

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

Title: BRIEFING ON RESULTS OF FEE STUDY

Location: ROCKVILLE, MARYLAND

Date: DECEMBER 21, 1993

Pages: 79 PAGES

SECRETARIAT RECORD COPY

NEAL R. GROSS AND CO., INC.

COURT REPORTERS AND TRANSCRIBERS
1323 Rhode Island Avenue, Northwest
Washington, D.C. 20005
(202) 234-4433

DISCLAIMER

This is an unofficial transcript of a meeting of the United States Nuclear Regulatory Commission held on December 21, 1993, in the Commission's office at One White Flint North, Rockville, Maryland. The meeting was open to public attendance and observation. This transcript has not been reviewed, corrected or edited, and it may contain inaccuracies.

The transcript is intended solely for general informational purposes. As provided by 10 CFR 9.103, it is not part of the formal or informal record of decision of the matters discussed. Expressions of opinion in this transcript do not necessarily reflect final determination or beliefs. No pleading or other paper may be filed with the Commission in any proceeding as the result of, or addressed to, any statement or argument contained herein, except as the Commission may authorize.

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

(202) 234-4433

(202) 232-6600

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - - -

BRIEFING ON RESULTS OF FEE STUDY

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, December 21, 1993

The Commission met in open session,
pursuant to notice, at 3:00 p.m., Ivan Selin,
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
FORREST J. REMICK, Commissioner
E. GAIL de PLANQUE, Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

JAMES TAYLOR, Executive Director for Operations

JESSE FUNCHES, Deputy Controller

RONALD SCROGGINS, Deputy Chief Financial
Officer/Controller

JAMES HOLLOWAY, Special Assistant, Office of the
Controller

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

P-R-O-C-E-E-D-I-N-G-S

3:00 p.m.

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

The Commission is meeting at this time to receive a briefing from the staff on their review of the NRC fee policy. This has been of great interest, which is sort of an understatement, to the Commission and to its licensee community, but the Energy Policy Act of 1992 required that we review our policy for assessing annual fees and that we recommend to the Congress whatever changes in existing law we may find are needed to prevent the placement of an unfair burden on certain NRC licensees. It's a fair statement to say that we jumped at this opportunity, since we've been looking for a forum and a communication path, not to do the analysis but to express our views, and so this was a really quite welcome request.

We've received the staff report and I have to say on my own part I've found it very interesting. I really was quite enlightened. We've all had a chance to review the report and so we look forward to the presentation and particularly to the opportunity to discuss with you some of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 what-ifs -- you know, what would happen if we made
2 some of these recommended changes.

3 Commissioners?

4 Mr. Taylor?

5 MR. TAYLOR: Good afternoon.

6 With me at the table are Ron Scroggins,
7 the Controller; Jesse Funches, the Deputy Controller;
8 and Jim Holloway, who heads the fee collection
9 activity in the Office of the Controller.

10 Jesse will commence the formal
11 presentation.

12 MR. FUNCHES: On November the 5th, 1990,
13 the Omnibus Budget Reconciliation Act of 1990, known
14 as OBRA-90, was enacted. That Act required that the
15 NRC recover 100 percent of its budget through fees for
16 fiscal years 1991 through 1995. This year the Act was
17 amended to extend the requirement through 1998.

18 To recover 100 percent of the budget, NRC
19 assesses two types of fees. First, license and
20 inspection fees are assessed under 10 CFR Part 170 for
21 specific services to applicants and licensees. In
22 fiscal '93, we collected approximately \$100 million
23 through those fees. The second type of fees we
24 recover are annual fees under 10 CFR Part 171. These
25 fees recover the remaining part of the budget that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 not recovered under Part 107. The fees, in accordance
2 with OBRA-90, are assessed only to NRC licensees.

3 Since OBRA was passed, the NRC has issued
4 four rules to implement OBRA. Three of the rules
5 established the fees for fiscal year 1991 and '93.
6 The first rule established the basic policy for the
7 annual fees. It also established the basic principle
8 for fairness and equity.

9 To eliminate a concern that was caused by
10 the fees on small entities, the Commission adjusted
11 its small entity fee to provide for a lower small
12 entity fee for a licensee with gross receipts of less
13 than \$250,000.00 per year. A \$400.00 fee was
14 established for those licensees.

15 As the Chairman mentioned, the Energy
16 Policy Act of 1992 required NRC to reassess its fee
17 policy and recommended legislative change to prevent
18 placement of an unfair burden on NRC licensee.

19 On April the 19th, 1993, we requested
20 comments from the public as an input to the evaluation
21 of NRC fee policy.

22 (Slide) Next chart, please.

23 The scope of the review of the NRC fees,
24 in scoping that we did not address two broad
25 questions. The first broad question was the issue of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 how to raise revenues to fund NRC's activity, that is
2 taxes versus fees. We assume the current legislation,
3 however we did examine whether or not some fees should
4 be taken off budget to eliminate an unfair burden.

5 The second major area we did not look at
6 was the size of the budget and the resulting fees.
7 The budget is addressed annually by the NRC, OMB and
8 Congress until we assume that budget.

9 There are four fee-related issues that are
10 under separate review and will be coming to the
11 Commission separately. The first one is reexamining
12 the exemption for non-profit education institutions.
13 As you will recall, we published a proposed rule to
14 reinstate that exemption. We received comments and we
15 expect to the come to the Commission in early January
16 with a proposal final rule. We expect the final
17 report to Congress to reflect our decision. For
18 analysis purposes, we have assumed that the exemption
19 would be reinstated.

20 There are two issues associated with the
21 small entity size standards that are being addressed
22 separately. The first issue is whether or not there
23 should be separate standards for manufacturing and
24 servicing industry. The second issue relates to
25 whether the size standard that's set for \$3.5 million

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 should be changed.

2 We have completed a survey, we have
3 completed evaluation of the survey and we're in the
4 process of completing a final recommendation on that
5 issue. We expect the resolution of those issues to be
6 accomplished without legislation.

7 We also have two petitions that we're
8 examining. We have a petition from the American
9 College of Nuclear Physicians and we also have a
10 petition from the American Mining Congress. The
11 issues in those petitions will be addressed as part of
12 this review and as a part of the final rule on non-
13 profit educational institutions. However, the final
14 FRN to issue a decision will be separate.

15 We have an effort underway examining using
16 cost center concepts within the NRC. We expect a
17 paper to the Commission shortly. We will indicate
18 during the briefing how those concepts can be used to
19 assist us in fees.

20 CHAIRMAN SELIN: I'd like to stop you for
21 a minute, Mr. Funches. One of the discussions is to
22 reduce or perhaps even drop our use of the variable
23 part, the Part 170 fees. When you do the savings, are
24 you assuming that we're putting in a cost center based
25 accounting system anyway? The assumption is not that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 the cost center accounting is there in order to
2 support fees, it's to support the proper financial
3 management.

4 MR. FUNCHES: That's correct.

5 CHAIRMAN SELIN: And so these savings do
6 not assume that we junk the cost center accounting.

7 MR. FUNCHES: No, no.

8 CHAIRMAN SELIN: Okay.

9 MR. SCROGGINS: It assumes that what we're
10 going to propose in the cost center paper would be the
11 process we go through in the restructuring of our
12 program and our budget.

13 CHAIRMAN SELIN: That I understand, but
14 when we talk about what the savings would be if we
15 didn't build for the individual fees, if we just used
16 the 171, the annual fees, we're assuming that we keep
17 enough of the cost center system to support a proper
18 internal --

19 MR. SCROGGINS: Yes, that's correct.

20 CHAIRMAN SELIN: -- financial management.
21 Okay. Thank you.

22 MR. FUNCHES: (Slide) Next chart, please.

23 We had three primary input to the fee
24 policy review. The first was the experience that we
25 have gained over the past three years implementing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 OBRA. We have collected during that time each year 98
2 to 99 percent of the budget. However, there have been
3 significant comments and concerns about the fees from
4 NRC licensees. We have received over 1,000 comments
5 on the four rules that we published. We receive
6 approximately 5,000 phone calls and letters per year.
7 As I mentioned earlier, we have had two petitions and
8 we have had one court case. In that court case, the
9 basic method that we were using for annual fees was
10 upheld. However, two issues were remanded. One issue
11 dealt with non-profit education, which we have a
12 separate rulemaking on, and the other issue dealt with
13 low-level waste. We addressed that issue as part of
14 the '93 rule.

15 COMMISSIONER ROGERS: Excuse me. Just
16 before you leave that, you don't list here any
17 statistics on, for example, the number of licensees
18 which have dropped their licenses since implementation
19 of OBRA-90. Now, I know that that may be in some
20 cases an entirely good thing to do because the license
21 may not have been very active anyhow and so on and so
22 forth. But it would seem to me that that's another
23 impact of that that ought to be part of the record.

