



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

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May 11, 2001

CHIEF FINANCIAL
OFFICER

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Jesse L. Funches *Jesse L. Funches*
Chief Financial Officer

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

Several questions have recently surfaced concerning fee recovery for the Office of Nuclear Regulatory Research's (RES) activities related to the potential application for a Pebble Bed Modular Reactor (PBMR), other similar first-of-a-kind applications, and use of mixed oxide fuel (MOX) in commercial reactors. In 1995 and 2001, the Commission considered a similar issue on RES's activities associated with standard reactor design certifications (DC). In the March 10, 1995, Staff Requirement Memorandum for SECY-95-035, the Commission decided to charge fees to the applicant for RES direct review and evaluation of standard design necessary to support NRR's Final Design Approval (FDA) and design certification and not charge fees to the design certification applicants for any RES confirmatory research.

The FY 1995 proposed fee rule (60 FR 14673; March 20, 1995) stated that:

Beginning with the effective date of the FY 1995 fee rule, the NRC plans (under 10 CFR Part 170) to bill the applicants for RES's direct review and evaluation of the standard design in support of NRC's FDA and design certification. Direct review includes evaluation of the applicant's test programs, vendor codes and topical reports, standard safety analysis reports, and other supporting design and analysis information. Under this approach, fee assessment for RES costs would be treated identically to NRR charges for staff full-time equivalent (FTE) employees or contractors associated with the FDA/DC review. Billing vendors for RES activities that are in direct review of the applicant's design is consistent with the major principle of 10 CFR Part 170 of assessing fees to the principal beneficiary of the NRC regulatory activity (i.e., vendor receipt of an FDA/DC). The applicant would not be assessed fees for confirmatory research related to the designs. The budget for confirmatory research would continue to be recovered from annual fees assessed to operating power reactor licensees under 10 CFR Part 171.

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In responding to comments received on the proposed rule, we replied to a commentator who had misconstrued the policy (60 FR, 32224; June 20, 1995).

Its aim is to charge vendors applying for FDAs and certifications of standard designs for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, would be charged to the utilities under 10 CFR Part 171, even if it had a bearing on the review of a standard design. (See 60 FR 14673; March 20, 1995). There is in this nothing inconsistent with the existing regulations on certification fees. In both cases, the NRC is charging the vendors for what must be done before issuance of the FDA or certification.

In the April 26, 2001, Staff Requirements Memorandum (SRM), COMSECY-01-0010, the Commission approved the continued use of the 1995 fee policy to recover the cost of research activities supporting the first-of-a-kind applications for advanced reactor designs. Therefore, this fee policy will be applied to RES activities for the potential application for a PBMR and other similar first-of-a-kind applications, and is consistent with the fee treatment for the AP-1000 standard reactor design. That is, these applicants will be assessed fees under Part 170 for RES's direct review and evaluation of the applicants' submittals that are necessary to support NRC's licensing decisions, including pre-application consultations and reviews. RES's confirmatory and anticipatory research will not be charged to these applicants but recovered from Part 171 annual fees assessed to existing reactor licensees.

However, in the April 26, 2000 SRM, the Commission specifically disapproved applying this same fee policy to RES activities associated with applications involving the fabrication and utilization of MOX. The SRM states that:

Since the limited use of MOX supports the Department of Energy's (DOE) fissile material disposition program, which is a U.S. Government national security initiative, the costs should be borne by the reactor applicants (which would presumably pass those costs on to the Federal Government) as Part 170 fees and not borne by all reactor applicants as Part 171 annual fees. In the event research is necessary to support the MOX fabrication facility, these costs should be borne by that applicant (Duke, Cogema, and Stone and Webster). If any other national security initiative involving NRC licensees -- e.g., tritium production in commercial light water reactors -- were to require NRC research activities, the Commission would take a similar approach to recover the cost of those research activities.

NRC will bill applicants Part 170 fees, on a quarterly basis, for RES's direct review and evaluation of the applications necessary to support NRC's licensing decisions related to the fabrication or use of MOX fuel, and for first-of-a-kind applications for advanced reactor designs, such as an PBMR application and the AP-1000 application. Thus, RES's direct review will be treated identically to NRR and NMSS charges for professional direct staff and contract costs associated with such reviews. Direct review includes, for example, evaluation of the applicant's test programs, vendor codes and topical reports, standard safety analysis reports, probabilistic

risk assessments, and other supporting design and analysis information. RES's confirmatory and anticipatory research associated with first-of-a-kind applications for advanced reactor designs will be recovered from annual fees assessed to operating power reactor licensees under 10 CFR Part 171. RES's confirmatory and anticipatory research associated with the fabrication and use of MOX, including, for example, NRC code development and assessment, testing programs for MOX fuel, or confirmatory testing for code development, and with other national security initiatives involving NRC licensees, will be recovered through Part 170 fees assessed to those applicants.

