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May 5, 2003

~~DOCKET NUMBER~~
~~PROPOSED RULE~~ **PR 170+171**
(68FR 16374)

DOCKETED
USNRC

May 6, 2003 (8:15AM)

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

ATTENTION: Rulemakings and Adjudication Staff

SUBJECT: Proposed Rule: *Revision of Fee Schedules; Fee Recovery for FY 2003* (68 Fed. Reg. 16374, April 3, 2003)

EPRI submits the following comments on the Nuclear Regulatory Commission's proposed rule, *Revision of Fee Schedules; Fee Recovery for FY 2003* (68 Fed. Reg. 16374). These comments address two areas: EPRI's support for the comments provided by the Nuclear Energy Institute (NEI) in their letter dated 2 May, and EPRI's continuing concerns over the fee waiver policies of the Office of the Chief Financial Officer (OCFO).

Supporting Comments on NEI's Fee Rule Letter

EPRI supports all four key comment areas in NEI's letter and amplifies below on points 2 and 3, primarily from a research perspective.

Regarding NEI's Comment #2 ("NRC's overall budget should be reduced by more efficient use of resources resulting from the agency's revised regulatory approach,"), cooperation with industry on regulatory research efforts is another area of opportunity for improved efficiency. The Commission has long supported the appropriateness and benefits of cooperation and information sharing between NRC and industry, and has specifically supported the Memorandum of Understanding between NRC's Office of Nuclear Regulatory Research and EPRI that commits both organization to cooperation information sharing, and joint generation of data needed by both NRC and industry to address safety issues and opportunities. This process has worked well where it has been applied, but many opportunities for increased cooperation exist, each with benefits to NRC and industry of increased efficiency and conservation of limited resources. Joint generation of data by RES and EPRI gives NRC and industry decision-makers the ability to efficiently resolve issues without having to contend with diverging technical bases.

Two areas of increased cooperation are specifically recommended:

- Nuclear plant security, where diverging data, assumptions and analysis methods could delay and detract from realistic vulnerability assessments, and
- Risk-informed regulatory improvements, where similar delays have seriously diminished progress on improvements that would benefit both NRC and industry

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In both cases, limited resources for research could be conserved through increased cooperation.

Regarding NEI's Comment #3 ("NRC fees should be clearly designated to allow industry to provide comprehensive comments on the proposed rule,"), EPRI believes that greater public disclosure and accountability of costs that are billed to Part 171 annual fees can and should be provided. However, shifting costs from Part 171 billing to Part 170 billing is one way, but not the only way, of providing the level of increased accountability NEI has called for.

One example NEI provides of a means to improve accountability is a detailed accounting of NRC contractor activities, including a detailed accounting of the major contracts currently outstanding, including their purposes and costs. This information should be made available to the public, irrespective of whether these costs are billed under Part 170 or Part 171. Although some NRC programs should be shifted to Part 170 billing, EPRI believes that, consistent with NEI's position, costs associated with reviewing documents submitted to NRC to "*...exchange information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts*" should continue to be funded under Part 171.

Comments on NRC's Fee Waiver Policy

Regarding NRC's review fee waiver policy, EPRI continues to believe that the OCFO policies are flawed, unworkable, and counterproductive to regulatory efficiency and effectiveness. This letter provides a high-level summary of these problems. Further detail was provided in EPRI's letter to Chairman Meserve dated 28 February 2003. Although no further changes are proposed to fee waiver criteria in the FY2003 Proposed Rule, we believe it is appropriate to comment on outstanding problems with OCFO fee waiver policies. We note that NRC's Proposed FY2003 Fee Rule explains well the basic difference between Part 170 and Part 171 under "Background:"

"The NRC assesses two types of fees to meet the requirements of OBRA-90, as amended. First, license and inspection fees, established in 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses, and for certain types of existing licenses, the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not otherwise recovered through 10 CFR Part 170 fees."

Unfortunately, the OCFO's actual fee waiver policies are not consistent with these definitions and distinctions. The OCFO has begun charging Part 170 fees for reviews of EPRI documents submitted to NRC for none of the purposes cited above for Part 170. EPRI has instead submitted documents for review in full conformance with Part 170 fee waiver criterion to "*...exchange*

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information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts." Various flawed reasons have been given for waiver denials:

