

NOTATION VOTE

RESPONSE SHEET

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TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MCGAFFIGAN  
SUBJECT: SECY-99-053 - FY 1999 FEE RULE

Approved \_\_\_\_\_ Disapproved X Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

I approve Option C (Rebaselining with a 50 Percent Cap) instead of Option A (Rebaselining) for determining FY 99 annual fees. See attached comments.

*Edward M. Gaffigan Jr.*

SIGNATURE

2/19/99

DATE

Entered on "AS" Yes X No \_\_\_\_\_

*C/7*

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Commissioner McGaffigan's Comments on SECY-99-053, "FY 1999 Fee Rule"

I disapprove the percent change method (Option B) because I don't believe it could pass the straight face test. It is clear to me that we have crossed the threshold for rebaselining, and the only question is whether to impose the proposed fifty percent cap.

Rebaselining is by its nature a complex issue, and I recognize the persuasive arguments for and against a cap. On one hand, OBRA-90 demands a reasonable relationship between fees and the cost of providing services. It can also be argued that licensees have had the benefit of relatively level fees for the past four years, and that it is now time to reconcile accounts. This argues in favor of rebaselining (Option A). On the other hand, I don't believe that it is judicious to assess fees without regard to the impact on a licensee's ability to continue to engage in commerce. The foundation for this position is buttressed by the current fee cap for small entities. This argues in favor of rebaselining with a cap (Option C).

I believe that the Commission is best served by inviting a public debate on Options A and C. I approve publishing a proposed fee rule that discusses rebaselining with a cap (Option C). I am mindful of the perceived minor increase in litigative risks associated with Option C, but good public policy demands that all of our licensees, particularly those classes of licensees most impacted by the rebaselined fees, have the benefit of understanding the range of options we are considering, and how the options affect the various classes of licensees.

I oppose publishing a proposed rule based solely on Option A because it could forestall the option of allowing a cap in the final FY 1999 fee rule, should we receive overwhelming public comments opposing Option A. Under this scenario, a final rule that incorporates a cap feature could easily become entangled by notification problems vis-a-vis the Administrative Procedure Act.

I also suspect that the increase in Part 170 hourly rates is likely to stimulate as many public comments as the increase in Part 171 fees. I appreciate the OCFO's direct manner in reporting this error. In the Statements of Consideration (SOC) discussion of the hourly rate increase, I encourage the staff to continue to be forthright and frank in acknowledging the coding error which occurred last year. As regretful as it may seem now, full disclosure is what our licensees are entitled to and, ultimately, is in NRC's best interest.

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I applaud the staff, particularly in the OCFO, for their laudable effort in developing the fee options paper. I am mindful of the demands that this rulemaking will have on the OCFO in the coming months. I am also mindful of the impact this rulemaking will have on our licensees' resources. Given the controversial nature of the proposed FY 1999 fee rule, I believe that it is important to maximize the public comment period. It is reasonable to anticipate extension requests from some licensees, but we cannot grant extensions and still carry-out our statutory responsibilities to collect approximately 100 percent of our non-HLW and non-DOE funds in fees. Therefore, I am voting early on this paper in hopes of getting the rule out as fast a possible. As soon as the proposed rule is ready for publication, a press release should be issued to announce its availability on our external home page. The nine classes of licensees most affected by the proposed rebaselining should also be made aware of the rule's availability through expedited means.

I do not buy into the notion that following rebaselining we will use the percent change method for the next 4-5 years. I believe making such an assertion at this point offers false hope to some classes of licensees, will provoke opposition from others, and ultimately is likely to prove disingenuous. The likelihood that some external factor will trigger rebaselining sooner rather than later is relatively high, in my view. Such factors include the distinct possibility that a number of plants will prematurely shutdown due to economic deregulation of electric power industry, the potential for additional States choosing to become Agreement States, and the possibility of a separate General Fund appropriation to fund up to ten percent of NRC's budget authority for fairness and equity concerns. The SOC for the proposed rule should discuss the possibility that rebaselining could occur within the next few years as circumstances require. Giving prior notice of the potential for further rebaselining preserves NRC's credibility, should the need arise.

Finally, I would note that rebaselining is likely to garner additional external support for providing a separate General Fund appropriation for fairness and equity issues. I would welcome such support.

*E. M. 92*

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