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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

June 2, 2009

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

Re: Variable Annual Fee Structure for Power Reactors

Dear Madam Secretary:

I am writing in response to the advance notice of proposed rulemaking concerning the possible amendment of the rule governing the annual fee structure for power reactors. 74 Fed. Reg. 12,735 (Mar. 25, 2009).

As you know, the NRC currently collects a uniform annual fee for licensed nuclear power reactors pursuant to Part 171 of its regulations. Under this system, all power reactors, regardless of their size and nature, are assessed a uniform annual fee in excess of \$4 million. 10 CFR § 171.15 The history reveals that the NRC decided to establish a uniform annual fee for power reactors upon concluding that the existing members of the fleet of power reactors were sufficiently similar to each other that a more fine-grained analysis to assess different fees for different classes of reactors was not warranted. See 60 Fed. Reg. 32,218 (June 20, 1995).

The considerations that led the NRC to adopt a uniform fee approach in 1995 should now be applied to draw fee distinctions among various reactor types. There are a variety of different reactor designs on the horizon including novel technologies, modular plants, varying nameplate capacities, and no doubt other differences. It is apparent that the one-size-fits-all approach appropriate for a more or less standardized fleet may shortly be inappropriate.

It would seem as a matter of principle that the licensees of a given reactor technology should only be charged for those overhead costs from which they benefit. This consideration should be the prime criterion in setting fees. That is, as a starting point, it would be appropriate to consider the technologies that benefit from specific categories of generic research or from other costs that are recovered through Part 171 and to distribute those costs into various technology "bins." A given licensee should then be asked to pay its fair share of the overhead costs that are appropriately allocated to its technology. Any other approach would unfairly burden one technology to the benefit of another. Further study should help to define the bins, guided by examination of the costs recovered through Part 171 and a determination of a fair

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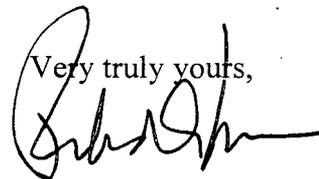
mechanism for categorization. For example, the bins would almost certainly separate gas-cooled reactors, sodium-cooled reactors, and perhaps other technologies from light-water reactors. The aim should be to assure that the recovery of costs that benefit solely one type or group of reactors are not unfair taxes on other types or groups.

Power output should also be a consideration, albeit perhaps a secondary one. I understand that the NRC contemplates the possibility that it might be asked to license reactors with a power output as small as 30 MWt, far below the 1500 to 3990 MWt output of the existing power reactor fleet. Because the recovery of costs is customarily based on power output, the effect of a uniform fee is to economically disfavor a reactor with small output. Perhaps a small reactor would benefit from the fact that it is likely to embody a different technology (the prime criterion). But if not, it may be appropriate to consider power output as a secondary consideration in order to avoid a regulatory system that slants the playing field against small reactors.

It is also possible that different configurations (modular units, multiple reactors feeding fewer turbines, etc.) might warrant special fee consideration. Consistent with the prime criterion, any adjustment of fees for such circumstances should be guided in the first instance by consideration of any significant differences in overhead costs that arise from that configuration.

Regardless of how the NRC adjusts the fee rule, I believe that any effort to try to define the future trajectory of technology is likely to be very uncertain. As a result, the aim should be to establish a system that provides maximum flexibility to adjust to unanticipated change. In concert with adjustment of its fee rule, the NRC should also relax its fee exemption rule (10 CFR § 171.11) so that any unfairness in fee allocation can be addressed readily through the exemption process without the burden and delay associated with a rulemaking.

I hope these comments are helpful. I would be very happy to respond to any questions.

Very truly yours,  


Richard A. Meserve  
Senior of Counsel

cc: James Dyer