24 MR. FUNCHES: Yes, sir. During the first
25 year we lost approximately 2,000 licenses. The number

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 of licenses decreased. Some of those obviously was
2 combining licenses or the license that people were not
3 using. The second year we lost about 300 licenses.
4 Going into this year, we expect another 300. However,
5 about 130 of the 300 are licenses that was transferred
6 to Maine as an agreement state. So, it's about 200
7 licenses that we have lost in the last year or so.

8 On the Energy Policy Act Federal Register
9 notice that we issued to solicit a comment on NRC fee
10 policy, we received 566 comments. Those comments were
11 received from all groups of licensees. We also had
12 the benefit of an OIG review which was submitted to
13 the Commission on October the 26th and briefed to the
14 Commission on December 10th.

15 (Slide) Next chart, please.

16 Based on our three years of experience,
17 the comments we receive on the Energy Policy Act and
18 the input from the OIG review, we conclude that there
19 are two major fairness and equity concerns. One
20 concern related to streamlining the fee process and we
21 also had several individual concerns that didn't fit
22 within these three major concerns.

23 What I'd like to do is summarize these
24 major concerns and then we'll discuss each of the
25 concerns and recommended solutions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 The two major fairness and equity concerns
2 both relate to annual fees. The first major concern
3 is that licensees are charged fees for activities that
4 do not directly benefit the licensee that paid a fee.
5 We must do this in order to recover 100 percent of the
6 budget as required by law.

7 The second concern is more difficult to
8 assess. It relates to a licensee's belief that the
9 fees they are paying are not commensurate with the
10 benefit that they receive.

11 Another concern that we in the staff have
12 and was identified by the IG was that there may be
13 opportunity to streamline the fee process. We
14 identified this concern in a Federal Register notice
15 and solicited comments on it.

16 There are six individual concerns that
17 relate to individual licensee or individual activity
18 that do not fall in the major concerns above and we
19 will discuss those individually.

20 (Slide) Next chart, please.

21 What I'd like to do now is address the
22 first fairness and equity concern. This concern
23 relates primarily to power reactors and the concern is
24 that fees are being assessed for activities that do
25 not directly benefit the NRC licensee. There are two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 groups of activities that are being assessed -- for
2 which fees are being assessed. The first group is
3 activities not associated with existing licensees.
4 This involves our international activities. For
5 example, support of international safeguards concerned
6 with nonproliferation. This involved our oversight of
7 agreement state programs and technical assistants of
8 agreement states.

9 Two types of activity we perform there.
10 One of the activities is specific support to an
11 individual agreement state or a review of an agreement
12 state. The second type is the generic guidance or
13 evaluation criteria that we might develop that apply
14 to all agreement states.

15 The other concern is that we don't have a
16 low-level waste licensee at this time. However, NRC
17 performs generic regulatory activity for low-level
18 waste.

19 A total amount of these fees for these
20 activities is \$21.4 million, of which \$18.2 million is
21 currently being assessed to power reactors, or about
22 \$170,000.00 per reactor.

23 CHAIRMAN SELIN: Is that the total
24 international program or just the international safety
25 and safeguards program? We do some research on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 international basis which is clearly in support of our
2 domestic safety program.

3 MR. FUNCHES: Right. The research that is
4 in support of our regulatory program is not included
5 in these numbers.

6 CHAIRMAN SELIN: So that --

7 MR. FUNCHES: It would be international
8 safeguards, consultation with the State Department on
9 issues, that type of support. Obviously the aid money
10 is not here because that's reimbursable.

11 (Slide) Next chart, please.

12 The next group of activities that are
13 being assessed to licensees that are not the direct
14 beneficiary of the activity result from some licensees
15 not paying fees because of legislative or policy
16 constraints. I would note that in the cases of the
17 policy constraints, the policy decisions were made to
18 eliminate other concerns.

19 The first group of -- currently we are not
20 able to assess federal agencies except for TVA and the
21 Uranium Enrichment Corporation which we were given
22 special legislation to do. We do not assess fees to
23 federal agencies. This includes a substantial amount
24 of activities in support of DOE, such as review of
25 mills under the Uranium Mill Tailing and Radiation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Control Act. About 90 percent of these reviews or the
2 cost associated with the reviews would be associated
3 with DOE.

4 As I mentioned earlier, we are assuming
5 that the proposed rule would be continued and the
6 exemption for non-profit education institution would
7 be reinstated.

8 We also have a small entity fee that we
9 establish in response to the Regulatory Flexibility
10 Act. As a result of this small entity fee, the
11 reduced fees must be -- the difference between a full
12 fee and a reduced fee must be recovered from other NRC
13 licensees. These three categories of activities
14 equate to about \$18.2 million of fees. Again, the
15 reactor pays the bulk of those fees.

16 (Slide) Next chart, please.

17 We looked at three alternatives to deal
18 with the fairness and equity concern raised by
19 licensees paying fees for activities that do not
20 directly benefit them. The first alternative would be
21 to seek legislation to relax the requirement to
22 collect the 100 percent of the budget. The second
23 alternative would be to identify, if we can, and
24 charge the direct beneficiary of NRC activities. In
25 many cases, this would also require legislation. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 third alternative would be to continue the current
2 policy of assessing NRC licensees as we do now, or
3 look at some combination of these three.

4 In deciding between the three
5 alternatives, we considered three primary factors.
6 The first one was we wanted to minimize the impact on
7 the 100 percent reduction where possible. That is if
8 we could eliminate the concern. The second one was we
9 did not want to undo the resolution of concerns based
10 on previous policy decisions. I guess lastly, we did
11 not want to create new significant concern. That is,
12 eliminate a concern and create another one.

13 (Slide) Next chart, please.

14 After looking carefully at the issues
15 involved and considering factors that I noted earlier,
16 the staff concluded a combination of the three
17 alternatives is desirable. We do not believe it's
18 necessary to remove all \$40 million of the costs that
19 we discussed from the fee base. However, there are
20 certain areas where we believe we cannot resolve a
21 concern without creating another concern if we don't
22 remove it from the fee base. These activities are
23 international activities. It becomes difficult, if
24 not impractical, to identify the direct beneficiary of
25 those services that NRC provides.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Agreement states -- although we could have
2 charged agreement states under 10 CFR Part 170 for a
3 specific service to an individual agreement state, we
4 believe if we charged those fees we would create
5 additional concerns that may be even larger than the
6 ones that we have now. This would involve potentially
7 agreement states turning the agreement back to NRC.

8 The last two items, non-profit education
9 institution and small entities, the decision in the
10 policy decision that's been made eliminated some
11 significant concern. If we attempted to charge them
12 fees now, we'd just recreate those concerns.

13 So, we would propose that OBRA would be
14 modified to remove about \$25 million of this \$40
15 million from the fee base.

16 Secondly, we would propose modifying the
17 Atomic Energy Act to charge all federal agencies
18 similar to what we're doing for TVA and the Uranium
19 Enrichment Corporation today for activities that we
20 perform for them. We do not believe this would be a
21 significant concern in that we're already charging
22 federal agency annual fees.

23 Lastly, we would continue the current
24 policy of assessing low-level waste fees to those NRC
25 licensees that generate low-level waste. Our reason

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 for doing this is that there is an indirect benefit to
2 those licensees that generate waste and therefore the
3 fee would be fair and equitable.

4 (Slide) Next chart, please.

5 The second major concern about fairness
6 and equity relate primarily to materials licenses.
7 Many material licensees believe that the fees that
8 they are paying are not equal to the benefit they are
9 receiving. There are several unrelated reasons for
10 this belief and I will discuss each and possibly
11 responses to each.

12 The first area relates to the NRC's
13 regulatory program which is available to be used by
14 both agreement state licenses and NRC licensees. We
15 recognize that the NRC regulatory program is necessary
16 to support NRC licensees, but it also supports the
17 agreement states to a significant degree. Currently
18 there are about 7,000 NRC material licensees, about
19 16,000 agreement state licensees. We examined the
20 cost that NRC incurred and looked at those activities
21 that could support both or would be likely to support
22 both or could be adopted by both NRC licensees or
23 agreement states. Based on that estimate and
24 prorating it based on the number of licensees, we
25 estimate about \$15 million of the annual fees paid by

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 material licensees could be considered support to
2 agreement states.

3 The issues raised by this particular area
4 could become worse in the future as additional
5 agreement states are issued. There are four states
6 with an interest in becoming agreement states. If
7 these states were to become agreement states, we would
8 lose approximately 2,000 licensees. Recognizing that
9 the direct cost would decrease as a result, however
10 the discretionary fix cost that we incur, such as
11 research rulemaking or examining certain safety issues
12 will stay the cost for -- the annual fee for material
13 license would increase by 30 percent.

