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**PR 170 and 171
(72FR05107)**

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Nuclear

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RS-07-035

March 5, 2007

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

Subject: Comments on "10 CFR Parts 170 and 171, Revision of Fee Schedules;
Fee Recovery for FY 2007; Proposed Rule"
(72 Fed. Reg. 5108, dated February 2, 2007; RIN 3150-AI00)

- References:**
- 1) Letter from Anthony R. Pietrangelo (Nuclear Energy Institute) to the U.S. Nuclear Regulatory Commission, "Comments on '10 CFR Parts 170 and 171, Revision of Fee Schedules; Fee Recovery for FY 2007; Proposed Rule' (72 Fed. Reg. 5108, February 2, 2007; RIN 3150-AI00)," dated March 5, 2007
 - 2) 10 CFR Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended"
 - 3) 10 CFR Part 171, "Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Material Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC"

Exelon Generation Company, LLC (EGC) and AmerGen Energy Company, LLC (AmerGen) appreciate the opportunity to provide comments on the proposed rule changes for 10 CFR Parts 170 and 171, "Revision of Fee Schedules; Fee Recovery for FY 2007," noticed in the Federal Register (FR) on February 2, 2007 (70 FR 5108 - 5140). EGC/AmerGen endorses the comments made by the Nuclear Energy Institute (NEI) on behalf of the industry in the referenced letter, which addresses concerns regarding the proposed NRC fee increases.

EGC/AmerGen concurs with and appreciates the NRC's efforts to reallocate and focus resources on addressing risk-informed regulations, license renewal applications and new reactor licensing. The fee increases in both Part 170 and Part 171 fees; however, do not reflect a "reallocation of resources" but rather a significant increase in each area. The justification for these increases, as presented in the cited FR reference, is not of sufficient detail to support concurrence with the proposed fee increases as described below.

Template = SECY-067

SECY-02

Inadequate Justification for Part 170 Fee Increases

The proposed NRC total fee recovery for Fiscal Year (FY) 2007 is \$664.9 million. The NRC estimates that approximately \$193.4 million of the total will be recovered from Part 170 fees, which represents a five percent increase when compared to the FY 2006 Part 170 collections of \$185 million. The composite "five percent" increase is somewhat misleading as the proposed single NRC hourly billing rate is \$256/hour as compared to the FY 2006 hourly billing rate of \$217/hour (for Nuclear Reactor Safety Programs) and \$214/hour (for Nuclear Materials and Waste Safety Programs). This represents an approximate 19% increase in the hourly billing rate.

The NRC states that the increase in the hourly billing rate is "mainly because of a downward revision to the NRC's estimate of direct hours worked per full-time equivalent employee (FTE) per year, which is used in the denominator of the hourly rate calculation. It is also higher due to Government-wide pay raises." The NRC also states: "Because the NRC's hourly rates are calculated by dividing annual budgeted costs by the product of budgeted mission direct FTE and average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculation, the higher the hourly rates." The downward estimate in direct hours worked per FTE appears to acknowledge the efficiencies gained by implementation of the revised reactor oversight process, initiated in April 2000. The successful implementation of the revised reactor oversight process coupled with the industry's continuing level of good performance has provided the NRC an opportunity to re-allocate existing resources to meet the challenges of risk-informing regulations, review license renewal applications and address new reactor licensing.

This substantial increase in NRC hourly billing rates to maintain (or increase) collections to offset the reduction in direct hours billed to licensees, due to improved industry performance and the associated inspection efficiencies, appears to be excessive.

Inadequate Justification for Part 171 Fee Increases

As previously noted, the proposed NRC total fee recovery for Fiscal Year (FY) 2007 is \$664.9 million. The NRC estimates that approximately \$471.5 million of the total will be recovered from Part 171 annual fees, which represents a seven percent increase when compared to the FY 2006 Part 171 collections of \$441.7 million. The composite "seven percent" increase is again somewhat misleading as the proposed annual fee increase per reactor is \$384,000 (i.e., \$4,088,000 proposed for FY 2007 as compared to \$3,704,000 in FY 2006) as noted in Table V, "Rebaselined Annual Fees for FY 2007." This represents an approximate 10.4% increase in the annual fee.

The justification given for this significant increase is lacking detail. The NRC states: "The most significant factors affecting the changes to the annual fee amounts are the increase in budgeted resources for new reactor activities, and the removal of generic homeland security resources from the fee base in accordance with the Energy Policy Act of 2005. The NRC's total fee recoverable budget, as mandated by law, is approximately \$40 million larger in FY 2007 as compared to FY 2006. Because much of this increase is for the additional workload demand in the area of new reactor licensing, this increase mainly affects the reactor annual fees."

Given this brief discussion, it is not possible to determine whether the proposed increase in this portion of the Part 171 fees is fully justified. The NRC should provide its licensees with a cost breakdown of their share of the major elements that comprise the annual fee. In addition, given

that licensees are billed for contractor activities under Part 171, the NRC should provide a more detailed account of the major contracts currently outstanding, their purposes, and their costs.

Disproportionate Allocation of NRC Expenditures

There appears to be a disproportionate allocation of NRC expenditures to recover under Part 170 vice Part 171. Approximately 71% of the NRC's budget (i.e., \$471.5 million of \$664.9 million) is recovered under 10 CFR Part 171 and only 29% (i.e., \$193.4 million of \$664.9 million) under the hourly billing rate provisions of 10 CFR Part 170. The allocation suggests that the NRC has identified only 29% of its expenditures as directly supporting operating power reactors which appears disproportionate. Not knowing specifically where resources are being applied prevents licensees from fully evaluating the appropriateness of these expenditures. The NRC should revise Parts 170 and 171 to discretely allocate generic program costs to individual dockets in order to improve the visibility of management oversight and associated accountability of these programs.

Please contact Joseph A. Bauer at (630) 657-2801 with questions you may have regarding this letter.

Respectfully,



Keith R. Jury
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From: <joseph.bauer@exeloncorp.com>
To: <SECY@nrc.gov>
Date: Mon, Mar 5, 2007 12:02 PM
Subject: Exelon/Amergen Comments on 10 CFR Parts 170 and 171 Revision of Fee Schedules; Fee Recovery for FY 2007; Proposed Rule

Attached, please find the Exelon/Amergen comments on 10 CFR Parts 170 and 171, "Revision of Fee Schedules; Fee Recovery for FY 2007," noticed in the Federal Register on February 2, 2007 (70 FR 5108 - 5140). We appreciate the opportunity to comment on this proposed rule.

<<ExelonAmergen Comment Ltr on NRC Proposed Fee Increase 030507.pdf>>

Sincerely,

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