From: Tammy Croote
To: Ann Norris; Michael Kaltman
Date: 3/23/04 8:51AM
Subject: Re: Comment on Draft FY 2004 Final Fee Rule

Mike,

Thanks for your comment on the draft FY04 final fee rule; Ann forwarded this to me since I drafted the response to comments section.

I understand your point about the first part of our response to this comment; we go through a discussion of how we establish annual fees before addressing the comment. However, in looking at previous fee rules, we pretty much have always responded to these types of comments in that manner (i.e., by first summarizing how to do calculate annual fees, before specifically addressing the comment). So, I began the 'response' to this comment in the same way, since that is consistent with previous fee rules.

However, that response does not just conclude with our 'belief' in the fairness of these annual fees. The response first discusses why we decided to have a uniform annual fee for reactors in 1995, after performing an analysis that showed that the previous method for calculating different annual fees for different reactors did not produce signficantly different results:

"Prior to FY 1995, the NRC did not assess uniform annual fees to reactors, but rather determined a reactor's annual fee based on a detailed analysis of vendor group, location, and other factors, such as type of containment. However, the NRC streamlined its fee program in FY 1995 (60 FR 14670; June 20, 1995) by establishing a uniform annual fee for operating power reactors, based on the fact that the difference in fees resulting from this more detailed analysis was small relative to the size of the annual fee."

I think this portion of the response (above) addresses your general point that we should have a reason for our 'belief' in the fairness of uniform annual fees. I'm uncomfortable with your suggested edit about the lack of a statistical correlation between the thermal power rating and benefit received from the agency's generic activities, since so such statistical analysis has been performed (and it would be difficult to quantify these 'benefits' to do a statistical analysis). I'm also uncomfortable with stating there is no correlation between thermal rating and ability to pay, both because we have not done a statisical analysis of this, either, nor do we consider 'ability to pay' in establishing fees (except for small entity fees per the Reg Flex Act). But, I think the idea of having different annual fees for reactors based on a number of different factors was addressed (and rejected) in the 1995 fee rule, and is summarized in the section quoted above.

Please call (x6041) or email if you have any further thoughts about this; otherwise, we'll send the final draft out to offices for concurrences tomorrow.

Thanks,

Tammy

>>> Michael Kaltman 03/19/04 10:16AM >>>
My comment focuses on a proposal made by one member of the public that the scheme for the assessment of reactor annual fees be changed; this proposal uses the plant's licensed thermal power fraction of the total licensed thermal power of all 103 reactors with operating licenses.

After spending a page detailing the components of the annual fees, the implications of OBRA-90, the arithmetic calculation used by the staff and a short history of annual fees, the staff response is :The agency continues **to believe** (my emphasis) that this uniform fee is a fair and equitable way to recover the generic costs allocated to the operating reactor class and that any difference in generic costs attributable to one power reactor as compared to another power reactor is not significant."

Most of the detail in the response is non-responsive to the respondent's point. Moreover, rather than concluding on a belief, why not conclude by stating a fact and denying the respondent's assumption; for example: "There is no statistical correlation between the thermal power rating and benefit received from the agency's generic activities, nor is there any correlation between thermal rating and ability to pay."

CC: Gene Suh; Kevin Hsueh; Michael Case