14 In addressing these issues there are two
15 possible alternatives. One is to remove the cost from
16 the fee base and the second one is to charge to
17 agreement states. As I mentioned earlier, assessing
18 fees to the agreement state could create significant
19 concerns on the other side. This leads the
20 alternative route, moving the cost from the fee base.
21 That's the best solution to this issue.

22 CHAIRMAN SELIN: That's an interesting
23 point. Moving the cost from the fee base is
24 equivalent to saying that the benefits are shared
25 by -- you know, on the statistical basis by all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 citizens, not by any particular set of citizens.
2 Clearly that's true of the international activities.
3 Those are for the security of the United States. If
4 they make sense at all, they make sense. Do you
5 believe that that's true also for the agreement
6 states, that the citizens of the agreement states and
7 of the non-agreement states should both share the cost
8 of the agreement state program?

9 MR. FUNCHES: I think if you look, all
10 states have material licensees within their states and
11 we're regulating across each of those states. So,
12 it's definitely not as clear as the international one,
13 but I think an argument could be made that all states
14 share in the safety benefits that are being achieved
15 from the agreement state and NRC license.

16 CHAIRMAN SELIN: Yes. The trouble is the
17 licensees in the non-agreement states are paying
18 twice, or at least the citizens of non-agreement
19 states are paying twice. Their licensees are paying
20 and then they share in it. You'd have to argue it's
21 de minimis, it's such a small amount of money per
22 citizen or some such.

23 MR. FUNCHES: I think even though they
24 might be paying twice, we looked at the amount of fees
25 that are being paid by the agreement state licensees.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 I think the highest one was like about 75 percent of
2 what the NRC charges. But typically they are lower
3 than NRC fees.

4 CHAIRMAN SELIN: And that's okay. I think
5 it's time to go on to the next question.

6 MR. FUNCHES: (Slide) Next chart, please.

7 Another reason that licensees believe that
8 fees are not equal to the benefit they receive I think
9 is really a perception of how the fees came in. Prior
10 to 100 percent recovery, the material licensees did
11 not pay an annual fee. The power reactor did, but the
12 materials didn't. So, in one year that fee went --
13 essential increase in the amount of fees the material
14 licensee was paying. Basically they had a new annual
15 fee. Even though we attempted to explain that this
16 was a new fee, they perceived it as a new NRC cost
17 without any additional benefit.

18 The second year we had a reduction in the
19 number of licensees, again resulting in an increase in
20 fees, licensees perceiving again that more costs from
21 NRC as opposed to -- without any additional benefit.

22 We believe these types of issues are
23 behind us to a large degree, as I mentioned earlier.
24 The reduction in licensees seem to have stabilized
25 fairly much. We believe that we won't have large

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 increases except for where there are programmatic
2 changes. For the material licensees, small
3 programmatic changes could cause relatively large
4 percentage increases in the fees. However, with the
5 availability of cost center concepts, we believe we'll
6 be able to improve the explanation in tracing those
7 increases.

8 CHAIRMAN SELIN: You know, one thing I'm
9 sort of fuzzy about is there seem to be people who
10 benefit from specific programs that we don't charge
11 fees for. In our research program, for instance, we
12 have some research that is tied to a very small number
13 of vendors, not specifically to the licensees. There
14 are fees in the research and in some of the
15 development programs that are not tied to the people
16 who come in with them. Do you have some sense of how
17 much money we're talking about? For instance, in the
18 research program, just as an example, we have a little
19 bit of research on heavy water reactors and there's
20 only one potential beneficiary of that. I'm sure
21 there are other programs like that.

22 Now, I realize it's sort of arbitrary to
23 say that if there's one vendor then that's vendor-
24 specific and if there are two vendors it's general
25 interest. I'm not so much talking policy as saying if

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 we try to be finer in our research program and some of
2 our advanced licensing programs, are we talking about
3 a lot of money or are we talking about relatively
4 small amounts?

5 MR. FUNCHES: I don't know, for example,
6 like on the advanced reactor, what the research -- I
7 could provide it.

8 MR. SCROGGINS: I think it's relatively
9 small on the major scale. In our annual fees right
10 now where there are, in fact, licensees that we can
11 associate it with, for example that we have in the
12 past, if we were doing some research that was unique,
13 let's say, to a B&W design, TMI 2 or some of the BWRs
14 because of some of the containment issues that arose
15 in the past, yes, those were uniquely laid out and
16 really charged to the operating reactors of that
17 vendor type.

18 As far as the advanced reactors that we're
19 talking about right now, at this stage of the game, if
20 it's a direct review, then we would try to charge the
21 applicant under the Part 170. If it's something that
22 falls into -- which might be defined as research as
23 partially a little bit more generic, then at least at
24 this point in time it is obviously spread across all
25 the operating reactors. But the intent is that under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 what we'll call the advanced reactor program or the
2 standardized plant reviews is that most of these costs
3 would be involved with director Part 170 charges to
4 the applicant. That's the intent at this stage of the
5 game.

6 MR. TAYLOR: That's where we have an
7 applicant.

8 MR. SCROGGINS: Where we have an
9 applicant, that's correct. The actual numbers I'd
10 have to go back and look at again.

11 CHAIRMAN SELIN: I'd like you to take a
12 look at --

13 MR. TAYLOR: We will.

14 CHAIRMAN SELIN: -- how much money we're
15 talking about. You know, you can think of things like
16 the heavy water work, the confirmatory research on one
17 or another, the specific reactor designs that are up,
18 et cetera.

19 MR. SCROGGINS: Right.

20 COMMISSIONER de PLANQUE: Before you go
21 on, in the SECY document, I understood the
22 explanations for the increases in fees through the
23 materials licensees up through '92. But if my
24 arithmetic is right, I get about a 50 percent increase
25 from '92 to '93 and there was a lot fewer materials

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 licensees left the database between those two years.
2 I found it hard understanding that large an increase.
3 Could you talk a little more about that?

4 MR. SCROGGINS: I think that's the fourth
5 bullet.

6 MR. FUNCHES: Yes. I think they're a
7 combination of things that happened in '93. As you
8 mentioned, the number of licensees that decreased was
9 not one of the big drivers. If you will notice, some
10 of the fees went up considerably whereas other fees
11 actually went down slightly.

12 COMMISSIONER de PLANQUE: One category
13 went down.

14 MR. FUNCHES: Right, and those are
15 samples. What we do on annual fees, we use the Part
16 170 licensing fees as a process to estimate how much -
17 - how to distribute certain of the generic costs that
18 we incur, those generic costs where we can't track to
19 a gauge use or a medical organization or a specific
20 class of licensees. What happened in fiscal year
21 1993, we reevaluated the Part 170 fees as a result of
22 the CFO Act. As a result of that evaluation, certain
23 areas had large increases in Part 170 and inspection
24 fees. Part of the reason for that was we hadn't
25 evaluated the fees since the early '80s and there had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 been significant changes in the inspection program
2 during that time.

3 COMMISSIONER de PLANQUE: Is that due to
4 more inspections?

5 MR. FUNCHES: Not more inspections, but
6 more of a change in inspection program because we're
7 looking at the average cost per inspection.

8 COMMISSIONER de PLANQUE: Does this mean
9 that some of those fees went down? Was it just a
10 reapportionment?

11 MR. FUNCHES: I think mostly the small
12 gauge user, those fees essentially stay roughly the
13 same. It was basically a reallocation of the total
14 amount of money that we had to recover through annual
15 fees.

16 COMMISSIONER de PLANQUE: Okay. I still
17 wonder who made out good in this formula because --

18 MR. FUNCHES: I think the small gauge user
19 fees stay roughly the same, the 3-P category.

20 MR. TAYLOR: Most of the others went up.

21 COMMISSIONER de PLANQUE: Some of them
22 went up by a factor of two.

23 MR. FUNCHES: Right. If you look at what
24 happened is the large organizations such as the broad
25 scope manufacturing, broad scope hospital had the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 largest increases and we believe that's reasonable.

2 COMMISSIONER de PLANQUE: So, this really
3 is the reapportionment that did this?

4 MR. FUNCHES: Yes. Yes, to reflect the
5 allocation based on the inspection and licensing fees
6 that we charge.

7 MR. SCROGGINS: Under the CFO Act we were
8 required now to biannually go back and assess any fee
9 charges we charged. That's to try to tie them to
10 exact costs. As Jesse indicated, it was like 1984 or
11 something like that was the last time the agency had
12 actually laid out what is the average hours for
13 different kinds of inspections, different kinds of
14 activities, et cetera. So, they went back over the
15 data from the past two to three years and came up with
16 what they considered to be the average hourly burden
17 for different kinds of inspections, different kinds of
18 reviews, et cetera. So, it really does reflect
19 everything that's changed since almost the last ten
20 years.

