PR 170 and 171
(72FR05107)

NEI

NUCLEAR ENERGY INSTITUTE

(6)

DOCKETED
USNRC

March 5, 2007 (3:15pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Anthony R. Pietrangelo
VICE PRESIDENT
REGULATORY AFFAIRS

March 5, 2007

Ms. Annette L. Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Attention: Rulemakings and Adjudications Staff

Subject: 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)

Dear Ms. Vietti-Cook:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)[1] hereby submits comments on the above-referenced proposed rule to revise the licensing, inspection and annual fees charged to NRC applicants and licensees. Our comments are focused on the following four areas of concern:

- The proposed increase in the hourly rates charged pursuant to 10 CFR Part 170 is not adequately explained and the increase does not appear to be justified.
- There continues to be a need to allocate more fees to specific services that benefit particular applicants and licensees.
- The proposed rule does not adequately explain the bases for the increase in annual fees.
- There continues to be a need to provide the industry with information regarding potential fee increases at an earlier date to enable applicants and licensees to adequately prepare their budgets.

These concerns are explained in detail below:

[1] NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry. NEI's members include all entities licenses to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

1776 I Street, NW | Suite 400 | Washington, DC | 20006-3708 | P: 202.739.8081 | F: 202.533.0182 | arp@nei.org | www.nei.org

Template=SECY-067 SECY-02

Increase in Hourly Rates

Based on the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, the NRC has been charged with collecting fees to cover the costs of special services that are provided to identifiable applicants and licensees. These fees are collected pursuant to 10 CFR Part 170. As we have commented in years past, we continue to be concerned about the limited allocation of fees pursuant to Part 170, which is approximately 29 percent (see discussion below) in 2007. In addition, we are concerned that, for FY 2007, the NRC is proposing to increase significantly the hourly rate established pursuant to section 170.20 without sufficient explanation or justification.

For FY 2006, the hourly rate was $217 for Nuclear Reactor Safety Programs and $214 for Nuclear Materials and Waste Safety Programs. The hourly rate for FY 2007 has been proposed to be unified and set at $256 which represents an increase of approximately 20% from 2006 to 2007. According to the proposed rule, this increase 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." 72 Fed. Reg. at 5111. The NRC further states that "[b]ecause 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." Id.

The industry's concern is highlighted by the agency's admission that since FY 2005, the estimate of direct hours worked annually per direct FTE fell from 1446 to 1287 annually. Id. We believe this decrease in individual staff productivity – 159 hours per FTE – is neither adequately explained nor, on its face, justifiable. While we recognize that over time the agency may choose to accept some adjustment in worker efficiency and that this would be reflected in those calculations, a decrease of 11 percent in efficiency would be cause for concern in a commercial enterprise and should cause management of a government agency to be similarly concerned. As such, we request that the agency conduct a detailed analysis to explain both the cause of the decrease in NRC staff efficiency and provide a justification for the fees associated with such a decrease once explained. We request that the results of that analysis be made public when it is completed.

Further to this point, the industry has repeatedly supported the NRC's objective of ensuring it has the appropriate level of staff to conduct the reviews and inspections and participate in the hearings associated with new plant licensing. The industry continues to encourage the NRC to engage qualified personnel to effectively handle new plant applications that are expected to be filed in late 2007. However, the industry does not support increasing the total number of NRC staff for which reactor licensees must pay the bulk of associated costs because current productivity is unacceptably low. We strongly encourage the Commission to carefully review its current and future hiring objectives with this in mind.

Allocation of Fees

As noted above, the industry is concerned that the proposed rule for FY 2007 does not allocate a greater proportion of the agency's fees to Part 170 activities. The NRC takes credit for "a shift in fee recovery from Part 171 to Part 170 and claims it "supports industry comments that consistently recommend that the NRC collect more of its budget through Part 170 fees-for-services vs. Part 171 annual fees." 72 Fed. Reg. at 5111. We can find no evidence of such a shift.

For FY 2006, NRC Part 170 collections were $185 million or 29.7 percent of its $623.8 million fee recoverable budget. For FY 2007, the proposed Part 170 collections are $193.4 million, or 29.1 percent of the $664.9 million fee recoverable budget. This reflects a net decrease of 0.6 percent in Part 170 collections from 2006, *not* an increase.

Increase in Annual Fee Base

The proposed NRC total fee recovery for 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. This is a seven percent increase over the FY 2006 Part 171 collections of $441.7 million. The proposed rule attempts to explain this increase with the following statement: "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." 72 Fed. Reg. at 5116. It would be reasonable to assume that, if the flat fee portion of the rule has been reduced by $35.3 million (attributable to generic homeland security costs excluded from NRC fee recovery by Section 637 of the Energy Policy Act of 2005), the total either would go down by that amount or there would be an offset/increase based on other activities. However, the new reactor activities cited by the NRC as one of the other significant factors are said to account for approximately $40 million. That should yield a net increase of just under $5 million dollars. The increase from FY 2006 to FY 2007 is closer to $30 million. We can find no explanation for the approximately $25 million difference and, therefore, request that the NRC provide an explanation for this seeming discrepancy. Without such information, the industry is hampered significantly in its ability to evaluate the bases for the flat fee amount to be recovered. For FY 2007, this amounts to an increase of almost $400,000 per reactor.

Additionally, while the industry recognizes that additional fees are necessary to support the staffing levels required to license new reactors, as new reactor applications are filed, the attribution of a considerable amount of the new reactor work now proposed for collection through Part 171 fees should be reassigned to specific licensees and charged as Part 170 fees. This will ensure that those licensees not seeking to license one or more new reactors will be treated equitably.

Need for Timely Budget Estimate

As the industry has requested in the past, it is very important to licensees that they properly budget for regulatory costs. This requires some knowledge of the likely costs on a schedule that comports with licensee budgeting cycles. Because the proposed fee rule is issued early in the calendar year and not on the schedules used by most licensees, it would be very helpful for the agency also to issue an estimate for the following year at the same time it issues a proposed fee rule or shortly thereafter. This may require the NRC to forecast on a two year horizon, but such forecasting and estimating of budgets is in fact consistent with sound business planning. The industry requests that the NRC hold a public meeting to further discuss this point.

If you have any questions regarding these comments, please contact me or Mr. Jack Roe at 202-739-8138.

Sincerely,

Anthony R. Pietrangelo

Anthony R. Pietrangelo

c: Mr. Luis A. Reyes, Executive Director of Operations, NRC
Mr. Jesse Funches, Chief Financial Officer, NRC

From: "PIETRANGELO, Tony" <arp@nei.org>
To: <avc@nrc.gov>
Date: 03/05/2007 2:40:38 PM
Subject: 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)

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* There continues to be a need to provide the industry with information regarding potential fee increases at an earlier date to enable applicants and licensees to adequately prepare their budgets.

These concerns are explained in detail below:

Anthony R. Pietrangelo

Vice President, Regulatory Affairs

Nuclear Energy Institute

1776 I Street NW, Suite 400

Washington, DC 20006

www.nei.org <http://www.nei.org/>

P: 202-739-8081

F: 202-293-3451

E: arp@nei.org

CC: <lar1@nrc.gov>, <jlf@nrc.gov>

Mail Envelope Properties (45EC7230.DE9 : 20 : 36329)

Subject: 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)
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