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NUCLEAR ENERGY INSTITUTE

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Stephen D. Floyd
VICE PRESIDENT
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NUCLEAR GENERATION

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

ATTENTION: Rulemakings and Adjudication Staff

SUBJECT: Proposed Rule: *Revision of Fee Schedules; Fee Recovery for FY 2004*
(69 Fed. Reg. 4865, February 2, 2004)—RIN 3150-AH37

On behalf of the commercial nuclear industry, the Nuclear Energy Institute (NEI)¹ submits the following comments on the Nuclear Regulatory Commission's proposed rule, *Revision of Fee Schedules; Fee Recovery for FY 2004* (69 Fed. Reg. 4865).

These comments recommend, as have the comments submitted by the industry in the past several years, that the NRC: include in its generic assessments under 10 CFR Part 171 only expenditures clearly related to licensee activities; reduce the agency's overall budget through more efficient decision-making and resource allocation; and more precisely identify programs and activities for which generic assessments are charged under 10 CFR Part 171. The industry also recommends that the NRC project the amount of its generic assessment at least a year in advance. Each of these recommendations is discussed in greater detail below.

A. NRC Fees Should Be Limited to Expenditures That Are Clearly Attributable To Licensee Activities

The NRC's fees should not include charges—\$51 million in FY 2004—for homeland security activities. Homeland security issues related to nuclear power plants are part of the United States government's overall responsibility to protect its critical infrastructure. As was done in FY 2002, the amounts for homeland security should be excluded from the fee structure and funded through the general treasury.

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.

We note that, in addition to the user fees being charged for FY 2004 nuclear reactor licensees have incurred almost \$500 million in additional security costs; based on NRC security orders issued since Sept. 11, 2001. This amount likely will grow to a total of \$1 billion with the implementation of security orders issued last year. Although the industry recognizes the public benefit of expending resources to enhance the already strong security at our facilities, the nuclear industry, unlike other industries, has not been reimbursed by the federal government for these expenses. This situation is fundamentally unfair and is further exacerbated by requiring licensees to pay for the agency's additional security-related oversight.

Irrespective of whether the security-based fees are funded through the general treasury or user fees, the NRC is responsible for managing its regulatory processes to maximize agency efficiency and effectiveness. Based on information in the NRC's budget submission, it appears that the NRC has markedly increased—to approximately 140 FTE—the staff resources being applied to security. This increase works out to approximately 1 to 1 ¼ FTE assigned to the security issue for each reactor. Using only rough calculations to make the point (140 FTE x 1650 hours annually), this would appear to account for approximately \$30 million to \$36 million of the \$51 million budgeted for security.

Even recognizing the need for additional resources for the review of revised security plans required by the April 2003 order, the effort would not seem to necessitate "one-plus" dedicated FTE reviewers per reactor. This is particularly true because most, if not all, of the reactor licensee security plans are to be submitted in accordance with an NRC-approved template, which in turn should facilitate a more expeditious agency review than normally could take place. Further, once the security plans are reviewed and their implementation is inspected and verified, it is reasonable to expect the number of FTEs allocated to security should drop substantially.

In sum, the inclusion of homeland security charges in the NRC's fees involves both fundamental fairness and the need to achieve greater efficiencies through more appropriate resource allocation. Additionally, although the NRC has addressed the industry's concern about paying surcharges that comprise approximately 10 percent of the fee base for activities that are not directly attributable to a class of licensees, the practical effect of the inclusion of the costs of homeland security activities negates the relief provided to the industry in the FY 2001 Energy and Water Appropriations Act. To address each of these deficiencies, the industry urges the NRC to continue to engage the Department of Homeland Security and congressional leaders to achieve a more equitable outcome for NRC licensees.

B. NRC Fees Should Reflect Agency Efficiencies

The industry remains disappointed that the NRC's overall budget continues to grow significantly. The improvements in the NRC's regulatory approach, including the revised inspection, assessment and enforcement processes, were designed to lead to more efficient use of agency resources while ensuring that licensees maintain a high level of operational safety. Under the reactor oversight program, for example, most licensees now require only baseline inspections. However, it appears that the inspection hours for baseline inspections are approximately the same as those required under the previous core inspection program, and that the decreased number of regional initiative inspections does not appear to be accounted for in the fees proposed for FY 2004.

Not only should the agency be able to reduce certain portions of its budget to account for the efficiencies currently derived from the reactor oversight program, it also should consider other programmatic changes that would yield additional efficiencies without impeding operational safety. For example, the agency should consider reallocating resources dedicated to inspection of areas of the plant that have little or no safety significance to efforts to risk-inform regulations, review license renewal applications and license new reactor designs. This could speed the process for the associated regulatory reviews which, in turn, would reduce costs and increase public confidence. Additionally, fewer NRC resources should be applied to the oversight of materials licensees, as NRC Agreement States have taken over much of this work. Another efficiency could be gained by the NRC's accepting the groundwater quality assessments conducted by a state or the Environmental Protection Agency instead of performing duplicative environmental assessments. We also continue to encourage the agency to proceed expeditiously to apply, as appropriate, the Reactor Oversight Process to fuel cycle licensees (uranium recovery, conversion, enrichment and fuel fabrication) to create a risk-informed, performance-based oversight process.

C. The NRC Should Clearly Define Programs and Activities for Which Fees Are Charged Under 10 CFR Part 171

The industry continues to object to the NRC's disproportionate allocation of user fees to the generic assessment under 10 CFR Part 171—74 percent of the NRC's budget is recovered under 10 CFR Part 171, while only 26 percent is recovered under the discrete fee provisions of 10 CFR Part 170.

Fundamentally, this approach impedes the industry's ability to evaluate the agency's application of resources and priorities. 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

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comment on the proposed fee rules. Specifically, the NRC should provide a itemized accounting of the major elements that comprise the annual assessment under 10 CFR 171. This should include providing, among other items, a detailed account of the major contracts currently outstanding, including their purposes and costs.

The NRC must be accountable for the expenditures it seeks to recover from licensees. Licensees and Congress cannot ensure the agency's exercise of fiscal responsibility if the bases for the fees are, in essence, inscrutable.

D. The NRC Should Provide More Advance Notice of Projected Fees

Although we recognize that, for FY 2004, the NRC published the proposed fee rules about two months earlier than last year; in general the timing of issuance of the fee rules makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. To address this problem, it would be helpful if—coincident with promulgation of the proposed fee rule each year—the NRC published an estimate of fees for the following year as well. Although it is, of course, likely to be impossible for the NRC to offer exact projections, the Commission nevertheless should be able to develop reasonable estimates. (For example, the agency's projected total budget authority might be based on the five-year projection the Commission prepares as part of its annual budgeting process.) Such an estimate would be of considerable assistance to licensees.

Conclusion

The industry respectfully requests that the Commission carefully consider the above recommendations as it moves to promulgate the final fee rules. If you have questions or would like to discuss the industry's comments further, please contact me at (202) 739-8078.

Sincerely,



Stephen D. Floyd