- The OCFO has determined in the case of EPRI submittals made for *generic regulatory improvement* that the entire nuclear industry is an "identifiable recipient" of NRC services as its basis for fee waiver denial. We believe this determination is being applied selectively to EPRI, since in theory it would provide the basis to shift all generic costs to Part 170 billing – something OCFO has not done.
- The OCFO claims incorrectly that federal law (IOAA, OBRA-90) requires its fee waiver denials. These federal laws only require NRC to be "...self-sustaining to the extent possible." – Congress has only required that NRC recover its costs through fees. NRC may meet Federal mandates via either Part 170 or Part 171 fees. The allocation of fee recovery between these two fee options is at the discretion of the Commission.
- Despite the many advantages to NRC, industry and the general public (see below) of granting fee waivers for submittals made for the purpose of *generic regulatory improvement*, OCFO policy establishes roadblocks to industry efforts to work with NRC toward such improvements.
- OCFO policy forces every regulatory improvement into an "NRC-only" bin or an "industry-only" bin through an unworkable "them" vs. "us" benefits test. EPRI believes that *generic regulatory improvement* proposals are either useful or not useful. If a proposal improves safety, both industry and NRC benefit. If a proposal helps make NRC staff review more efficient, both industry and NRC benefit. Yet the OCFO process is to unilaterally determine the intent of the submitter and who benefits 'most' in order to make fee decisions. Further, OCFO policy is to require decisions on "who benefits" at a point in time when such projections are not known.

The Commission has directed the staff to work with industry on "...initiatives proposing further NRC reliance on industry activities as an alternative to NRC activities," yet the OCFO positions effectively block cooperation, despite its many acknowledged advantages:

- Improved focus on safety, typically through risk insights, improved technology, etc.
- Improved regulatory efficiency and effectiveness, by addressing generic issues generically, rather than on a plant-specific basis.
- Reducing the number of individual waiver requests and license amendments.
- Enhanced standardization and uniformity of individual applications.
- Engaging stakeholders more broadly at an earlier state in addressing an issue.
- Improved communications and more timely identification of appropriate actions.
- Reducing unnecessary resource demands through increased consensus on both sides.
- Allowing more flexibility and innovation in selecting schedule and technical approach.
- Expediting resolution of issues; improving timeliness of actions.
- Enhanced regulatory efficiency and effectiveness during NRC follow-up activities.

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Conclusions and Recommendations

EPRI again requests Commission and EDO consideration of recommendations in EPRI's letter commenting on the FY2002 Fee Rule, dated 26 April 2002, (see attached excerpt), as a starting point for developing a practical approach to fee waiver criteria. These recommendations are fully consistent with IOAA, OBRA-90, and Commission performance goals to make NRC activities and decisions more effective, efficient, and realistic, and to reduce unnecessary regulatory burden and resource expenditures. They would eliminate disincentives to proactive industry efforts toward *generic regulatory improvements*.

Sincerely,



David J. Modeen
Vice President & Chief Nuclear Officer

DJM/bjr/9988L

Attachment

Attachment: Recommendations for Resolution of Fee Waiver Criterion 3 Application

(Excerpt from EPRI letter (T. Marston) to NRC (SECY) dated 26 April 2002):

Recommendation:

A fee waiver decision for a generic industry submittal by EPRI ultimately comes down to deciding whether NRC's costs come out of commercial reactor licensees' Part 171 fees or come out of EPRI's budget, which, like Part 171 fees, is funded by all commercial reactor licensees. When EPRI requests a fee waiver for a particular submittal, it does so on behalf of its membership, who agree to support the EPRI request with full recognition that the waiver shifts those specific review costs to Part 171 fees. (These considerations are similar to those made by NEI for its reports.) EPRI and its members prefer to request fee waivers, when appropriate, in order to sustain their approved and budgeted activities within the budget cycle, and for overall budget stability. EPRI specifically avoids requesting a waiver for submittals that are not of a generic nature and thus would not obtain support from our membership for shifting cost accountability to Part 171 fees.

Specifically, we recommend that the third fee waiver granting criteria should be implemented as follows: *"As a means of exchanging information between industry organizations and the NRC for the purpose of supporting NRC's generic regulatory improvements or efforts."* if either of the following apply:

1. NRC requests the submittal from an industry organization because, for whatever reason and for whatever ultimate usage, it desires industry input to assist in regulatory improvement, or
2. An industry organization representing all licensees (e.g., NEI, EPRI) submits a proposal for generic regulatory improvement, including unsolicited proposals and implementation details that need NRC review, and that is supported by its membership as a generic submittal.

This recommendation is fully consistent with Commission performance goals to make NRC activities and decisions more effective, efficient, and realistic, and to reduce unnecessary regulatory burden. It would eliminate disincentives enabling Commission policies on Role of Industry that seek proactive industry response to generic regulatory issues.

In turn, EPRI would continue to assure NRC that all submittals to NRC that include a fee waiver request have been reviewed by our members and have their support, in terms of content, generic value and applicability, and concurrence to cost recovery via Part 171. This formulation is equivalent to that used today for NEI submittals. It should also be applicable on a case-by-case basis for Owners Group submittals that qualify as "generic."