



PR 170 and 171
(76FR14748)

Department of Energy
Washington, DC 20585

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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

Subject: 10 CFR Parts 170 and 171, Docket ID NRC-2011-0016
U.S. Department of Energy Comments on Revision of Fee Schedules; Fee Recovery for
Fiscal Year 2011: Proposed Rule (March 17, 2011)

To Whom It May Concern:

The U.S. Department of Energy (DOE), represented by the Office of Legacy Management (LM) and the Office of Environmental Management (EM), appreciates the opportunity to comment on the subject U.S. Nuclear Regulatory Commission (NRC) proposed rule for fiscal year (FY) 2011. Our comments pertain to the annual fee assessed to DOE for licensing its Title I and Title II sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA), listed as fee category 18.B in 10 CFR §171.16 (pages 14755-14756 of the proposed rule). Our specific concerns relate to the following three elements:

- (1) The increase in hourly rate given current economic conditions
- (2) The level of detail supporting proposed fees for the uranium recovery fee class
- (3) Need for clarification regarding the relationship between DOE's Cooperative Agreement (CA) with NRC and 10 CFR 171 annual fees

Proposed Action: Amendments to 10 CFR Part 170, Item 1: Hourly Rate (14750-14751)

In this section of the proposed rule, NRC proposes an hourly rate of \$273, a 5.4 percent increase from the \$259 hourly rate established in the FY 2010 final fee rule. In justifying the increase, NRC states:

The increase in hourly rate is due to higher FY 2011 agency overhead budgeted resources, and a small reduction in the number of direct full-time equivalents (FTEs).

DOE acknowledges that the hourly rates established each year reflect NRC's fee recovery process, as required by law. We also acknowledge that, using NRC's hourly rate calculation methodology, the reduction in FTEs (40 staff) would increase the hourly rate. However, as indicated in Table II of the proposed rule, this rate increase is largely attributable to a staggering 43 percent (\$143 million) increase in agency corporate support and Inspector General (IG) recoverable budgeted resources. The latter is perplexing given current economic conditions and that we as federal agencies are under a

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two-year federal pay freeze. DOE requests that NRC provide additional documentation substantiating the proposed increases in the hourly rate and, most notably, the increase in overhead costs.

Furthermore, we reiterate our previous comment (submitted in response to the FY 2009 proposed rule) regarding the universal application of the labor rate across all licensees. Once again, DOE requests that NRC consider developing several labor rates to account for more complex licensing tasks (and corresponding allocation of NRC staff resources) and that commercial operators bear a greater portion of the fee recovery burden.

Proposed Action: Amendments to 10 CFR Part 171, Item 3b: Revised Annual Fees for Uranium Recovery Facilities (14755–14756)

Once again, DOE requests that NRC provide further documentation regarding the basis for the UMTRCA Title I budgeted costs and the basis for the allocation of generic fees summarized in Table X (14756). The following comments reiterate those conveyed by DOE-LM two years ago (in March 2009), when we expressed the same concern. The total cost of this budget item has increased markedly since FY 2009—from \$247,000 to \$420,000 in FY 2010 to, as proposed, \$745,300 for FY 2011. As has been the case historically, apart from the underlying FTE allocation (1.18 and 2.25 FTEs for FY 2010 and FY 2011, respectively), no detail is provided in the working papers associated with the proposed rule. If these increases reflect NRC's increased commitment to dedicate staff to ensure timely resolution of license issues, DOE is heartened. However, additional detail is required to support the increase in FTE, especially because two distinctly managed and distinctly funded DOE programs—LM (responsible for most of the Title I sites) and EM (responsible for Atlas Moab, also a Title I site)—are represented in this fee class. At the very least, DOE requests that NRC provide site-specific detail documenting the basis for the UMTRCA Title I budgeted costs so that DOE can assess the total level of NRC support and determine how the associated fee should be allocated between the two DOE offices.

In response to DOE-LM's comments regarding this issue in 2009, NRC's response (Section II of the June 10, 2009 Final Rule) was vague at best:

In response to comments on budgeted resources for specific uranium recovery activities, the NRC determines the budgeted costs to be allocated to each class of licensee through a comprehensive review of every planned activity in each of the agency's major program areas... Nonetheless, the NRC's budget and the manner in which the NRC carries out its activities are not within the scope of this rulemaking. Therefore, this final rule does not address the commenters' concerns regarding the NRC's budget and the use of NRC resources for specific activities, such as the GEIS and UMTRCA.

If, as stated above, NRC conducts a comprehensive review for each program area, DOE requests that this information be provided, if not in the papers supporting the rulemaking, then at least documented in the quarterly invoices which assess the annual fee. Additionally, DOE again requests further documentation regarding the basis for the total "generic/other uranium recovery budgeted costs," which have varied greatly since FY 2006.

10 CFR 171 Annual Fees Assessed to DOE vis a vis the DOE–NRC Cooperative Agreement

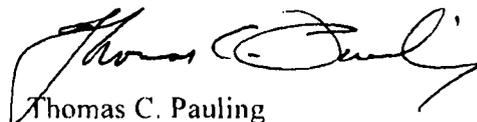
In addition to assessing the annual license fee under Part 171, NRC bills DOE for specific license support activities under a cooperative agreement. DOE would appreciate an explanation of what services are provided under the annual license fee and how they differ from the services provided under the cooperative agreement. DOE requests that NRC show the effort and cost reflected in billings under the cooperative agreement for comparison to the effort represented by the license fee. This would allow DOE to assess total support provided by NRC to be used toward future DOE budget requests to Congress.

Summary and Conclusions

In summary, DOE requests that NRC supplement their documentation to include, at a minimum, the following: (1) additional documentation explaining the basis for the increased hourly rate; (2) additional *site-specific* documentation of the scope and assumptions underlying the budgeted costs of for UMTRCA license support—in *particular* distinguishing between the LM and EM program commitments, and (3) clarification regarding the relationship between invoices for support provided under the Cooperative Agreement and 10 CFR 171 annual fees.

DOE appreciates the NRC staff's professionalism and cooperation in assisting DOE with UMTRCA licensing, long-term custody, and site transfer activities. To assist with budget requests to Congress and projecting resource needs, DOE requests that the comments and concerns raised herein be reflected in the implementation of the Final Rule, as well as in the documentation provided in future published work papers. Should you have any questions on these comments, please contact Thomas Pauling (LM) at (202) 586-1782 and/or Kriss Grisham (EM) at 301-903-8478.

Sincerely,



Thomas C. Pauling
Director
Office of Site Operations
Office of Legacy Management

cc:

R. Bush, DOE

Rulemaking Comments

From: Bush, Richard [Richard.Bush@lm.doe.gov]
Sent: Tuesday, April 19, 2011 4:39 PM
To: Rulemaking Comments
Cc: Suri, Renu; KING, RONALD; Plessinger, Tracy; Shafer, David; Pauling, Thomas C; Widdop, Michael (CONTR); Grisham, Kriss
Subject: Comments on annual fee, Docket NRC-2011-0016
Attachments: NRC Annual Fee Letter.pdf

Appologies for not making the deadline for submittal of these comments on the annual fee through the website. I am hoping you can still consider them in your deliberations. This letter was also sent via mail.

Thank you.

Richard P. Bush
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