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NUCLEAR ENERGY INSTITUTE

DOCKET NUMBER  
PROPOSED RULE PR 170+171  
(70 FR 08678)

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DOCKETED  
USNRC

March 24, 2005

April 1, 2005 (3:05pm)

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 2005*  
(70 Fed. Reg. 8678, February 22, 2005)—RIN 3150-AH61

On behalf of the commercial nuclear industry, the Nuclear Energy Institute (NEI)<sup>1</sup> submits the following comments on the Nuclear Regulatory Commission's proposed rule, *Revision of Fee Schedules; Fee Recovery for FY 2005* (70 Fed. Reg. 8678).

Consistent with our recommendations of recent years, NEI believes that the NRC should include in its generic assessments under 10 CFR Part 171 only expenditures clearly related to licensee activities. The agency should also 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 in this letter.

<sup>1</sup> 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 plants designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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

The NRC's fees should not include charges 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.

In addition to NRC user fees being charged for FY 2005, nuclear reactor licensees have incurred more than \$1 billion in additional security costs since 2001, based on NRC security orders since the September 11 terrorist attacks and implementation of the revised design basis threat. 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 increased 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.

The NRC has already completed its review of the new security plans. Once plan implementation is inspected and verified, the number of FTEs allocated to security should drop substantially.

In sum, the inclusion of homeland security charges in the NRC's fees is inequitable and demonstrates the need for the NRC to achieve greater efficiencies through more appropriate resource allocation. Moreover, the practical effect of the costs of homeland security activities negates the user fee relief provided to the industry in the FY 2001 Energy and Water Appropriations Act. We appreciate the NRC's past support and encourage its continued support of legislative efforts to remove homeland security costs from the user fee base to achieve a more equitable outcome for NRC licensees.

B. NRC Fees Should Reflect Agency Efficiencies

The agency should be able to reduce certain portions of its budget to account for the efficiencies resulting from the reactor oversight program, and it also should consider other programmatic changes that would yield additional efficiencies without impeding reactor 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.

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 disproportionate allocation of user fees to the generic assessment under 10 CFR Part 171. Seventy-two percent of the NRC's budget is recovered under 10 CFR Part 171, while the remainder is recovered under the discrete fee provisions of 10 CFR Part 170.

Fundamentally, in addition to making it difficult to discern how NRC effectively manages the resources allocated against 10 CFR Part 171, 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 comment on the proposed fee rules. Specifically, the NRC should provide an itemized accounting of the major elements that comprise the annual assessment under 10CFR 171. This should include providing 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 NRC fiscal responsibility if the bases for the fees are, in essence, inscrutable.

D. The NRC Should Provide Advance Notice of Projected Fees

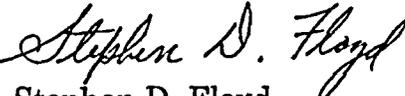
The timing of issuance of the fee rules makes it difficult for licensees to plan for regulatory expenses within the framework of their annual budget cycles. To address this problem, the NRC should publish with its imposed fee rule each year an estimate of fees for the following year. Although it is difficult for the NRC to provide 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.

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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