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Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff.

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Gentlemen:

Subject: Kennecott Uranium Company - Comments on 10 CFR Parts 170 and 171 Revision of Fee Schedules; Fee Recovery for FY 2006; Proposed Rule - Friday, February 10, 2006

Kennecott Uranium Company is the operator and manager of the Sweetwater Uranium Project (the only remaining conventional uranium mill in Wyoming) which is licensed under Source Material License SUA-1350 and is located in Sweetwater County, Wyoming approximately 42 miles Northwest of Rawlins, Wyoming. Kennecott Uranium Company has reviewed the proposed 2006 fees and has the following comments:

Magnitude of the Increase

The table below shows the 2006 proposed fees:

TABLE IX—ANNUAL FEES FOR TITLE II SPECIFIC LICENSES

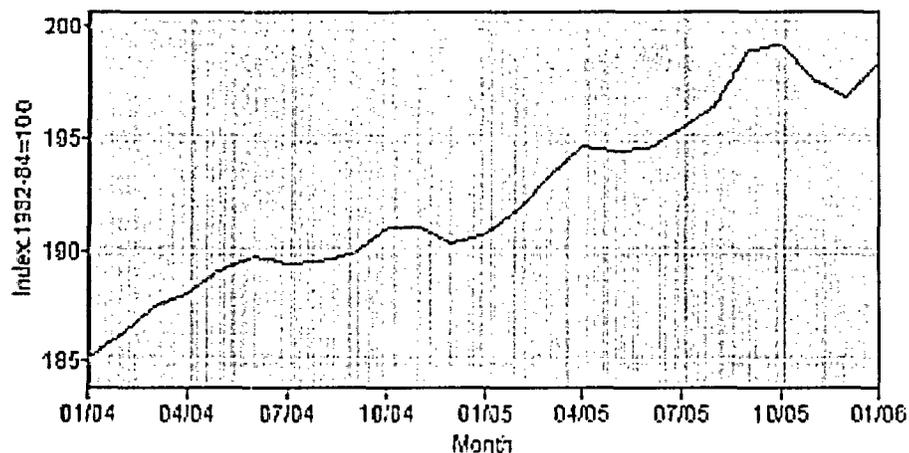
Facility type	FY 2004 Annual Fee	FY 2005 Annual Fee	FY 2006 Proposed Annual Fee	Percent Increase Since 2004
Class I (conventional mills)	\$14,500.	\$30,200.	\$66,400.	458%
Class II (solution mining)	\$12,900.	\$30,200.	\$66,400.	515%
11e.(2) disposal	\$12,800.	N/A	N/A	N/A
11e.(2) disposal incidental to existing tailings sites	\$12,900.	\$30,200.	\$66,400.	515%

These proposed 2006 fees represent a 400% to over 500% increase in fees over three (3) years. This rapid fluctuation is far in excess of increases in the rates of inflation or the Consumer Price Index (CPI) for All Urban Consumers which licensees are required to use to increase their surety amounts. A graph of this index for 2004 to 2006 is shown below along with the associated data:

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SECY-02

Consumer Price Index - All Urban Consumers 2004 to 2006



Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2004	185.2	186.2	187.4	188.0	189.1	189.7	189.4	189.5	189.9	190.9	191.0	190.3	188.9	187.6	190.2
2005	190.7	191.8	193.3	194.6	194.4	194.5	195.4	196.4	198.8	199.2	197.6	196.8	195.3	193.2	197.4
2006	198.3														

The document *10 CFR Parts 170 and 171 Revision of Fee Schedules; Fee Recovery for FY 2006; Proposed Rule* states:

Rebaselining fees in FY 2006 would result in increased annual fees compared to FY 2005 for all licensees, with the exception of certain fuel facilities. The proposed increases in annual fees range from less than one percent for certain fuel facilities to approximately 120 percent for uranium recovery facilities. However, most of the annual fee increases are of similar magnitude to the percentage increase in total required fee recovery of approximately 15 percent.

The very language of the document indicates that the uranium recovery industry has been targeted for the highest percentage increase in fees of all segments of the licensed community. In addition, the Commission is proposing elimination of quarterly invoicing for uranium recovery licensees stating:

As discussed in section 2. "Eliminating the Existing Fee Payment Exception for Uranium Recovery Licensees," the NRC is proposing that all Title II facilities be subject to the billing provisions of § 171.19(c), which state that annual fees that are less than \$100,000 are billed on the anniversary date of the license.

Kennecott Uranium Company requests that if an increase in fees for uranium recovery licensees is required, any increase would be in keeping with increases in the fees for other classes of licensees, and that the quarterly fee payment provisions remain.

Facilities in the Public Interest

In a letter dated July 17, 2001, the Commission in granting a request for the postponement of the initiation of the requirements for timeliness in decommissioning for the Sweetwater Uranium Project stated:

The continued existence of this facility is in the public interest.

