

From: Robert Carlson
To: Croote, Tammy
Date: 4/7/05 2:44PM
Subject: UR PROGRAM COMMENT

Tammy --

I agree with your rationale and response. I've made several clarifying edits ... and need you or Renu to finish/refine the one comment about our fee methodology (see deletions in 'strikeout' and additions in **BOLD**).

Thanks,

Bob

Robert D. Carlson, Chief
OCFO\DFM\LFT
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

CC: Suri, Renu

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1. Annual Fees for Uranium Recovery Licensees.

Comment. The NRC received three comments objecting to the large increases in annual fees for uranium recovery licensees. These commenters stated that there continues to be a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from such services. Additionally, the commenters stated that the NRC needs to address the issue of decreasing numbers of uranium recovery licensees. Specifically, as more states become Agreement States and/or additional sites are decommissioned, the number of NRC regulated sites continues to decline, leaving fewer licensees to pay a larger share of the NRC's regulatory costs. One commenter suggested re-visiting the alternative of establishing arbitrary fee caps or thresholds for certain classes or other potential solutions.

The comments supported the continuation of the 2002 determination that the Department of Energy must be assessed one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program. In addition, one commenter cited the dramatic increase in the price of uranium and expressed concern that the NRC "may not possess sufficient experienced staff to process future license applications and amendment requests that this price increase will generate." This commenter also noted a previous Commission comment which indicated the existence of a uranium recovery facility was in the public interest.

Response. The NRC acknowledges that uranium recovery annual fees increased by a large percentage (90 to 115 percent) from FY 2004 to FY 2005. However, the NRC notes that the FY 2005 uranium recovery annual fee of \$30,200 is still significantly lower than previous years. (For example, these fees ranged from approximately \$82,000 to \$132,000 in FY 2001, and \$39,000 to \$64,000 in FY 2003.) Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. Additionally, because annual fees must recover all fee class resources not recovered through part 170 fees, annual fees are impacted by the part 170 fees collected from that fee class.

In response to concerns regarding decreasing numbers of NRC licensees in light of more states becoming Agreement States, the NRC notes that budgeted resources providing support to Agreement States or their licensees are included in total surcharge costs, and total surcharge costs are reduced by the fee relief (i.e., direct appropriations) provided by Congress. (As previously noted, to address fairness and equity concerns associated with licensees paying for the cost of activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001, until the fee recovery amount is 90 percent in FY 2005.) To the extent that this fee relief is insufficient to cover all surcharge costs, these remaining surcharge costs are spread to all licensees based on their percentage of the budget. In FY 2005, \$2.3 million of the \$62.4 million in total surcharge costs was not covered by the 10 percent fee relief, and therefore is included in licensees' annual fees. Eighty-two percent of this \$2.3 million in net surcharge costs is included in reactor annual fees, and the remainder is spread to all other licensees' annual fees **[NEED TO EXPLAIN WHY IT'S SPREAD THIS WAY – I.E., ... BECAUSE CURRENT FEE METHODOLOGY ALLOCATES SURCHARGE COSTS ACCORDING TO THE PERCENT OF A CLASS' COSTS TO AGENCY'S TOTAL BUDGET ...]**

As such, NRC's uranium recovery licensees are not generally burdened with the costs of

regulating Agreement State licensees or any other costs not associated with uranium recovery licensees (only to the extent that a small portion of these costs are spread to all licensees through the net surcharge). Total surcharge costs allocated to the uranium recovery class are \$8,600 in FY 2005. However, the NRC acknowledges that license fee classes with fewer licensees are more impacted by changes to the budget and changes to part 170 collections. The NRC does note that the increases to hourly rates enacted through this rulemaking will enable the NRC to more fully recover the costs of licensee-specific activities, and once implemented, will minimize **[REDUCE]** costs that must be recovered through annual fees.

With respect to **[THE]** general comment that there is a lack of a reasonable relationship between the cost to uranium recovery licensees of NRC's regulatory program and the benefit derived from such services, the NRC notes that the uranium recovery fees reflect the budgeted resources associated with the regulation of NRC's uranium recovery licensees. As described above, the fee relief of 10 percent for FY 2005 covers almost all (with the exception of \$2.3 million) of the budgeted resources associated with activities that do not directly benefit NRC licensees. The NRC must by statute assess annual fees to uranium recovery licensees to recover their budgeted costs not recovered through part 170 fees and other receipts. Fee recovery alternatives involving caps or thresholds raise potential legal, and fairness and equity concerns. As noted previously, given the requirements of OBRA-90, as amended, to collect most of NRC's budget authority through fees, failure to fully recover costs from certain classes of licensees due to caps or thresholds would result in other classes of licensees bearing these costs. While the NRC acknowledges the previous Commission comment about the existence of a uranium recovery facility being in the public interest, this does not negate the NRC's legal obligation to collect fees to recover the costs of regulating uranium recovery facilities.

In response to the comment that the NRC may not possess sufficient experienced staff to process future licensing actions for uranium recovery licensees, ~~the NRC notes that this rule establishes fees to recover 90 percent of the NRC's FY 2005 budget, in compliance with OBRA-90;~~ the NRC's current and future budgets are not within the scope of this rulemaking. However, the NRC does consider market forces **[AND EXPECTED FUTURE LICENSING ACTIVITIES]** in its budget formulations.

Finally, the NRC notes that this final rule continues the policy of assessing the Department of Energy one-half of all NRC budgeted costs attributed to generic/other activities for the uranium recovery program.