21 COMMISSIONER de PLANQUE: So, a change in
22 the true cost for the inspections.

23 MR. SCROGGINS: And then how it gets
24 allocated on the 171, right.

25 COMMISSIONER de PLANQUE: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 CHAIRMAN SELIN: There's a problem in
2 that, but your overall solution may solve this
3 problem. We have to find a way to avoid large changes
4 from year to year which are not predictable from the
5 licensee's point of view, just based on a new analysis
6 that we do. Even if the new figures are fairer than
7 the old figures, people have to be able to have some
8 assurances that when they budget that the budget just
9 won't be swamped because a federal agency did a new
10 calculation. Maybe your recommendations will make the
11 license fees much less sensitive to no large changes
12 on a small basis on recalculation, but one way or
13 another we've got to damp these swings, so to speak.

14 MR. SCROGGINS: No. I think too the fact
15 that we have to do this review now every two years,
16 we're not going to get into a situation where our
17 detailed look at it is going to be that long a time
18 frame. So, we'll be looking at it every couple of
19 years. It will help some in that regard.

20 MR. FUNCHES: The other areas in the
21 earlier rules that we continue to get comments from
22 licensees that the fees should be based on some
23 economic factors such as number of hospital beds or
24 how often they use the gauge, the number of hours they
25 use the gauge. We continue to believe that basing it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 on the license or the NRC's regulatory costs is an
2 appropriate way to assess the annual fee.

3 I guess in terms of solutions, as you
4 mentioned, Mr. Chairman, we will continue to look for
5 ways to prevent large increases. We also believe that
6 the use of the costing concept will have a payoff in
7 the fee area also.

8 (Slide) Next chart, please.

9 In summary, to deal with the concerns
10 about fairness and equity as it relates to fees not
11 being commensurate with the benefit received, we're
12 proposing that OBRA be modified to remove
13 approximately \$15 million from the fee base. This
14 would recognize the utilization of the NRC regulatory
15 program by both the NRC licensees and agreement state
16 licensees. It would also recognize the inherent
17 difficulties in establishing a fee for agreement
18 states. Overall, this would reduce the amount of fee
19 that a material licensee would pay on the average of
20 about 40 percent.

21 CHAIRMAN SELIN: Is this 15 additive to
22 the 25 that you had earlier?

23 MR. FUNCHES: Yes.

24 CHAIRMAN SELIN: Is it a total of 40?

25 MR. FUNCHES: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 We will continue to base our fees on the
2 budgeted regulatory cost and improve assignment of
3 such costs and explanation of changes resulting from
4 year to year using costing concepts.

5 CHAIRMAN SELIN: One thing I would like
6 you to do when we're all done is to take a look at
7 this \$40 million and try to figure out how much is
8 fairness and how much is subsidy. By that I mean, you
9 know, the international program, we're basically
10 saying that that just shouldn't be in the license
11 base, whereas the agreement state program, there is a
12 set of licensees, whether they're our licensees or the
13 agreement state licensees, who would be subsidized by
14 putting that in out of tax revenues rather than -- and
15 when you look at detail, there may be other pieces
16 that our universal licensees ought to be paying, but
17 since we can't get them to the right set of people, we
18 just say it's too hard to change too many pieces. So,
19 you're recommending that they be put in the non-
20 reimbursed base, which is essentially putting it in
21 the tax base.

22 MR. TAYLOR: These are the generic
23 activities across both our states and the agreement
24 states, as close as you can estimate.

25 CHAIRMAN SELIN: They are activities that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 if you look at the universe of licensees they benefit
2 only the universe.

3 MR. TAYLOR: That's right.

4 CHAIRMAN SELIN: But it's too hard to get
5 them to the right set of people. It's more unfair to
6 get them who's left over, so we just say, "Well, it's
7 just too hard, so let's just not be reimbursed," as
8 opposed to say the international safeguards and the
9 international safety issues which are not -- the
10 benefits go as much to people who are not licensees as
11 to people who are.

12 MR. TAYLOR: Yes, sir.

13 MR. FUNCHES: (Slide) Okay. Next chart,
14 please.

15 Concern number 3 addresses the question of
16 whether there are ways to streamline our fee effort
17 and still maintain a reasonable degree of fairness and
18 equity. In the Energy Policy Act, Federal Register
19 notice, we requested ways and we identify several
20 alternative ways of streamlining the fee process. The
21 IG review also addressed this concern and concluded
22 that an NRC fee process is relatively labor intensive
23 and they recommended that we combine Part 170 and 171
24 fees into one annual fees, similar to what FERC did
25 last year.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 In terms of total resources, we currently
2 spend about 25 FTEs and \$725,000.00 for Part 170 and
3 171 fees.

4 CHAIRMAN SELIN: Was that \$725 --

5 MR. SCROGGINS: Purely contract support.

6 CHAIRMAN SELIN: Contract. So, it's the -

7 -

8 MR. FUNCHES: It's the equivalent of about
9 3.2 --

10 CHAIRMAN SELIN: So, if you take the 25
11 FTE, it's \$75,000.00.

12 MR. SCROGGINS: No. In cost center terms,
13 it now looks like the -- when you took the added
14 factor, it's very close to \$100,000.00 in FTE. So,
15 you could --

16 CHAIRMAN SELIN: That's \$2.5 million for
17 our own people, plus \$725.

18 MR. SCROGGINS: Right. So, \$3.5 million
19 is a way to look at it.

20 CHAIRMAN SELIN: Just a half of one
21 percent of our --

22 MR. SCROGGINS: Yes, a little over.

23 COMMISSIONER de PLANQUE: You done?

24 CHAIRMAN SELIN: I just thought a
25 controller's budget should have at least one number --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 COMMISSIONER de PLANQUE: The 25, does the
2 25 include the FTEs that are involved in keeping the
3 databases that are needed anyway, but are also used
4 for the fees?

5 MR. FUNCHES: No, this does not include
6 the FTE that are necessary to maintain the regulatory
7 information practices and which tracks the staff
8 hours.

9 COMMISSIONER de PLANQUE: This is just the
10 incremental difference needed for fees.

11 MR. FUNCHES: For fees, right. Right.
12 There are efforts, as we mentioned earlier, and we
13 will want to continue those efforts, some of them for
14 cost center purposes and for other management
15 information purposes also.

16 CHAIRMAN SELIN: I wanted to ask you --
17 it's sort of on the next chart, but I wanted to ask
18 you. One approach says that the differences are so
19 small it's not worth collecting them. Let's move
20 effectively to just the 171 program.

21 Another approach would say that the reason
22 they're so small is that such a small share is in the
23 170 and furthermore our actual regulatory program
24 doesn't distinguish enough among different licensees.
25 One could argue that what we should do is collect,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 say, half of our fees out of the 170 program, have a
2 very big difference in the inspection effort for the
3 stronger licensees compared to the weaker licensees,
4 and that argument would be based on the difference in
5 fees, giving the incentive for the behavior that we
6 would like to see.

7 In other words, that by having the costs
8 more nearly distributed according to the degree in
9 which compensatory regulatory activity were required,
10 that the licensees would react in such a way as to
11 reduce our cost.

12 So, there really are two questions. One
13 is outside of this, but with the changes that you see
14 coming, Mr. Taylor, would you see a significantly
15 wider variation given the current cost structure
16 between say the stronger and the weaker reactor
17 licensees? And the second, is there any reason to
18 believe that if the fees more closely tied the amount
19 of work that we are caused to produce for the
20 licensees, that their behavior would be any different
21 or is their cost so much greater than the difference
22 in fees that the marginal incentives would be small?

23 MR. TAYLOR: The answer would be
24 speculative because I don't think we've had that type
25 of condition. It's shown to be different.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 Do you have any view on that?

2 MR. SCROGGINS: Jesse? We've looked at
3 some of the differences. I talk about some of that
4 between different types of performers. Again, I think
5 I agree with Jim, as far as whether it would have any
6 impact like an enforcement action or what have you by
7 paying the higher fees, at this point in time I have
8 no feel whatsoever as to what the reaction on that
9 would be.

10 MR. TAYLOR: I can't say we have a
11 correlation.

12 MR. SCROGGINS: We have looked at what
13 some of the variations are given, let's say, the
14 operating reactors as a good example.