This statement was made at a time when there were six (6) remaining uranium mills in the United States. There are now four (4) such facilities remaining, the Sweetwater Uranium Project, the Canon City Mill, the White Mesa Mill and the Shootaring Mill. The continued existence of these remaining conventional uranium milling facilities should be even more

in the public interest today than in 2001 because there are fewer facilities and there is at present a strong renewed interest in nuclear energy in the United States and the world for numerous reasons. Given that the continued existence of the Sweetwater Uranium Project was declared in 2001 to be in the public interest and by extension the continued existence of the other three (3) conventional uranium mills is in the public interest as well, it appears unfair that the fees being imposed on them are being increased so dramatically.

Dual Jurisdiction of In-Situ Wellfields/Performance Based Licensing

The Commission needs to investigate ways to reduce fees by streamlining the regulatory process. Completion of Memorandums of Understanding (MOUs) between the Commission and non-agreement states such as Wyoming or Nebraska regarding regulation of in-situ wellfields would help substantially to reduce costs to licensees.

Expansion of performance based licensing and the increased use of Safety and Environmental Review Panels (SERPs) would also help in reducing costs. Implementation of the much delayed Memorandums of Understanding (MOUs) and expansion of the use of Performance Based Licensing is justified due to the very low risks posed by uranium recovery licensees due to the relatively low activities of the materials that they handle.

Agreement States

In 2004 the State of Utah became an agreement state for uranium recovery and 11e.(2) byproduct material. The problem of the lack of reasonable relationship between annual fees and services rendered by the Commission is exacerbated as more states become Agreement States and existing sites are decommissioned, leaving fewer licensees to bear an even greater share of the burden. The Commission needs to continue to search for an equitable way of dealing with the scenario that could result in the last licensee having to pay for the entire program. This scenario unfortunately occurred in the uranium recovery arena when the State of Utah achieved Agreement State status, leaving only two (2) producing ISL facilities and one conventional mill licensed by the Commission. This is a serious situation that needs to be carefully reviewed and addressed.

As noted in the final FY 2002 rule, "*a decreasing licensee base . . . presents a clear dilemma for both the uranium recovery group in its efforts to maintain a viable industry and the NRC which must recoup its budgeted costs from the licensees it regulates.*" (67 Fed. Reg. 42617). Some of the possible solutions that were discussed in the FY 2002 rule were establishing arbitrary fee caps or thresholds for certain classes of licensees or combining fee categories. If the uranium recovery licensee base continues to decrease, the Commission may have to revisit the fee cap issue or the other potential solutions discussed in the FY 2002 rule.

Hourly Charges

The proposed rule increases hourly charges from \$197 to \$215 per hour. This is a 9% increase, which also exceeds the rate of inflation as shown in the table and chart above. The Commission should consider a more balanced approach to uranium recovery regulation. A more balanced approach would result in less regulatory oversight and lower costs. This is especially reasonable in light of the very low risks posed by uranium extraction operations and uranium mill tailings impoundments. The Commission should continue its efforts to provide invoices that contain more meaningful descriptions of the work done by staff and Contractors. With proposed hourly rates at \$215.00 per hour, the agency should be held to at least the same standard of accountability to its licensees as a private sector consultant is to his clients. In the private sector, adequate explanations and dates are provided to clients in order for clients to fully understand what was done and when it was done. This type of billing system allows costs to be specifically identified.

Hourly fees are also much more unpredictable, and difficult to incorporate into a licensee's financial plan than the annual fee, since the total charges are not predefined but depend upon the amount of staff time expended on a particular item or submittal. Hourly charges represent a substantial amount of uncertainty in a given licensee's annual costs.

Conclusions

Kennecott Uranium Company does not support the proposed 2006 annual fees and hourly charges and provides the following conclusions:

1. The proposed fee increase for uranium recovery is the highest percentage fee increase for any class of licensee and the proposed 2006 fee structure appears to unfairly discriminate against the uranium recovery sector by imposing a 120% increase in annual fees. Kennecott Uranium Company requests that if fees for the uranium recovery licensees are to be raised, any increases be in keeping with increases in fees for other classes of licensees.
2. The continued existence of the remaining uranium recovery facilities in the United States is in the public interest given the renewed interest in nuclear power. The continued existence of one particular facility in Wyoming, the Sweetwater Uranium Project, was declared to be in the public interest by the Commission in 2001. Exorbitant fee increases for uranium recovery licensees are contrary to the public interest.
3. The proposed fee increases and increases in hourly rates exceed the current rates of inflation as expressed by the Consumer Price Index for All Urban Consumers.
4. Fees and hourly charges could be controlled by regulatory streamlining of the uranium recovery industry by increased use of Performance Based Licensing and by execution of Memorandums of Understanding (MOUS) with non-agreement states regarding dual jurisdiction of in-situ wellfields.
5. The proposed increase in the hourly rate to \$215.00 per hour is very large and large invoices for hourly fees represent an increasingly unpredictable expense for uranium recovery licensees.
6. Kennecott Uranium Company requests that the quarterly fee payment provisions for uranium recovery licensees remain.

Kennecott Uranium Company appreciates the opportunity to comment on this proposed fee rule. If you have any questions please do not hesitate to contact me.

Sincerely yours,

Oscar Paulson
Facility Supervisor

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