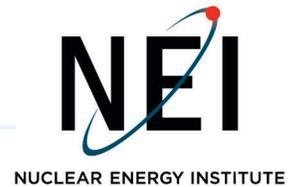


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April 22, 2015

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

Subject: 10 CFR Parts 170 and 171, Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015; Proposed Rule (80 *Fed. Reg.* 15476); Docket ID NRC-2014-0200

Dear Ms. Vietti-Cook:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute, Inc. (NEI)¹ submits these comments on the above-referenced proposed rule to revise the licensing, inspection and annual fees charged to U.S. Nuclear Regulatory Commission (NRC) applicants and licensees.

We appreciate the opportunity provided in the April 20 public meeting to discuss the key features of the FY2015 budget, fees and billing process. Due to the late scheduling of this meeting, our comments do not fully reflect the meeting discussions, however, we encourage NRC to continue to conduct these meetings in the future.

As an overall matter, the industry remains concerned about the NRC's ability to prioritize and complete regulatory matters, and efficiently manage its internal processes in the face of the changing workload. The industry continues to hold the view that agency fees are not transparent, simple, or predictable.

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.

As discussed in more detail below, our concerns focus on the following four areas:

1. Agency programs and activities need to reflect the changing workload, which has a direct impact on the amount of fees imposed on the regulated community. The overall amount to be recovered through fees appears to be unjustified, given the numbers of operating reactors, active design certification applications, active new reactor license applications, and material licensees have declined in recent years.
2. NEI requests that NRC improve the transparency, timeliness, and predictability of the fee rule by more explicitly integrating the rulemaking with NRC's budget process. NRC's current schedule for publishing the proposed and final annual fee rule falls short of these objectives. Greater transparency and predictability in fee policy could be realized if the NRC published the proposed rule in the first quarter of the fiscal year (based on the Congressional Budget Justification if Congress has yet to enact appropriations) and the final fee rule in the second or early third quarter of the fiscal year.
3. NRC regulations do not adequately address overcharges caused by NRC's plan to issue the fee rule late in the fiscal year. NRC estimates the final rule hourly rate will decrease significantly from \$279 in FY 2014 to \$268 in FY 2015. Yet NRC will continue to charge licensees \$279/hour for the first three quarters of the fiscal year before it begins applying the \$268/hour rate for the fourth quarter of the fiscal year. NRC regulations lack any means to address these unwarranted overcharges.
4. The portion of the budget allocated to corporate support—a key factor in both the hourly rate and annual fee calculation—appears to be disproportionately large with respect to the resources allocated for mission-direct and mission-indirect activities.

The NRC Should More Quickly Adjust to the Changing Workload

We agree with NRC Chairman Burns's written testimony before the House Appropriations Energy and Water Development Subcommittee² that "the NRC needs to function more efficiently by: right-sizing the agency while retaining appropriate skill sets needed to accomplish its mission; streamlining agency processes to use resources more wisely; improving timeliness in regulatory decision making and responding quickly to changing conditions; and promoting unity of purpose with clearer agency-wide priorities."

² Written statement by Stephen G. Burns, Chairman, United States Nuclear Regulatory Commission before the House Appropriations Committee Subcommittee on Energy and Water Development, March 24, 2015 (ML15079A050).

NEI commends the NRC's efforts to improve efficiency and be more responsive to anticipated changes in workload over the next five years. The agency's recognition of the need to change and these initial recommendations are important steps on the path to improved efficiency and effectiveness.

The Project AIM goals—to right-size the agency, streamline processes, improve the focus and timeliness of regulatory actions and establish clearer priorities—align well with concurrent efforts to address the cumulative effects of rulemakings and other regulatory actions. But neither effort by itself will sufficiently enable the NRC to fulfill its mission efficiently and effectively.

Nuclear energy facilities—which have a demonstrated track record of safety—need relief now from the cumulative impact of regulatory activity and from uncertainty that exists relative to the NRC's priorities. The industry cannot afford to let spending to meet regulatory requirements of low safety significance crowd out more important plant initiatives directly related to safety and reliability improvements. From that standpoint, NEI encourages the NRC to address and implement the strategies in the Project AIM report with a sense of urgency.

Many Project AIM recommendations comport with long-standing industry concerns about the efficiency and effectiveness of the agency programs, policies, and practices. With respect to fee policy, the industry concurs with the Project AIM recommendation that “[i]mprovements in the processes used by the agency to estimate and impose fees could be responsive to the concerns expressed by licensees, applicants, and Congress.” The industry is also supportive of the CFO-initiated project to improve the transparency, timeliness, and predictability of NRC fees.³

The NRC Should Issue the Proposed and Final Fee Rule Earlier in the Fiscal Year

Financial management policies and practice at NRC licensees and regulated entities are best served when the NRC provides timely and reliable fee information. From the industry's perspective, the NRC's current schedule for publishing the proposed and final annual fee rule falls short of this objective, which leads to a lack of transparency and inhibits sound financial planning by licensees in budgeting for NRC fees. Furthermore, the magnitude of the fee increase for a number of categories of licensees is significant and problematic as it occurs well after licensee budgets for the year have been established.

For most companies, cash outlays occur early in the calendar year. Consistent with the NRC's Principles of Good Regulation, specifically the principle of reliability,⁴ the NRC has a responsibility—and companies have a

³ See Project AIM 2020 Report, Enclosure 1, pps 33-34.

⁴ Reliability: Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes. [Emphasis added.]

reasonable expectation of the NRC—to accurately estimate Part 170 and 171 fees early in the year using the best available information. This allows licensees to plan, adjust budgets and manage cash flow. Cash outlays for fees are particularly impactful on materials licensees. They also affect cash flow for smaller companies. The provision in 10 CFR Part 171.19⁵ providing a remedy in the fourth quarter of the fiscal year for overcharges occurring during the first three quarters the fiscal year does not adequately address these concerns. It also is not applicable to companies whose annual fee payment is due on the anniversary date of the license (i.e., when a licensee anniversary date occurs prior to issuance of the final rule).

The NRC's current approach is to publish the proposed fee rule six months after the beginning of the fiscal year (generally in the March timeframe) and the final rule approximately nine months into the fiscal year (generally in the June/July timeframe). This timetable for the fee rulemaking is problematic for the industry, particularly when there is a significant difference between the hourly rate or annual fee for a given category of licensee, which is true for the FY 2014 final fee rule and the FY 2015 estimated final fee rule. It is also unnecessarily burdensome and inefficient for the NRC to do end-of-year adjustments that could have been avoided.

The current fee rulemaking approach lacks transparency, in large part, because the first and second quarter Part 170 and Part 171 billing invoices precede issuance of the proposed fee rule. Greater transparency and predictability in fee policy could be realized if the NRC published the proposed rule in the first quarter of the fiscal year and the final fee rule in the second quarter or early in the third quarter of the fiscal year. The proposed fee rule would continue to reflect the amount requested in the NRC Congressional Budget Justification (CBJ) or, if already approved, enacted appropriations. The final fee rule would reflect the amount in the enacted appropriations. Accelerating the rulemaking schedule by six months would not appear to be problematic for the NRC because the CBJ is publicly-released coincident with transmittal of the President's Budget Request to Congress (i.e., in February before the fiscal year begins), and the CBJ currently provides a fee recovery estimate.⁶ We encourage the NRC to address this concern as part of the CFO-initiated project to improve the transparency, timeliness and predictability of NRC fees.

The industry understands the challenges the NRC faces in meeting the Omnibus Budget Reconciliation Act of 1990 fee collection criteria and the constraints attributable to the Congressional Review Act (CRA) categorizing the fee rule as a major rule.⁷ In the interest of transparency and improved financial planning

⁵ 10 CFR 171.19(b) Annual fees in the amount of \$100,000 or more and described in the Federal Register document issued under § 171.13, must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. [Emphasis added.]

⁶ See FY 2016 NRC Congressional Budget Justification, Appendix III (NUREG-1100, Volume 31).

⁷ The CRA defines a major rule as one that has resulted in or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or

for the NRC and licensees, the industry proposes that the NRC CBJ include a table providing estimated Part 170 and Part 171 fees similar to Table 1.1, "Estimated Final FY 2015 Fees." This approach would allow the NRC to publish the proposed fee rule in the first quarter of the fiscal year. If enactment of the final appropriation occurs before the NRC publishes the proposed fee rule, the proposed fees would reflect the enacted level. If enactment occurs while the proposed rule is open for comment, a correction or supplement to the proposed rule updating the schedule of fees would be issued without creating timing challenges under the CRA and Administrative Procedure Act. The industry encourages the NRC to include this suggestion as part of the CFO-initiated project to improve the transparency, timeliness, and predictability of NRC fees.

Changes in Hourly Fees Under 10 CFR Part 170

The proposed fee rule establishes an hourly rate of \$277/hour, but estimates the final fee rule hourly rate of \$268/hour. The different rates are attributed to different amounts for the NRC's total budget authority (i.e., a difference of \$44.2 million between the FY 2015 CBJ and the FY 2015 enacted appropriations). To improve the proposed rule's clarity and regulatory basis, the industry believes the hourly rate should have been consistent at \$268/hour for both the proposed and final fee rule.

More substantively, the proposed rule is flawed because neither it nor the current NRC regulations adequately address overcharges caused by NRC plans to issue the fee rule late in the fiscal year. Specifically, NRC estimates the final rule hourly rate will decrease from \$279 in FY 2014 to \$268 in FY 2015. Yet NRC will continue to charge licensees \$279/hour for the first three quarters of the fiscal year before it begins applying the \$268/hour rate for the fourth quarter of the fiscal year.

Imposing this higher hourly rate for the first three quarters of FY 2015 after the NRC has already estimated a lower rate for the final FY 2015 rule is unjustified and results in imposition of excessive fees. It also appears contrary to the Independent Offices Appropriations Act of 1952, which requires that charges by federal agencies be fair and based on, among other things, the costs to the agency and the value of the service to the recipient. See 31 U.S.C. § 9701(b).

Most problematic, however, is that there is no provision in Part 170 analogous to 10 CFR § 171.19, that provides for an end-of-year adjustment and refund of overpayment of Part 170 fees in the fourth quarter of the fiscal year. To address the unwarranted overcharges caused by the protracted schedule for issuing the final fee rule, the NRC should consider adding a provision to Part 170 analogous to the payment refund provisions in section 171.19. This suggested change to Part 171 is within this rulemaking's scope because these overcharges are a direct result of this year's unique estimated decrease in NRC's hourly rate. Likewise, because this year's estimated decrease in the estimated hourly rate was clearly reflected in the proposed

rule, the need for a new overcharge provision in the final rule should be considered a logical outgrowth of the proposed rule, and was something interested parties should have anticipated and reasonably could have addressed during the notice-and-comment period. See *CSX Transp., Inc. v. Surface Transp. BD.*, 584 F.3d 1076, 1079-80 (D.C. Cir. 2009).

The industry also notes that, as shown in the proposed fee rule at Table I, "Budget and Fee Recovery Amounts," the estimated amount to be recovered through Part 170 fees remains unchanged at \$324.3 million for both the proposed and final fee rules while the estimated amount to be recovered through Part 171 fees decreases by \$39.7 million between the proposed and final fee rules. There is no explanation of why the estimated Part 170 fees are identical despite the 3.4 percent reduction in the hourly rate for the final fee rule.

Changes in Annual Fees Under Part 171

As noted above, the timing of NRC's rulemaking challenges the implementation of sound financial management policies and practice at NRC licensees and regulated entities; particularly for fuel facility licensees that will see annual fees increase by 14.3 percent compared to FY 2014. The timing issue creates an unnecessary burden for the affected licensees by imposing all of the increase in the final quarter of the fiscal year and inefficiencies for the NRC in reconciling significant differences in quarterly invoices based on the mixture of the FY 2014 and FY 2015 final fee rules.