15 Jesse?

16 MR. FUNCHES: We've looked at historical
17 data as it relates to Part 170 fees and you do get
18 some difference in fees. Some of them just are the
19 function of the number of units you have a site, for
20 example. If you would go to an annual fee, you could
21 eliminate those differences by having a different
22 annual fee for, say, a multiple unit site compared to
23 a single unit site.

24 CHAIRMAN SELIN: How do we do the annual
25 fee today?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. FUNCHES: The costs that we're looking
2 at today are generic costs. It's based on one reactor
3 design primarily driven by the types of research. We
4 also at one point had a --

5 CHAIRMAN SELIN: You're talking about the
6 171 fee, not the research.

7 MR. FUNCHES: Yes. The 171 fee currently
8 is based on -- it's distinguished between reactor
9 design and it's also distinguished between some
10 location of the reactor because of the research at one
11 point we had on seismic issues.

12 MR. SCROGGINS: It is one fee per reactor
13 or per license, is what it is. What Jesse is
14 indicating, if you look at some of the variations in
15 the 170 fees which are based upon inspections and
16 other reviews, you see a skew in the data between the
17 multiple unit plants and the single unit, as you might
18 expect. You go out and do an inspection, you have
19 multiple unit but --

20 CHAIRMAN SELIN: Go back --

21 MR. SCROGGINS: -- reduce the cost per
22 unit.

23 MR. TAYLOR: 170 fees?

24 MR. SCROGGINS: 171.

25 CHAIRMAN SELIN: The 171, a single unit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 and what are the classes that --

2 MR. SCROGGINS: Currently the classes we
3 have now are BWR and PWR, I guess.

4 MR. HOLLOWAY: There's four vendors. We
5 have four vendor classes.

6 CHAIRMAN SELIN: Do we adjust for the
7 power output?

8 MR. HOLLOWAY: No.

9 CHAIRMAN SELIN: Or for the number of
10 reactors per site?

11 MR. HOLLOWAY: No.

12 MR. FUNCHES: No. Because the types of
13 costs we're doing there we don't believe vary that
14 much by reactor site.

15 MR. SCROGGINS: I think what Jesse was
16 indicating is that if we were to drop 170 where we do
17 see the variation, one thing that you might consider,
18 because we have seen the skew as to the amount of
19 effort, is that you might -- if you went to a straight
20 annual fee, one thing you might consider or one
21 category might be multiple unit versus single unit to
22 just reflect the fact that there is more effort per
23 unit on a single unit plant than there is on a plant
24 unit.

25 MR. FUNCHES: Direct cost to that unit,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 for example.

2 MR. SCROGGINS: That just might be a
3 consideration if you went that direction. We haven't
4 looked at it in detail.

5 MR. TAYLOR: On the Part 170 plants that
6 have trouble, I think our costs that may show up in
7 the Part 170 are dwarfed by the other costs as they
8 try to recover in areas which have caused them to get
9 into operational problems. There's no question that
10 we've seen plants that have had difficulty. Their O&M
11 costs go up dramatically as they try to recover from
12 areas that have not been kept up, such as maintenance
13 or other problems in the plant. So, I think that's
14 our experience. The differences in the fees are
15 dwarfed by that type of cost to the utilities.

16 That was part of your question, wasn't it?

17 CHAIRMAN SELIN: Yes, way back when.

18 MR. TAYLOR: Right.

19 COMMISSIONER ROGERS: Before we just move
20 off this, I think that there's many, many reasons why
21 this basis of assigning fees is our cost basis has
22 some real problems with it. I can think of lots of
23 them, but you just put your finger on another one,
24 namely that it costs us less to inspect a multi-unit
25 site than a single unit site.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 CHAIRMAN SELIN: Per unit.

2 COMMISSIONER ROGERS: Per unit, right.

3 But if we assess fees on a per unit basis, and that
4 really makes no sense at all from the licensee's point
5 of view. If a licensee has a single unit and runs it
6 very, very well and does a fine job, there's
7 absolutely no reason why from their point of view we
8 should be charging them a larger fee because it costs
9 us more to inspect them than it does per unit on a
10 multi-unit site. There's a real fallacy in that
11 argument with respect to fairness. In my view, that's
12 not a fair way of looking at it, but it's a realistic
13 way in some ways. But it really does come back to
14 this whole cost basis being -- our cost being the
15 basis for a fee assignment. I know this is a very,
16 very difficult area to deal with, but I really have a
17 lot of trouble with that as a philosophy.

18 MR. TAYLOR: We haven't figured out --

19 COMMISSIONER ROGERS: Another way around
20 it. I know.

21 MR. SCROGGINS: No. We recognize the more
22 you go to an averaging type of an approach, for
23 example a 171 annual fee, you are going to have --
24 you're going to show these disparities more. The
25 question is, okay, what is the range and can you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 rationalize all the other factors such as the
2 efficiencies and what have you to override that? It
3 is very non-quantitative in that sense.

4 CHAIRMAN SELIN: Why don't you go on?

5 MR. FUNCHES: (Slide) Next chart, please.

6 In terms of streamlining alternatives, we
7 examined three alternatives, but we are not
8 recommending those to the Commission at this time.
9 Two of the alternatives we had solicited public
10 comments on. Each year we issue a proposed rule, we
11 get comments and we issue a final rule. We have to
12 try to do that in a fairly short period of time so
13 that we can get the rule out and collect 100 percent
14 of the budget. We had indicated in the request for
15 comments alternatives along the lines of only issue a
16 rule for comment if we change the basic fee
17 methodology or policies. Overwhelming sentiment from
18 the comment was they would like us to continue the
19 proposed rule, primarily from the perspective of
20 giving them opportunity to see the fees earlier and
21 also provide an opportunity to voice any concerns they
22 might have.

23 We also looked at alternatives of reducing
24 the number of subclasses for some of the groups of
25 licensees, reactors being one. Again, even though

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 there are differences in fees say for reactors between
2 BWRs, PWRs, in the classes, the subclasses we had was
3 only on the order of \$100,000.00 out of \$3 million.
4 The commenters recommend against it and we believe at
5 this time we would adopt the commenters' suggestion.

6 The last alternative which would result in
7 maximum resource saving would be to assess fees only
8 to a very small number of the licensees, basically the
9 power reactors and fuel facilities. This alternative
10 will result in significant savings on the order of 20
11 FTEs and 75 K in order of about \$3 million. However,
12 it would create significant concerns about fairness
13 and equity and we do not recommend we pursue that
14 alternative further.

15 MR. TAYLOR: We had talked about this
16 early on when we even began talking about the various
17 fee structure and we just felt it was not a good idea.
18 I think the comments pretty well substantiate that.

19 MR. FUNCHES: Yes.

20 (Slide) Next chart, please.

21 The alternative which we've discussed
22 somewhat already would be -- that we do recommend
23 would be that the Commission pursue a fee structure
24 which would allow us to not -- would not require us to
25 chart Part 170 fees. What we would do is use an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 annual fee, use the current annual fee. We would
2 discontinue the Part 170 fees for amendments to
3 licenses, renewals of materials license and inspection
4 fees and these costs would be included in the annual
5 fee. This would add about 700 K per reactor on the
6 average and about 13 percent to the various materials
7 fees.

8 We would continue an application fee for
9 new licenses, such as new OLs or advanced reactors and
10 topical reports. There are now about 300 bills per
11 year in this category and we would also have about 700
12 payments for new applications for the materials
13 licensees. The amount of money we'll be billing for
14 these application reviews would be on the order of \$20
15 million.

16 Adoption of this proposal would allow us
17 to avoid spending about \$1.2 million, which is
18 equivalent to 10 FTEs and \$200,000.00 in contract
19 support. It would also give us a simpler fee
20 structure and with the added benefit that the licensee
21 would not have to understand a Part 170 inspection
22 fee, an amendment fee, a renewal fee and see an annual
23 fee each year. A licensee would have one fee to deal
24 with. An applicant would have one fee to deal with.
25 When they become a licensee they'll have one fee to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 deal with.

2 CHAIRMAN SELIN: Mr. Parler, do we have
3 the authority without further statute to say that the
4 differences in 170 fees over large numbers of
5 licensees is de minimis and therefore to have what
6 amounts to a flat 170 fee rather than -- I mean we
7 wouldn't have to abolish it, but we could make it a
8 flat fee rather than tied to manpower, et cetera.
9 Could we do that if we chose?

10 MR. PARLER: We always try to find the
11 authority to do what the staff and the Commission
12 reasonably would like to have done. But the specific
13 answer to the question that you raise with me, at
14 least as I understand the question, is no. Unlike the
15 FERC legislation which was enacted in the Omnibus
16 Budget Reconciliation Act of 1986, which just talks
17 about the annual fee and furthermore gives FERC the
18 authority to waive already part of any fee or annual
19 charge addressed under this section for good cause
20 without anything else being said and without nothing
21 being mentioned in the FERC authority about the
22 Independent Office Appropriations Act. That is the
23 basis for the Section 170.

