2001

Secretary
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville, MD 20852

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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Secretary
U.S. Nuclear Regulatory Commission
April 27, 2001
Page 2

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

Secretary
U.S. Nuclear Regulatory Commission
April 27, 2001
Page 3

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 waiver 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 waiver 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 waiver 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

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DOCKET NUMBER
PROPOSED RULE 150, 170 + 171
(66FR 16982)

April 30, 2001



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Secretary,
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

Subject: Comments on Federal Register Notice (Part 2, NRC) dated March 28, 2001:
"10 CFR Parts 150, 170, and 171, Revision of Fee Schedules; Fee Recovery for
FY 2001; Proposed Rule"

This letter provides EPRI's comments on the NRC's proposed changes to Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and other Regulatory Services Under the Atomic Energy Act of 1954, As Amended" that are focused solely on one particular aspect of the proposed changes to Part 170 - that related to Fee Waiver policy (§170.21, Footnote 4).

EPRI believes that the proposed change to fee waiver policy could negatively impact an effective working relationships between NRC and industry on resolving generic technical and regulatory issues. It could undermine Commission policies intended to encourage industry organizations to work cooperatively with NRC on a generic basis to support regulatory improvement. It could also undermine the NRC's commitment to improved regulatory efficiency, effectiveness, and increased realism in regulatory decision-making. The NRC views on industry initiatives (as reflected in the relevant SECYs, SRMs, public meeting presentations, etc.) consistently recognize the increased efficiency and effectiveness resulting from encouraging industry to investigate and propose its own solutions to technical issues, subject to NRC review.

The proposed position on fee waivers for generic industry initiatives is inconsistent with NRC management encouragement of industry initiatives. NRC proposes to tighten its waiver criteria for charging review fees for generic industry efforts in a manner that will discourage industry initiative and penalize self-generated industrywide generic initiatives.

The proposed change is to insert the word "NRC's" in the third criterion for fee waivers listed in §170.21, Footnote 4, which would state, with this proposed modification: "Fees will not be assessed for requests/reports submitted to the NRC ... (c) as a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts;" (see Attachment A for full text of waiver criteria).

On the surface, it would appear that this change is not significant, since the rule clearly applies to the U.S. NRC, not some other regulatory agency. However, the rationale for this change, which will form the basis for NRC's waiver decisions, is problematic (see text under para. II.5, Fee Waivers, CFR page 16985).

Template = SECY-067

SECY-02

- (1) That rationale attempts to distinguish between fee waiver requests based on the industry's future use of the reports, in contrast to reports being submitted, reviewed, and approved for the purpose of NRC's generic regulatory improvements.
- (2) The rationale also cites a sentence from the statement of considerations for the FY 1994 fee rule that discusses NRC's development of generic guidance and regulations.

It appears that the reason for making these distinctions is to establish that the original intent of the fee waiver provision was to restrict fee waivers to situations where NRC specifically requests industry to develop a report and/or situations where industry reports are incorporated into NRC regulations or guidance. This interpretation is inconsistent with the history of the fee rule and many of the generic industry initiatives developed and submitted to NRC for review without fee. It runs counter to NRC policy of encouraging proactive industry initiatives.

In an April 18, 2001 letter, to the Commission, I appealed an NRC staff decision to deny our request for a waiver of the 10 CFR Part 170 fees covering the staff's review of the RETRAN-3D safety analysis code. In that letter, I disagreed with recently imposed interpretations of the fee waiver criteria that limit its scope.

Imposing additional and costly review fees on organizations that develop generic industry solutions to technical and regulatory issues (e.g., NEI, EPRI) discourages generic industry initiative. The value of industry generic activities is well acknowledged by NRC. For example, SECY-00-0116 states: "... it is expected that addressing issues through industry initiatives would, overall, save resources for both the NRC and the industry. Most industry initiatives would address issues generically, rather than on a plant-specific basis, and staff experience is that the generic approach saves resources. Industry initiatives also allow the nuclear power reactor industry more flexibility in the selection of the schedule and technical approach for addressing the issue. Further, since industry and other members of the public would be involved at an earlier stage in addressing an issue, the staff expects better communication and more timely identification of appropriate actions to address emerging issues. This would also save resources and would improve timeliness of actions."

Commission direction to the staff in COMSECY-96-062 was to "move as expeditiously as possible, within budget constraints, to evaluate on a case-by-case basis, initiatives proposing further NRC reliance on industry activities as an alternative to NRC activities."