In addition, the NRC has not adequately explained the basis for the significant increase in annual fees for fuel facilities in the proposed fee rule. Although the proposed rule attributes the increase to a reduction in Part 170 fees from construction delays and a slight increase in budgeted resources, it does not explain how or why the redirected resources that were budgeted for construction-related activities were redirected to Part 171-related activities for fuel facilities. Excessive and unjustified fee increases contribute to the cumulative impact of regulation and create competitive disadvantages for domestic production facilities in international markets. As such, the NRC should reexamine the budgeted resources necessary to support the existing fuel facility licensing and inspection program as part of the Project AIM 2020 rebaselining initiative.

Efficiency of Mission-Direct Hours per FTE

For the reasons stated in the industry's comments on the proposed FY 2014 fee rule, the industry continues to encourage the NRC management to more thoroughly analyze and understand the data derived from its time and labor system used to determine mission-direct hours per FTE. As explained in the proposed fee rule, the hourly rate used 1,420 hours per direct FTE to calculate the hourly fee rate, which is higher than the FY 2014 estimate of 1375 hours per direct FTE, and represents increased efficiency. While encouraging, there is no basis given for the reason why productivity increased (e.g., training, proficiency, etc.). As part of the Project AIM 2020 rebaselining initiative, the industry encourages the NRC to establish a performance-metric for mission-direct FTE in order to achieve a higher level of efficiency and reduce overhead.

Relationship between Core Programs and Corporate Support

The portion of the budget allocated to corporate support—a key factor in both the hourly rate and annual fee calculations—appears to be disproportionately large with respect to the resources allocated for mission-direct and mission-indirect activities.

In both congressional testimony and in its Project AIM 2020 report, the NRC has acknowledged challenges in ensuring that the level of corporate support corresponds to the size of NRC's core safety and security programs. Transparency in the fee rule is challenged by the use of the same term "Corporate Support" in the NRC CBJ, but which is apparently calculated in a substantially different manner. In both the fee rule and the CBJ, the budget for corporate support is excessive. Both fail to provide a clear explanation of the overhead necessary to support the NRC's core programs.

The proposed fee rule also does not provide an adequate explanation of why the level of corporate support differs by more than \$100 million between the FY 2015 CBJ and the FY 2015 proposed fee rule. The proposed fee rule Table II, "Hourly Rate Calculation," identifies \$455.6 million for corporate support and the Inspector General, which represents 49.2 percent of the total adjusted amount to be recovered through fees (\$926.2 million). For the final fee rule estimate, Table II identifies \$422.3 million for corporate support and the Inspector General, representing 47.6 percent out of the total adjusted amount to be recovered through fees (\$886.5 million).

Balance between Part 170 and Part 171 Fees

A review of fee rules from recent years shows that the ratio of Part 170 fees to the overall agency budget authority has steadily decreased from 35.0 percent in 2011 to 30.6 percent in 2015 (proposed fee rule). Historically, the industry has raised concerns about the decrease in Part 170-related activities, and the same concern applies to the FY 2015 proposed fee rule. As shown in the FY 2015 CBJ, the NRC did not meet its performance metric for operator licensing actions in 2014 and indicates that the NRC will again be challenged in FY 2015 to meet this metric – despite efforts to transfer resources from new reactor to operating reactor business lines in order to work down the backlog in licensing actions. This imbalance between Part 170 fees and Part 171 fees is due, in large part, to the level of generic activity the agency is engaged in, such as rulemaking. The industry encourages the NRC, as part of Project AIM rebaselining initiative, to better measure and manage the division of work between Part 170 and Part 171 activities and provide greater focus on its core licensing workload.

Ms. Annette Vietti-Cook

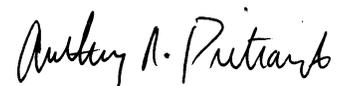
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Conclusion

The industry appreciates the opportunity to comment on the proposed fee rule for FY 2015 and encourages the NRC to carefully consider these comments. The industry and the public rely on the NRC to be an effective and credible nuclear safety and security regulator. NEI stands ready to work with the NRC in furthering ongoing efforts under Project AIM 2020 to enhance the agency's ability to plan and execute its mission while adapting in a timely and effective manner to a dynamic environment.

Sincerely,

Handwritten signature of Anthony R. Pietrangelo in black ink.

Anthony R. Pietrangelo