24 The Independent Office Appropriations Act
25 itself does not limit our authority or our discretion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 at least in the context that you're talking about.
2 However, the Omnibus Budget Reconciliation Act of
3 1990, which applies to us, the subtitle would be NRC
4 user fees and annual charges, enacts the Independent
5 Office Appropriations Act and the language there is
6 mandatory. Citing that act, it says that, "The
7 Commission shall" -- it says, "Any person who receives
8 a service or thing of value from the Commission shall
9 pay fees to cover the Commission's cost in providing
10 any such service or thing of value." That's fairly
11 unambiguous, at least for legislation, any sort of
12 legislation.

13 The certainty in regard to the language is
14 also reflected with the same certainty in the
15 conference report that was associated with the
16 legislation. The legislation goes on to say, the same
17 section, in the same part of the Omnibus Budget
18 Reconciliation Act, for annual charges, that's the
19 foundation for the 171. This is the section that
20 established the 100 percent of the budget requirement.
21 It says that, "Any licensee of the Commission may be
22 required, in addition to the fees set forth in
23 Subsection B," that's the Independent Office
24 Appropriations Act, "an annual charge." Then it goes
25 ahead to give the language that really is the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 statutory underpinning for Part 171. "A schedule of
2 charges fairly and equitably allocating the aggregate
3 amount of charges that's needed to satisfy the 100
4 percent of the budget objective that's established by
5 the statute."

6 The statute goes on to say, "To the
7 maximum extent practicable, the charges shall have a
8 reasonable relationship to the cost of providing
9 regulatory services and may be based on the allocation
10 of the Commission's resources among licensees or
11 classes of licensees." So, it seems to me that a lot
12 of policy choices that the Commission could have
13 otherwise have been free to make have been made by the
14 Congress enacting legislation such as this which
15 should be contrasted with the FERC legislation which
16 does give FERC considerable discretion as to what
17 their annual charges could be without the constraints
18 of having to satisfy the Independent Offices
19 Appropriations Act.

20 CHAIRMAN SELIN: So, to go to this type of
21 a structure, all annual fee, you would basically have
22 to argue that the individual services that we provide
23 to the licensees do not have individual value, but
24 have value really in the context of the annual
25 license. We would do that by statute. In other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 words --

2 MR. PARLER: I would think that it would
3 certainly be desirable, highly desirable in view of
4 the time that I just spent, to go the statutory route,
5 right.

6 CHAIRMAN SELIN: Not only would we ask for
7 a statutory change, but we would probably want to
8 change the theory behind it to say individual
9 inspection is not in itself a service of value. What
10 is the value is the annual regulation which includes
11 inspections and changes, et cetera. Therefore, it's
12 not just administrative convenience, but it's truly
13 consistent with the spirit of the previous act that
14 says the service we're providing the licensee is that
15 we're regulating the licensee, not that we're doing an
16 inspection on Tuesday or a change of address on Friday
17 and therefore we should charge by a unit of service,
18 which is in effect the annual -- the whole of the
19 annual regulatory activity.

20 MR. PARLER: I certainly would think that
21 if a statutory change is sought, that the statutory
22 change should include provisions which would give us
23 the flexibility to proceed in a manner which would
24 seem to make the best sense from a regulatory
25 standpoint and also would be basically fair and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 equitable.

2 CHAIRMAN SELIN: We probably would want to
3 go to the next point, given Commissioner Rogers' view,
4 that says the cost for us to provide the service is
5 important, but secondary. Regulating a reactor of a
6 particular type is the service and the service that
7 the licensee is getting is really driven by the fact
8 that we're regulating them, not that -- because you go
9 to the extreme case and say we would charge less to
10 Comanche Peak because they have a regional office
11 within 25 miles of the site and we charge a lot more
12 to Hanford -- I mean to a WHIPP site because it's so
13 far away. We would probably just try to equalize that
14 to some degree.

15 I'm sorry. Thank you very much, Mr.
16 Parler.

17 COMMISSIONER REMICK: I would guess that
18 our licensees would probably agree that our
19 inspections are not individual services to them.

20 CHAIRMAN SELIN: If we charge by value,
21 they would bill us each year. I don't think we can go
22 that far.

23 MR. PARLER: If the statute provided that,
24 we might have some difficulty. The statute says a
25 reasonable cost of -- the cost of providing regulatory

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 services, good, bad or indifferent.

2 MR. FUNCHES: I think that concludes our
3 discussion of the three --

4 CHAIRMAN SELIN: You know what I'm not
5 clear about? We talk a lot about reactors, but how
6 would this -- as Commissioner de Planque and
7 Commissioner Rogers pointed out, we haven't come up
8 with an algorithm, we've just talked in general terms.
9 But even at those terms, I don't understand what we
10 would do with the materials licensees. Is it true
11 that the 170 part is also a very small part of that?

12 MR. FUNCHES: Yes.

13 CHAIRMAN SELIN: Equally small?

14 MR. FUNCHES: Yes, about \$5 million out of
15 \$30 million roughly. It's about 13 percent we're
16 talking about. So, it actually is a smaller
17 percentage of the total cost in the reactor Part 170,
18 yes.

19 CHAIRMAN SELIN: That's interesting. And
20 how many classes of materials licensees would you
21 foresee the same -- what do we have today in the way
22 of --

23 MR. FUNCHES: I think it's like about 26
24 if you call the small materials, transportation, and
25 large fuel facilities.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 CHAIRMAN SELIN: Do you see any
2 significant difference in the number of classes?

3 MR. FUNCHES: Not a significant
4 difference. You know, if you went away from a Part
5 170 fee, if there are things that Part 170 captured
6 that you might want to distinguish, you might create
7 a class here and maybe eliminate one there but not a
8 substantial change.

9 CHAIRMAN SELIN: Basically you're arguing
10 that within what the de facto theory is that we do our
11 fees today, we could do them cheaper without being
12 significantly less or more fair, that the differences
13 are very small. It's not a zero based review of
14 what's the right number of licensee classes for
15 material licensees, but evaluation of where we stand,
16 you know a small variation that would make it a lot --
17 somewhat cheaper and not more unfair and a lot easier
18 to explain.

19 MR. SCROGGINS: We think more stable in
20 the sense that Jesse indicated. Sort of very similar
21 if you have a license with the NRC, this is what it's
22 going to cost you this year. It's like getting a car
23 registration or something like that.

24 COMMISSIONER de PLANQUE: Would you have
25 to do more rearranging to address the equity issue?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. FUNCHES: I think you might would have
2 to do some rearranging. For example, if you have some
3 gauges that might have three or four sites and you
4 might inspect each site, you might have to rearrange
5 that category to have, say, a multiple site and a
6 single site to reflect that difference. There could
7 be some rearrangement. I wouldn't think significantly
8 different in the classes, but some minor rearrangement
9 probably would be necessary to recognize that.

10 MR. TAYLOR: It's like the small medical
11 and the broad scope. If we had such a broad scope
12 gauge, we'd have to look at that.

13 MR. FUNCHES: Right.

14 This concludes the discussion of the three
15 major concerns. What I'd like to do next would be --

16 (Slide) Go to the next chart, please.

17 What I'd like to do next is talk about
18 some specific concerns that didn't fall within the
19 concerns we discussed earlier. These are -- what I
20 will do with each is talk about what we do today and
21 the issues that have been raised and how we propose to
22 resolve it.

23 The first area involved proportion of
24 annual fees. Currently we assess any licensee a fee,
25 a full fee if they essentially have a license at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 beginning of the fiscal year or have not filed for a
2 termination. That means that if a person terminates
3 in March before the annual fee is issued, they still
4 get an annual fee. We have a significant amount of
5 correspondence from the material licensees and from
6 the reactors when they go into decommissioning if they
7 terminate in the middle of the fiscal year that this
8 is unfair. We plan to implement a type of proration
9 during the year and I think it would be even more
10 important if we go one fee because obviously they
11 couldn't get an inspection once they terminate their
12 license.

13 The second specific --

14 COMMISSIONER REMICK: Excuse me, Jesse.
15 Would you propose prorating on the basis of the number
16 of days of the year or number of months or quarter or
17 half year? Have you thought it out?

18 MR. FUNCHES: It probably would be either
19 quarter or half year initially. We'll probably never
20 go down to days because, you know, cutting it really
21 fine, but probably no more than quarterly.

