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AFFILIATION:	NEI		
ADDRESSEE:	Annette Vietti-Cook		
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NEI

NUCLEAR ENERGY INSTITUTE

Anthony R. Pietrangelo
VICE PRESIDENT
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March 30, 2009

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

Subject: 10 CFR Parts 170 and 171, Revision of Fee Schedules; Fee Recovery for FY 2009; Proposed Rule (*74 Fed. Reg. 9129*; March 2, 2009; RIN 3150-AI52).

Project Number: 689

Dear Ms. Vietti-Cook:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)[1] submits these 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 areas of concern:

- NRC should provide a plan to curb the recent double digit rate of increase in NRC budgets and NRC fees.
- NRC should provide an explanation for the higher than expected increase in annual fees.
- NRC should provide an explanation of the increase in administrative cost applied to hourly fees.
- NRC should clarify the fee impact to NRC licensees once additional states beyond the Commonwealth of Virginia become an Agreement State. There is no discussion of this point in the proposed rule.
- NRC should continue ongoing agency efforts to provide the industry with information regarding potential fee increases at an earlier date. In our view, such interactions will better enable applicants and NRC licensees to adequately prepare their budgets and provide accurate reporting of actual costs.

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[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

NEI's comments are as follows.

Increase in Total Fee Recovery

The proposed NRC total fee recovery for FY 2009 is $870.6 million. Notably, this reflects an 11.7% increase over the FY 2008 total fee recovery of $779.1 million. Over the past five years, the NRC total fee recovery has increased by approximately 60% from a total fee recovery in FY 2005 of $540.7 million. The proposed rule explains this increase with the following general statement: "The increase is primarily due to the higher FY 2009 budget supporting increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities."

The industry supports NRC's hiring effort to respond to a potentially large number of new licensees in several categories, e.g., reactors and uranium recovery operations. Nevertheless, we are concerned that the seemingly related fees under "Agency Management and Support and the Inspector General" have increased almost 19% (from $266.2M to $316.5M). These non-direct costs are essentially equivalent to the direct costs associated with "Mission Direct Program Salaries and Benefits" which rose from $292.6M to $322M. The NRC should ensure that its hiring practices and the administrative costs associated with additional staff, including the need for additional office buildings, are as efficient as possible to minimize and/or prevent further increases in cost. Additionally, we believe that the proposed rule should include a more detailed explanation and justification for the fee increases, particularly given their magnitude.

The industry recognizes that the resurgence in nuclear power has increased the work demands on the NRC. In our view, five years worth of substantial budget increases such as those the industry has faced from the NRC should be ample to allow for any new work for the NRC. This is supported by NRC Chairman, Dr. Dale Klein, in a March 18 hearing at the United States Senate committee on Energy & Natural Resources in a response to a question from Chairman Bingaman "does the nuclear regulatory commission have adequate staff to review all of the combined license and design certification and early site permit applications that it has received and expects to receive in the foreseeable future?", Dr Klein stated that "we do". Accordingly, the industry requests that the NRC provide a plan for controlling and limiting the rate of future budget increases.

Increase in Annual Fee Base

The proposed NRC Part 171 fee recovery is $544.6 million, which represents a 16% increase over the FY 2008 Part 171 collections of $468.9 million. The proposed rule explains this increase with the following general statement: "Much of this increase is for reactor renewal activities, new uranium recovery facility applications, and new uranium enrichment facility applications, and materials."

While we recognize that additional fees are necessary to support the NRC staffing levels and the agency infrastructure required to license new facilities, the industry expected a larger percentage of the increase to be recovered through hourly fee charges. In this regard, NEI requests that the final rule include the agency's rationale for recovering a significant portion of the expense for individual license activities through the annual fee as opposed to NRC hourly fee charges.

Hourly Rate Calculation

The industry is concerned about the high cost of NRC hourly services, as described in Table II of the proposed rule. The FY 2009 proposed rate of $257/hr is an 8% increase over the $238/hr FY 2008 hourly rate. Additionally, the $257/hr rate for professional technical services seems to be out of line with (and higher than that for) similar service providers. Moreover, the proposed rule does not provide a sufficient explanation for the increase; however, it would appear that this increase is largely due to higher administrative costs and increases in salaries and benefits.

The cost of agency administrative overhead is estimated at $316.5 million for FY 2009. This is a 19% jump from the $266.2 million in the FY 2008 fee rule. We request that the NRC provide an explanation for the sizeable increase in administrative overhead that is being applied to the industry.

Additionally, the cost of mission direct salaries and benefits has increased approximately 10% from a FY 2008 value of $292.6 million to a FY 2009 value of $322 million. By contrast, the increase in the number of full-time equivalents (FTE) for mission direct support was only a modest 4%. We emphasize that in light of the weakening global economy, the U.S. nuclear industry has experienced very modest, if any, increases in salary or benefits to their own mission direct FTEs. Accordingly, the industry requests that the NRC provide an explanation for the substantial increase in FTE salaries and benefits.

Agreement State Activities

Regarding Agreement State activities, there is no discussion in the proposed rule of the potentially significant fee impact to remaining NRC licensees as additional States, beyond the Commonwealth of Virginia and the State of New Jersey, become Agreement States. With potentially 36 Agreement States by the end of FY 2009 and counting, NRC licensees will soon represent 15% or less of byproduct materials users nationwide but be fiscally responsible for 100% of NRC's regulatory program which benefits NRC, the Agreement States and licensees nationwide. NEI recommends that NRC coordinate with the Agreement States through a transparent process to identify unique solutions that would lessen the fee impact on the decreasing pool of NRC materials licensees while maintaining the much-needed Federal regulatory program.

Need for Timely Budget Estimate

The industry recognizes the NRC financial staff's work in providing information to the industry on the FY 2009 fee rule. In October of 2008, the staff held a public meeting and shared with the industry the FY 2009 budget year request and presented information on the fee process. The meeting was effective in informing industry personnel on the fee process and provided information to assist in performing budget estimations for licensees. The industry requests that the sharing of information continue. Further, we recommend that an annual public meeting be held for the purpose of sharing fee projection information. The industry requests that this meeting be held earlier in the year to align with their budget planning cycle.

During the October 2008 public meeting, the NRC staff took an action to create a method for providing monthly estimates of fees for inspections to power reactor licensees. The plan was to provide this information on the NRC public website and have a pilot of the project available in February 2009. The industry was notified that difficulties in providing the information were discovered that prevented the pilot. NEI believes that a more timely method of reporting monthly NRC costs is necessary to ensure the ability to meet accuracy requirements in licensee's financial reporting. The industry recommends that we continue to work towards an improved method for communication of monthly inspection cost and requests continued dialogue.

NRC Scholarship and Fellowship Funding

The industry is encouraged by the availability of $15 million for NRC administration of scholarship and fellowship funding. Such funds will contribute to the availability of persons with critical skills needed by NRC and the nuclear sector. To that end, the industry would like to continue to provide input to NRC in determining how best to administer these funds to reach our mutual safety and security goals.

If you have any questions regarding these comments, please contact me at 202.739.8081; arp@nei.org or Russell Smith at 202.739.8058; ras@nei.org.

Sincerely,

Anthony R. Pietrangelo

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c: Mr. R. William Borchardt, EDO, NRC
Mr. James E. Dyer, CFO, NRC
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