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April 26, 2002

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ATTENTION: Rulemakings and Adjudication Staff

SUBJECT: Proposed Rule: *Revision of Fee Schedules; Fee Recovery for FY 2002*
(67 Fed. Reg. 14818, March 27, 2002)

On behalf of the commercial nuclear 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 2002* (67 Fed. Reg. 14818).

The U.S. nuclear energy industry continued its long-term trend of improved performance in 2001, with safety and electricity production at or above historically high levels. The industry's unit capability factor was above 90 percent for the second consecutive year. World Association of Nuclear Operators (WANO) statistics show that performance stood at or near record levels of excellence in vital areas such as the availability of key safety systems, worker safety, unplanned plant shutdowns, and collective radiation exposure.

Similarly, the NRC's ongoing reform efforts appear to be producing significant improvements in the agency's approach to regulation. The reactor oversight process, now in its third year, has succeeded in timely identification of performance differences among nuclear power plants from the critically important perspective of safety. The 2001 performance indicator data and inspection findings showed that the vast majority

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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of nuclear power plants continue to perform at very high safety levels. The reactor oversight process makes it much easier for plant operators, the NRC, and the public to ascertain how nuclear plants are performing and to identify any areas in need of increased regulatory resources.

Revision of the agency's regulatory approach is only one facet of NRC reform the industry believes is necessary. The NRC also should continue to seek opportunities for increased efficiency of its own operation and organization. Regulatory reform, industry consolidation and continued high levels of safety performance should result in organizational efficiency. The NRC should take actions 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. Increased agency efficiency and more effective use of resources should result in reduced and more equitable fees.

Following is a more detailed discussion of our specific concerns with the proposed rule.

1. NRC's overall budget should be reduced by more efficient use of resources resulting from the agency's revised regulatory approach.

The industry strongly believes that the changes in the NRC's regulatory approach and the industry's continued excellent performance should result in a decrease in the NRC's overall budget and a decrease in attendant fees charged to licensees and applicants. The revised inspection, assessment and enforcement processes are far more objective and risk-informed, which should lead to more efficient use of agency resources while ensuring that licensees maintain a high level of operational safety. Under the reactor oversight program, most licensees will require only baseline 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.

The revised reactor oversight process, now in its third year of implementation, is a mature and effective program. It is an opportune time for the agency to 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 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,

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with the attendant overhead costs, to focus on the few plants that warrant significant additional attention.

The continued increase in the number of Agreement States and greater number of decommissioned material facilities should require fewer NRC resources for materials licensee oversight. Uranium recovery licensees continue to be subject to unnecessary costs due to overlapping regulatory jurisdictions. In non-Agreement States, the NRC should accept the groundwater quality assessments conducted by the State or the Environmental Protection Agency rather than performing duplicative environmental assessments. We also encourage the agency to proceed expeditiously with extension of the revised regulatory oversight program to fuel cycle licensees (uranium recovery, conversion, enrichment, and fuel fabrication). A risk-informed, performance-based oversight process will acknowledge the inherent safety of these operations and further reduce unnecessary regulatory burden.

Increasing fees may also retard the pace of materials' facility decommissioning. What is clearly in the public interest—rapid decommissioning and environmental restoration—is hindered by burdensome fees.

2. The NRC should justify proposed Part 171 charges.

The industry continues to object to the NRC's approach to allocation of fees through 10 CFR Part 171, generic fee assessment. Part 171 charges typically account for 70 to 80 percent of a licensee's fees. Reactor licensees bear a large share of the Part 171 burden, amounting to \$2.869 million per operating power reactor—an increase of 4.2 percent of last year's fee.

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 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.

The subject *Federal Register* notice states that the agency workpapers that support the proposed fee changes are available at the NRC Public Document Room and via the Agencywide Documents Access and Management System (ADAMS). We find this supporting material indecipherable. We strongly urge the NRC to clearly provide licensees and the public with the specific activities and associated costs that form the bases for these fees. Two significant benefits will accrue from such action. First, stakeholders could provide the NRC with far more effective feedback on the efficiency of regulatory activities if Part 171 related costs were described with specificity. Second,

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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.

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

The proposed rule revises the criteria for fee waivers and relocates the fee wavier information to a new Exemption section as 10 CFR 170.11(a)(1).

Licensees often undertake pioneering or "ground breaking" licensing actions. The associated NRC review fees for such first-of-a-kind licensing actions are often substantial. The result of such pioneering actions, however, is an assessment that may contribute to generic regulatory activities and which may serve as precedence for other licensees. It is through such efforts that many safety improvements, burden reductions, improved regulatory processes, and public confidence enhancements result. Such "ground-breaking" actions by licensees should be encouraged and supported by the NRC. The proposed rule does just the opposite. The restrictive application of the "primary beneficiary" criterion as proposed will have unintended consequences. There will be a chilling effect on licensees that would otherwise have volunteered to pilot significant regulatory initiatives that have safety benefits and burden reduction benefits.

We recommend that the proposed sections (A), (B), (C) and (D) of 10 CFR 170.11(a)(1)(iii) be deleted and that the following new paragraph be added:

"(iv) To request action for a specific licensee(s), but which also has the potential to result in final products which could provide a useful precedent to additional licensees or which could contribute to the development of generic regulatory improvements."

Additionally, we support the comments and positions submitted by EPRI on the fee waiver policy.

4. Fee rule changes related to Part 52 Combined Licenses are appropriate, but additional clarification is required.

We concur in the intent of the rulemaking to (1) include Part 52 licensees within the scope of Part 171 annual fee requirements, (2) clarify that annual fees would be assessed on a per license, not per unit, basis, and (3) establish that annual fees for facilities licensed under Part 52 would begin to be assessed upon authorization to operate.

We understand and appreciate that the clarification that fees would be assessed on a per license, not per unit, basis is motivated at least in part by the prospect of multi-

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module nuclear facilities in the future. Fair and proper treatment of modular facilities under the NRC annual fee schedule is important so as not to discourage this innovative and promising design concept. Recognizing this, Congress is currently considering legislation to ensure fair treatment of modular facilities under the Price-Anderson Act. Specifically, pending Price-Anderson renewal legislation would provide that modular facilities consisting of individual reactors rated between 100-300 MWe and having a total output not greater than 1300 MWe would be assessed a single retrospective premium. Price-Anderson renewal is broadly supported in both houses of Congress and by the Administration and is expected to be enacted into law this year.

Consistent with the intent of Congress, there is apparent agreement that modular facilities should be assessed a single NRC annual fee. However, due to other factors (e.g., term of a modular license), it is not yet clear whether it will be more appropriate and beneficial for modular facilities to be covered by a single Part 52 combined license, or multiple COLs, i.e., one for each reactor module. In theory, both options would be available to prospective modular facility applicants. If the outcome of ongoing interactions with the NRC staff regarding modular plant licensing is that it is more appropriate and beneficial for each reactor module of a multi-module facility to have a separate license, the proposed change to clarify annual fee assessment on a per license basis would not achieve the underlying intent to assess a single NRC annual fee to modular facilities.

We recommend that the Statements of Consideration accompanying the final 2002 fee recovery rule make clear the underlying intent that modular facilities be assessed a single NRC annual fee, regardless of whether they are granted a single COL or multiple COLs for each module. In general, for purposes of assessing NRC annual fees, facilities qualifying for a single annual fee should include, but may not be limited to, those meeting the criteria in the pending Price-Anderson legislation (facilities having multiple reactors rated between 100-300 MWe and a total output not greater than 1300 MWe).

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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.

Thank you for the opportunity to submit comments on this subject.

Sincerely,



Stephen D. Floyd

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