

12/02/02

To Mark (w/p) 8/16/02
for Jesse

(G:\Comments on Modular Reactor paper.August 2002.wpd

Subject to the following changes, the CFO concurs on the Commission paper "POLICY ISSUES ASSOCIATED WITH LICENSING NEW NUCLEAR POWER PLANTS".

- A. Based on OFCO staff's discussion with NRR staff, Item 8 of the Commission paper and the Staff Position under Item H.2 of the Attachment to the paper should be modified to clarify that a separate COL will be issued for each module of a modular facility.
- B. In the Commission paper, replace the current Item 9 with the following:

9. Annual fee requirements in 10 CFR 171

In the FY 2002 final fee rule, 10 CFR 171 was revised to specifically authorize the assessment of annual fees for COLs issued under 10 CFR Part 52; to clarify that annual fees are charged per license, not per unit; and to establish when NRC will begin to charge an annual fee to a holder of a 10 CFR Part 52 COL. Annual fees will be assessed for a 10 CFR Part 52 COL only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operations of the reactor.

In its June 17, 2002, white paper, NEI stated that "if individual COLs are issued for each module of a modular plant (facility), a further change to the NRC's annual fee structure will be necessary to provide for assessment of a single annual fee to a modular plant (facility).

Based on the current provisions of 10 CFR Part 171, a separate annual fee would be assessed for each COL. Accordingly, if a separate COL is issued for each module of a modular facility, a separate annual fee would be assessed for each module. The annual fees for the COLs would be determined based on the requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, that the charges be fair and equitable and to the maximum extent practicable reflect the costs of providing regulatory services. However, until the staff is able to determine the regulatory oversight required for the new proposed designs, it is premature to recommend whether a separate fee class should be established for modular reactors or to determine the amount of the annual fee for each license.

Jesse's change

- C. In the Attachment to the Commission paper, replace Item I.2 with the following:

1.2 Commencement of Annual Fees

Issues

H/1

How should annual fees be assessed for a set of modular reactors that constitute a facility? When should annual fees commence for a facility that has been issued a COL?

Current Statutory Provisions and Regulations

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended, requires that the NRC assess annual fees and that the fees be established through rulemaking. The statute establishes two standards for the annual fees. The fees must be "fair and equitable" in allocating the "aggregate amount of charges" among licensees; and, "to the maximum extent practicable," the fees must have a "reasonable relationship to the costs of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees."

In the FY 2002 final fee rule, 10 CFR Part 171 was amended to specifically authorize the assessment of annual fees for COLs issued under 10 CFR Part 52; to clarify that the annual fee is charged per license, not per unit; and to establish when NRC will begin to charge an annual fee to a holder of a 10 CFR Part 52 COL. The annual fee will be assessed for a 10 CFR Part 52 COL only after construction has been completed, all regulatory requirements have been met, and the Commission has authorized operation of the reactor(s).

Discussion

It is clear from the language of the OBRA-90, as amended, that the NRC has flexibility in determining policies and practices in recovering the statutorily directed amount of the NRC's budget through fees. The Commission is within its statutory bounds as long as the rule establishing the fees results in a fair and equitable allocation of costs to licensees and as long as there is a reasonable relationship between the services rendered by the agency and the costs charged for those services.

In accordance with OBRA-90, as amended, annual fees for each class of licenses are based on NRC's budgeted costs allocated to the class for generic activities and other costs not recovered under 10 CFR Part 170. It is not clear whether the agency's generic and other efforts to regulate modular reactors will be significantly different from its regulation of other types of operating power reactors. Further, while a modular reactor might have less megawatt output capacity than any existing reactor, historically capacity has not been a consideration in determining the annual fee amount. This is because the NRC has not found a necessary relationship or predictive trend between the thermal megawatt rating of a power reactor and NRC regulatory costs. If the NRC's regulatory costs for a modular reactor were approximately the same as for existing power reactors, the annual fee would

be of the same magnitude as for existing power reactors. However, if the NRC's regulatory costs were significantly lower or higher than those for other types of operating reactors, the Commission could establish a separate license fee class through a 10 CFR Part 171 rulemaking.

Under the current provisions of 10 CFR Part 171, an annual fee would be charged for each COL. In its June 17, 2002, white paper, NEI stated that "if individual COLs are issued for each module of a modular plant (facility), a further change to the NRC's annual fee structure will be necessary to provide for assessment of a single annual fee to a modular plant (facility)."

Staff Position

Based on the provisions of 10 CFR Part 171 that a separate annual fee be assessed for each license, if a separate COL is issued for each module of a modular facility, a separate annual fee would be assessed for each module. The annual fees for the COLs would be determined based on the requirements of OBRA-90, as amended, that the charges be assessed in a "fair and equitable" manner and, "to the maximum extent practicable", reflect a "reasonable relationship" to the costs of providing services to the licensees or classes of licensees.

Until the staff is able to determine the regulatory oversight required for the new proposed designs, it is premature to recommend whether a separate fee class should be established for modular reactors or to ~~determine~~ determine the amount of the annual fee for each license.

*James
Chavez*