22 CHAIRMAN SELIN: We have this authority
23 today. We don't need a statute.

24 MR. FUNCHES: No, we could implement
25 that, yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. TAYLOR: Then we'd have to adjust the
2 amounts collected in later months.

3 MR. FUNCHES: We will have to estimate how
4 many terminations and whatever.

5 The annual fee for non-operating
6 facilities. One the facility receives a POL, they
7 don't pay an annual fee. They continue to pay for
8 inspections or amendments to their license. Basically
9 the fee is not charged once you are not able to
10 operate. You request that your operating status be
11 removed. Some licensees have requested that the fee
12 not be paid once they decided they are not operating,
13 but would like to put their facility in standby but
14 hold the operating license.

15 Another question that has come up is that
16 once a licensee goes in the POL, they still benefit
17 from some of the NRC's regulatory activities, such as
18 decommissioning or reclamation or research or
19 rulemaking.

20 The premise on which we have charged fees
21 and that we recommend we continue to charge fees is
22 that if you request the ability to operate you should
23 pay the annual fee whether you operate -- whether you
24 make a decision to operate or not. We recommend we
25 continue that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 If we go to a one fee or one annual fee
2 for licensees, we would probably create an annual fee
3 to cover some POLs. It wouldn't be the same as the
4 annual fee for the operating facility or for a
5 facility that's undergoing reclamation in the mining
6 area.

7 The third specific issue is a sliding
8 scale for small entities. Currently we charge a
9 \$400.00 maximum annual fee for small entities with
10 gross receipts of \$250,000.00 or less. For between
11 \$250,000.00 and \$3.5 million, we charge \$1800.00.
12 Licensees that are about \$500,000.00 in gross
13 receipts, "You gave a big break to my competitor on
14 one end and I can't compete with the \$3.5 million,"
15 and therefore they request that maybe some
16 intermediate step.

17 We don't have a recommendation in this
18 paper on that particular issue. We plan to look at
19 the issue as part of reexamining whether the size
20 standards are correct. The SBA has come out with new
21 size standards, proposed size standards. If we adopt
22 those standards, the standard would be like a half
23 million dollars. As part of examining whether or not
24 we've changed the size standard, we'll also look at
25 whether or not there are good reasons to have maybe

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 intermediate points between the maximum and the low
2 fee.

3 Prior to 100 percent recovery, advanced
4 reactor application fees would defer for 15 years or
5 until an application was received to reference that
6 design. In implementing 100 percent recovery, the
7 Commission decided to delete that and charge the
8 advanced reactors fees as the costs were incurred for
9 application review. But the application review does
10 not include the research that we mentioned earlier and
11 we'll get some information back to you on that.

12 The fees for advanced reactors varies
13 from -- individual advanced reactor for '93 varies
14 from about \$300,000.00 to about \$4.6 million for
15 fiscal '93 for the application review. The total
16 effort there was about \$11 million. We have no reason
17 to recommend deferral of those fees, the cost that's
18 incurred, especially on 100 percent recovery. So,
19 therefore, we have proposed that the current approach
20 of charging as the costs are incurred be continued.

21 COMMISSIONER REMICK: Would that be a 170
22 fee or --

23 MR. FUNCHES: Well, it would be an
24 application fee. We will continue to charge fees for
25 the first time you're in, for reviews.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 CHAIRMAN SELIN: What about -- I mean
2 there's some other intermediate activities. For
3 instance, the B&W Owners Group comes in and says,
4 "Here's our license renewal work. We would like you
5 to review that."

6 MR. FUNCHES: Are you talking about under
7 the proposed one annual fee?

8 CHAIRMAN SELIN: Yes.

9 MR. FUNCHES: They would still pay an
10 application fee. The initial application type fee
11 would continue.

12 CHAIRMAN SELIN: It's a fixed fee or is it
13 proportionate to the amount of work we do?

14 MR. FUNCHES: We would do it on -- you
15 could do it either way. You could do it fixed fee or
16 proportion to the amount of work you do. If you had
17 groupings that were pretty uniform --

18 CHAIRMAN SELIN: Then the Westinghouse
19 fellows come in and they get a terrific benefit that
20 they didn't pay for in the B&W work. Do they just get
21 a free ride or how does that work?

22 MR. FUNCHES: I'm not sure I understand
23 the question.

24 CHAIRMAN SELIN: Baltimore Gas & Electric
25 comes in and does a bunch of these things on a one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 time basis. They pay full charge and then a second,
2 third, fourth plant gets a free ride. How would we do
3 these -- would we have some flexibility in deciding
4 whether there would be a series beyond the licensing?

5 MR. FUNCHES: Yes, I think you would have
6 some flexibility to do that if we go to the one annual
7 fee. You'll have some flexibility to do some
8 smoothing rather than as you go up the learning curve.
9 I assume that flexibility would be there under that
10 type of legislation.

11 MR. FUNCHES: Jesse, as I understood the
12 Chairman's question, it was not an application. I
13 don't think it would fit an application fee. It would
14 be more like a topical report, I assume, or something.
15 It's where our staff is spending time working with
16 them in the license renewal area. They haven't
17 actually made a formal application. Am I correct?

18 MR. FUNCHES: We would continue to charge
19 for those topical report approvals, initial approval
20 for a specific topical report. Say if, as you say,
21 B&W came in for a joint, we would charge them an
22 application fee for that approval.

23 COMMISSIONER REMICK: Okay. And suppose
24 the case is not a formal topical report but we are
25 working together to try to get an understanding of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 problem and the staff and, let's say, B&W Owners Group
2 are working with the staff, but there's not a formal
3 application or a formal topical point to review.

4 MR. FUNCHES: One concept would be to use
5 what we call pre-application review and we do that now
6 where the licensee would come in and want to have a
7 docket and to have subsequent discussion about the
8 application. So, you could do some pre-charges there.

9 CHAIRMAN SELIN: There are actually two
10 separate problems. Commissioner Remick has put his
11 finger on it. The first is whether it's an
12 application or not and the second is the free rider
13 problem, is a pilot plant or an owners group of what
14 have you and they come in and we spend a lot of time
15 with them and we and they both know it wouldn't be
16 justified if it were only going to be done for them,
17 but it's going to be done across the board. And yet
18 the other people haven't voluntarily said, "We will be
19 part of the program." We get this all the time. We
20 get this in tech specs, we get this in license renewal
21 where we make a command decision that we think this is
22 of interest and we find somebody to work with, but we
23 haven't asked the other licensees to sign up and say,
24 "If the results are successful, will you share in
25 these?"

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 I don't think you can come up with all the
2 answers at this point, but that is a generic problem
3 of significant concern.

4 MR. TAYLOR: There is a question that the
5 paper addresses in topical reports, but we're saying
6 if it's applicable generically and you can so identify
7 it, then those costs would be applied over the full
8 span.

9 COMMISSIONER REMICK: It would be in the
10 annual.

11 MR. SCROGGINS: Which we do quite often
12 now. We do have the authority to --

13 CHAIRMAN SELIN: Let's take a specific
14 case. It's not B&W, it's the B&W Owners Group. There
15 are what, seven, nine reactors? I forget. It's a
16 small number. It's an odd number. I remember B&W
17 equals odd. So, we decide on our own that this work
18 is really of general interest because it's at least
19 going to address all the PWR people. So, according to
20 your scheme, we would take the charge for this
21 preapplication work and figure it into the annual
22 amount for all PWRs, if you made the decision that it
23 was not B&W specific, right?

24 MR. TAYLOR: You could do that.

25 CHAIRMAN SELIN: Even if the other folks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 said, "Hey, we don't even know if we're going to apply
2 or not," we still would have that flexibility.

3 MR. TAYLOR: You could say it was generic.

4 CHAIRMAN SELIN: Fine.

5 Commissioner Remick, any follow-up?

6 COMMISSIONER REMICK: No.

7 CHAIRMAN SELIN: Mr. Funches?

8 MR. FUNCHES: The last area we mentioned
9 topical. We had a ceiling on topical for a couple
10 reasons. One was immediately encouraging submittal of
11 topical. Second was so that people could plan how
12 much topical would be, how much cost they'd need to
13 budget for a topical because sometimes they're owners
14 groups or they have limited budgets.

15 The topical report fees can vary from
16 \$1,000.00 up to hundreds of thousands of dollars for
17 review, depending on what the report is, the issues
18 involved. We removed that ceiling in 1991 as part of
19 the 100 percent recovery. Again, recovery from those,
20 the cost of providing the service. That issue has
21 been raised. We recommend that we don't -- we
22 continue to maintain -- I mean charge full cost for
23 the topical.