RES should take the necessary steps to ensure that: 1) the direct review activities associated with first-of-a-kind applications for advanced reactor designs are coded as fee billable under Part 170; 2) confirmatory and anticipatory research activities associated with first-of-a-kind applications for reactor designs are coded as not billable under Part 170; 3) all direct review and confirmatory and anticipatory research activities associated with the fabrication and use of MOX, as well as any other national security initiative involving NRC licensees, are coded as fee billable under Part 170; 4) the direct staff effort for the activities subject to Part 170 fees are reported to the RITS system; and 5) that the RITS data as well as direct contract costs expended for the activities subject to Part 170 fees are reported to the Office of the Chief Financial Officer on a quarterly basis for fee billing purposes. Please contact Ellen Potat at 415-6392 for assistance in reporting this information.

If you need clarification or need to discuss implementation of this policy, please contact me or Glenda Jackson, Assistant for Fee Policy and Rules, at 415-6057.

- Attachments: 1. SRM for SECY-95-035, dated March 10, 1995
 2. SRM for COMSECY-01-0010, dated April 26, 2001

- cc: C. Paperiello, DEDMRS
 W. Kane, DEDR
 M. Virgilio, NMSS
 S. Collins, NRR
 A. Thadani, RES

*Previously concurred.

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

OFFICE OF THE
SECRETARY

March 10, 1995

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: *John E. Hoyle*
John E. Hoyle, Secretary

SUBJECT: SECY-95-035 - REASSESSMENT OF FEE BILLING
PRACTICES AND FEE POLICY FOR OFFICE OF
NUCLEAR REGULATORY RESEARCH (RES) ACTIVITIES
ASSOCIATED WITH DESIGN CERTIFICATION (DC)
APPLICATIONS

The Commission (with all Commissioners agreeing) has approved the staff's proposal to charge fees to all DC applicants for RES direct review and evaluation of the standard design necessary to support NRR's FDA/DC and not charge fees to DC applicants for any RES confirmatory research. The rule should not be made effective 30 days after the vendors are notified, as proposed. Rather, the proposed change in fee policy should be discussed in the statement of considerations for the proposed 1995 fee rule and public comments evaluated prior to implementation of the new fee policy.

(EDO)

(SECY Suspense: 3/31/95)

cc: The Chairman
Commissioner Rogers
Commissioner de Planque
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SECY NOTE: THIS SRM AND SECY-94-035 DISCUSS SENSITIVE INFORMATION AND WILL BE LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 26, 2001

OFFICE OF THE
SECRETARY

MEMORANDUM TO:

Jesse L. Funches
Chief Financial Officer

FROM:

Annette L. Vietti-Cook, Secretary

SUBJECT:

STAFF REQUIREMENTS - COMSECY-01-0010 - FEES
RELATED TO RESEARCH ACTIVITIES SUPPORTING FIRST-
OF-A-KIND APPLICATIONS FOR A LICENSE OR
CERTIFICATION

The Commission has approved the continued use of the 1995 fee policy to recover the cost of research activities supporting the first-of-a-kind applications for advanced reactor designs. As an exception to the policy, the Commission specifically disapproves the application of the 1995 fee policy to the applications involving the fabrication and utilization of mixed oxide fuel (MOX). Since the limited use of MOX supports the Department of Energy's (DOE) fissile material disposition program, which is a U.S. Government national security initiative, the costs should be borne by the reactor applicants (which would presumably pass those costs on to the Federal Government) as Part 170 fees and not borne by all reactor licensees as Part 171 annual fees. In the event research is necessary to support the MOX fabrication facility, these costs should be borne by that applicant (Duke, Cogema, and Stone and Webster). If any other national security initiative involving NRC licensees - - e.g. tritium production in commercial light water reactors - - were to require NRC research activities, the Commission would take a similar approach to recover the cost of those research activities.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
EDO
OGC

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OTHERWISE