

**PR 170 and 171  
(74FR09129)**

DOCKETED  
USNRC

March 23, 2009  
09-041

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April 1, 2009 (3:13pm)

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
ATTN: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

References: (1) NRC News Release No. 08-022 dated February 4, 2008  
(2) NUREG-1100, Volume-24, Performance Budget, Fiscal Year 2009, dated February 2008  
(3) NRC's Proposed FY 2009 Fee Rule dated February 18, 2009  
(4) Federal Register Notice, NRC-2008-0620, published in Federal Register, Volume 74, No. 39, dated March 2, 2009.

Subject: B&W NOG, Inc.'s Comments on Significant Fee Increases, RIN 3150-AI52

Gentlemen:

Babcock & Wilcox Nuclear Operations Group, Inc. (B&W NOG), is providing these comments in response to the significant fee increase proposed by the U.S. Nuclear Regulatory Commission (NRC) for FY 2009 (References 3 and 4). Under NRC's proposal, B&W NOG's annual fees will increase from \$3,041,900 in FY 2008 to \$4,782,000 in FY 2009 which is a 57% increase.

B&W NOG would like to express the following points in relation to the proposed increase:

1. The NRC did not communicate the magnitude of the fee increases earlier in the process. In References 1 and 2, the NRC published a proposed budget increase of about 10% over the FY 2008 budget. In the Reference 2 document which offered detail for Reference 1, the NRC proposed a budget increase of about 25% for Nuclear Materials and Waste Safety which included a proposed increase in the budget authority for the Fuel Facilities program of about 39%. The agency explicitly stated in the Reference 2 document that for Fuel Facilities:

"The agency requests an increase of \$13.5 million primarily to support the review of two new uranium enrichment facility license applications and continuation of licensing and inspection activities for existing fuel facilities."

Since B&W NOG is not a uranium enrichment facility nor is it seeking application for a new uranium enrichment facility, and since the NRC recovers much of its licensing and inspection activities through its Hourly Rate charges (e.g., B&W NOG paid over \$1.1 million for inspections and license amendments in FY 2008), B&W NOG did not anticipate and budget for a 57% increase in its annual fees. This increase will therefore create a significant and unanticipated negative financial impact for B&W NOG.

2. The NRC stated in its Reference 3 document:

"In FY 2009, the NRC's total fee recovery amount increases by \$91.5 million from FY 2008, mostly in response to increased regulatory and infrastructure support workload for reactor renewal

activities, new uranium recovery facility applications, new uranium enrichment facilities, and materials licensing.”

Since \$91.5 million is a 12% increase from FY 2008, and since only materials licensing is applicable to B&W NOG's 1A license, and since licensing activities are recovered through Hourly Rate charges (e.g., B&W NOG paid over \$1.1 million for inspections and license amendments in FY 2008), the 57% increase in the license fee for a High Enriched Uranium Fuel Facility is unjustified.

3. The NRC also stated in its Reference 3 document after Table VI. ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES :

“The increase in FY 2009 total budgeted resources allocated to this fee class compared with FY 2008 is primarily due to increases in resources for new uranium enrichment facility licensing activities partially offset by a higher part 170 revenue estimate.”

The NRC then proceeds to explain how the fee recovery amount is allocated based on a determination matrix developed for FY 1999 final fee rule. B&W NOG requests that the NRC re-evaluate this determination matrix because the annual fee increased by only 66% for Uranium Enrichment although it is the primary cause of increases for Fuel Facilities. The 57% increase (which is almost as high as Uranium Enrichment) for a High Enriched Uranium Fuel Facility is unjustified especially since the NRC states that the:

“...effort factors for the High Enriched Uranium Fuel (HEU) fee category have decreased from FY 2008.”

4. B&W NOG requests that the NRC consider that the NRC has been billing B&W NOG based on the FY 2008 fee schedule which means that if the proposed FY 2009 fees are approved, then the NRC will bill B&W NOG with a 4<sup>th</sup> quarter installment of over \$2.4 million which is about 80% of the entire annual fee for FY 2008. In view of the current recession and economic uncertainties in the U.S. economy, and that high enriched uranium fuel facilities are not immune to such matters, this is not an appropriate time to significantly increase annual fees. The NRC should endeavor to at least maintain the FY 2008 fee schedule if it cannot reduce it.

Should additional information be needed for this matter, please contact me at (434) 522-6366.

Sincerely,



Roger P. Cochrane  
General Manager  
B&W NOG, Inc., Lynchburg

cc: NRC, Region II  
NRC, Resident Inspector  
NRC, Amy Snyder