The staff response, SECY-97-303 ("The Role of Industry and Use of Industry Initiatives") included the following means of addressing the review fee issue for industry initiatives:

"Another issue to be considered is the fee structure associated with the review of industry initiatives that would be substitutes for regulatory action, specifically, whether or not the

sponsoring organization should be charged for the cost of the review. Based on the level of effort that has, in the past, been necessary for staff to review and endorse industry initiatives, this is likely to be a significant issue. Currently, consistent with the fee policy for topical reports, fees will be assessed for the full cost of the reviews unless the industry initiative meets the criteria specified in Footnote 4 to 10 CFR 171.21 or Footnote 5 to 10 CFR 171.31."

From our perspective, NRC staff efforts the past five years have encouraged industry initiative and have focused on better ways to credit industry initiative in existing NRC processes while maintaining the statutory authority of the NRC to assure adequate protection of public health and safety. Optimizing the existing parallel but independent processes of industry initiative and regulatory oversight meant improving information exchange and achieving regulatory efficiency by allowing industry to carry a greater burden for analyzing issues and identifying practical and effective responses to safety issues, subject to NRC review.

To a significant degree, the way these two seemingly unrelated regulatory procedures – the industry initiative process outlined in SECY-00-0116, and the proposed revision to the fee rule to allow the staff discretion in not granting a waiver for industry initiatives that it did not specifically request – could work in concert to create unintended consequences is evident in these hypothetical examples:

- NRC staff could impose review fees on broad-based, generic industry submittals for improved, risk-informed and/or best-estimate analysis tools (e.g., RETRAN-3D), but not impose a review fee on analysis tools submitted by only two licensees, but that are more deterministic or conservative than the preferred realistic or best-estimate analysis tools.
- NRC staff could impose review fees on an industrywide solution to a generic technical issue – one supported by all licensees, but one that does not involve an explicit commitment to NRC for taking enforcement action (because §50.109 criteria have not been met); but not impose a review fee on another solution by two licensees willing to commit, for enforcement purposes, to specific actions, despite the lack of a regulatory basis.
- NRC could impose review fees on a high-value, unsolicited, risk-informed, performance-based initiative supported by all licensees on the sole basis that the staff had not specifically requested the industry to propose that initiative, or on the sole basis that the staff did not envision the need to incorporate the industry initiative into its regulations or guidance.

I am not suggesting that the NRC staff would exploit these rules and guidelines in such a manner as to exact a *quid pro quo*. I am arguing that the NRC staff should not propose, nor promulgate, policies and rules that knowingly establish the opportunity for such unintended consequences.

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I recommend the fee waiver criteria in Part 170 not be changed. Further, I request that the NRC reaffirm its intent and desire to encourage industry initiatives that improve plant performance and safety, even in cases where the NRC does not specifically request the action, and in cases where the NRC might not modify its own regulations and guidance to reflect the industry initiative.

There will be increasing instances in our commercial nuclear business where industry takes the initiative to address issues on a generic basis and where NRC has an interest in or need to review the industry's analysis, guidelines, and implementation plans. Industry groups like NEI and EPRI should not be penalized for these industrywide activities through costly review fees. Further, the staff should not be empowered with the ability to favor some industry initiatives over others through discretionary use of fee waiver criteria that are not clearly understood and not based on sound and fair policies.

The NRC should reaffirm its support of fee waivers for all NEI documents, and all other documents from EPRI or other organizations – even unsolicited ones, that enjoy broad-based, industrywide support for addressing a generic regulatory issue applicable to the entire industry or a large class of licensees (e.g., BWRs or PWRs).

Since granting a fee waiver is revenue-neutral to NRC, and since the use of industry initiatives in the regulatory process can provide effective and efficient use of resources and resolution of issues, NRC policies, regulations and implementing guidance must continue to encourage cooperation, industry initiative, and generic approaches to issues.

Sincerely,



Theodore U. Marston, Ph.D.
Vice President & Chief Nuclear Officer

TUM/bjr/9850L
Attachment

c: Ralph Beedle
Sam Collins
Ashok Thadani

Complete Citation from Part 170 of Generic Fee Waiver Criteria

The regulatory basis for granting an exemption from review fees is footnote 4 to the Special Projects fee category in the table presented in 10 CFR 50.170.21, which says:

[footnote] "4. Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts."