

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



COMMISSIONER

March 27, 2001

MEMORANDUM TO: Jesse L. Funches
Chief Financial Officer

FROM: Edward McGaffigan, Jr. *Edward McGaffigan, Jr.*

SUBJECT: FEES RELATED TO RESEARCH ACTIVITIES SUPPORTING FIRST-OF-A-KIND APPLICATIONS FOR A LICENSE OR CERTIFICATION

I have reviewed your March 16, 2001 memorandum proposing to recover the cost of research activities supporting the first-of-a-kind applications (FOAKA), including the Pebble Bed Modular Reactor (PBMR) and mixed oxide fuel (MOX) applications, through 10 CFR Part 171 fees. I approve continued use of this policy for FOAKA for advanced reactors, such as the PBMR. However, I disapprove applying the fee policy for the MOX application for reasons explained below. I propose recovering the research costs associated with the MOX application from the applicant through 10 CFR Part 170 fees.

I support continuation of the 1995 fee policy for the FOAKA involving advanced reactor designs such as the PBMR. Advanced reactor design is the product of the private sector where corporate America is seeking to respond to a generic need in the electric utility business sector. The applicant pays its own way for design certification/licensing and the industry at-large jointly pays for research costs because of the potential shared benefit to those who might someday purchase an advanced reactor. As we have seen in recent months, there is growing interest in the future of Generation III+/IV reactors.

The MOX program, however, is different in key aspects from the advanced reactor program. The Department of Energy's (DOE) fissile material disposition program is a U.S. government initiative to reduce the availability of weapons grade plutonium both in the U.S. and Russia. DOE's hybrid strategy calls for irradiating approximately 33 metric tons of weapons origin plutonium as MOX fuel in a very limited number of commercial nuclear reactors -- Duke Power Company's Catawba and McGuire plants -- to achieve the "spent fuel standard." DOE is funding the MOX program, including design, construction and licensing costs for the fuel fabrication facility, and licensing costs for the participating reactor facilities. The MOX fuel facility is to be used exclusively for the weapons plutonium disposition mission and will be shut down when this mission is complete. Duke Power Company is both a member of the fuel fabrication facility consortium and is the commercial reactor licensee who volunteered to burn the weapons-origin MOX.

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Any NRC research carried out to support the MOX option for disposing of excess weapons plutonium will benefit only the U. S. Government and its contractors, not reactor licensees as a whole. It is unfair to ask reactor licensees as a whole to subsidize a U.S. Government arms control program by paying Part 171 fees for NRC research related to the MOX program. As an exception to the 1995 policy to take into account the unique nature of the MOX weapons plutonium disposition program, I believe that all research related to MOX should be charged to the DOE contractor, the MOX consortium, via Part 170 fees.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner Merrifield
W. Travers, EDO
K. Cyr, OGC
A. Vietti-Cook, SECY

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