24 Another issue that has been raised is one
25 along the lines we were talking about earlier, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 that's the issue of some topicals we receive from
2 groups have a benefit to NRC and the question of
3 whether there are specific groups that we should
4 eliminate. We look at exempt at the beginning and
5 generically. We're looking at those and the types of
6 topics that are coming in. In the past, we have
7 granted specific exemption when they were in support
8 of activities that we were accomplishing.

9 CHAIRMAN SELIN: But what Mr. Taylor said
10 is that you have an alternative actually.

11 MR. FUNCHES: Right.

12 CHAIRMAN SELIN: We have an alternative,
13 which is not to give an exemption, but to say this is
14 a generic cost. Then that would encourage people to
15 come in and be prototypes because they would get a
16 plant-specific application of a generic principle for
17 no more than the other folks did. That's probably
18 behavior we would want to encourage.

19 MR. SCROGGINS: Yes, we do that even now.

20 CHAIRMAN SELIN: We do?

21 MR. SCROGGINS: Yes.

22 CHAIRMAN SELIN: I see. What's this about
23 expanding scope?

24 MR. FUNCHES: Early on, one extreme was as
25 you mentioned. You mentioned alternatives, say, of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 charging 50 percent of 170 as part of the budget to
2 170. One of the areas we were looking at was whether
3 or not it was feasible to increase the amount we were
4 recovering through Part 170. It was a question that
5 we had early on. Obviously with the recommendation
6 that we have here, that that recommendation go
7 forward --

8 CHAIRMAN SELIN: It says it's either/or.

9 MR. FUNCHES: Yes. Okay.

10 (Slide) Next chart, please.

11 In summary, we are recommending that OBRA
12 be modified to require that NRC --

13 CHAIRMAN SELIN: You're recommending that
14 OBRA be modified in a way which would incidentally
15 have the effect of collecting 90 percent of the
16 budget. I mean you would still do it by category.,

17 MR. FUNCHES: Yes.

18 CHAIRMAN SELIN: I assume that you would
19 also put in a bottom line that says, "This can amount
20 to no more than ten percent of the budget in a year."

21 MR. FUNCHES: Yes.

22 CHAIRMAN SELIN: Well, estimate or not,
23 because I think the appropriations will make a huge
24 difference if they had what could be an open ended
25 situation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. FUNCHES: Right.

2 CHAIRMAN SELIN: But specifically you're
3 saying modifying OBRA '92, exempt X, Y and Z, and the
4 effect we estimate would about ten percent.

5 MR. FUNCHES: Right. Actually when we add
6 these numbers up that you've seen in the papers there,
7 it's about 80 percent.

8 We would also recommend that we modify the
9 Atomic Energy Act to allow us to assess fees to all
10 federal agencies. Again, even though we'll go to one
11 fee, we will want the flexibility to charge the
12 application fee. For example, currently we're doing
13 work on advanced reactor for DOE and those fees we
14 can't assess for those review fees.

15 COMMISSIONER REMICK: That was when it
16 seemed like -- it seemed to me that satellite 170
17 fees, but we're proposing to eliminate 170 fees. We'd
18 handle them different with 170, is that it?

19 MR. FUNCHES: Okay. We'll continue to
20 charge new applicants a fee for the review.

21 COMMISSIONER REMICK: This says inspection
22 fees, licensing and inspection fees.

23 MR. FUNCHES: Right.

24 COMMISSIONER REMICK: Licensing I can see
25 similar to application, but inspection is different.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 MR. FUNCHES: You would drop the
2 inspection under the new approach, yes, that's
3 correct. It would just be licensing fees.

4 COMMISSIONER REMICK: So, we should strike
5 inspection fees?

6 MR. FUNCHES: Yes. This recommendation --

7 CHAIRMAN SELIN: Well, actually, I think
8 what we would do is we would ask for authority to deal
9 with other federal agencies as we deal with private
10 sector licensees.

11 MR. FUNCHES: Right.

12 COMMISSIONER REMICK: That would be
13 better, yes.

14 CHAIRMAN SELIN: Then if we got to the
15 third point, it would be just licensing. But if the
16 second passed and the third one didn't, it would be
17 licensing and inspection.

18 MR. PARLER: I think the second bullet,
19 Mr. Chairman, would simply give us the additional
20 authority under Section 161(w) to charge other federal
21 agencies who do not produce power or heat
22 commercially, to charge them the fees. How we would
23 go about doing that would be left up to what
24 happens --

25 COMMISSIONER REMICK: I agree, but the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 words don't say that.

2 MR. PARLER: No, they don't.

3 COMMISSIONER REMICK: Another question I
4 have there, in my mind I certainly don't know. There
5 are certainly people who might not like that idea.
6 They're saying you're just shuffling federal money
7 from one agency to another. Have you thought as a
8 fall back position if that didn't go then to eliminate
9 that from our -- or get relief from that as a
10 requirement? In other words, how do I want to say
11 that? To remove it from the fee recovery is what I
12 want to say. Have you thought about that as an
13 alternative if it doesn't fly?

14 MR. FUNCHES: We've thought about that as
15 an alternative and one of the guidelines we were using
16 was trying to minimize the amount you take off the fee
17 base and yet eliminate the concerns about fairness and
18 equity. If we treat federal licensees like we treat
19 private licensees, you would not have to take that
20 off. We already charge some federal licensees and I
21 think that had been recognized by giving us the
22 authority to charge the Uranium Enrichment
23 Corporation. We have the authority to charge TVA.

24 COMMISSIONER REMICK: We've also got the
25 authority not to charge some federal facilities at the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 same time.

2 MR. FUNCHES: Yes. You would take it out,
3 but it would increase the amount of the --

4 CHAIRMAN SELIN: Mr. Funches, I think you
5 have to take Commissioner Remick's point -- I don't
6 want to say into consideration because of course
7 you'll do that. But it goes beyond that because what
8 we're basically saying is one way or another we should
9 not charge the commercial licensees for the licensing
10 of federal agencies. But whether that's done by
11 reducing the reimbursement which has the effect of
12 making us look worse to our appropriators, or whether
13 it's done by rebilling the agencies, in which case
14 we're shifting that problem to them, you sort of have
15 to be guided a little bit by advice as to which would
16 be easier legislation to get through.

17 In other words, it depends on more than
18 just the clean point. The key point is it's not fair
19 to our licensees that they have to pay for the federal
20 agencies, but the people to whom we do charge today
21 are on a private sector accounting basis. They have
22 a balance sheet. They have profit and they have loss.
23 So, it's a real charge for the U.S. Enrichment
24 Corporation or the case of high-level waste, there's
25 a specific fund that it should come at and TVA also is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 an organization that is supposed to balance its
2 profits and costs and its revenues. When you start
3 getting to non-enterprise accounts, then it is a
4 legitimate question, should money be appropriated in
5 the Department of Defense or some research institute
6 in the Department of Defense and they repaid to us, or
7 should it just come directly out of --

8 Obviously we have a preference, but the
9 main thing is make sure it happens. If there are
10 congressional folks who would advise us that one way
11 is better than another way, from that point of view I
12 think we should be --

13 MR. TAYLOR: Either way.

14 CHAIRMAN SELIN: -- driven by that
15 consideration. You're right, it would be nice to not
16 reduce our fee base anymore than necessary. But if
17 that's what we had to do in order to get a fairer
18 situation for our licensees, we should at least
19 consider it.

20 Jim, can I just go ahead and think
21 about -- we have to submit a report to the Congress,
22 right?

23 MR. TAYLOR: Yes.

24 CHAIRMAN SELIN: And it's clearly going to
25 be this report. The Commission is not going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 rewrite the report. We may comment on it or so, but
2 this is the study that the Agency has done.

3 MR. TAYLOR: What we would like is the
4 Commission's comments and --

5 CHAIRMAN SELIN: Let me retract before we
6 get to that. I'm sorry, I cut Commissioner de Planque
7 off.

8 COMMISSIONER de PLANQUE: Well, a question
9 that bears on that and it has to do with the petition
10 for the medical licensees. If that petition were to
11 be granted, what dollar value are we talking about in
12 terms of fees, ballpark?

13 MR. TAYLOR: Are you prepared to answer
14 that?

15 MR. FUNCHES: No. I could provide that to
16 you within the day.

17 COMMISSIONER de PLANQUE: Fine. Did you
18 consider, if that were to occur, how you would recover
19 that amount? Which route would you go? The reason I
20 ask this question is does that or should that be
21 resolved before we go ahead and seek legislation?
22 What is the impact of that in the total package that
23 we might want to go with? The petition on the medical
24 licensees. If that petition were granted, to exempt
25 them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 CHAIRMAN SELIN: All medical?

2 COMMISSIONER de PLANQUE: Well, I don't
3 know the details of the petition right now.

4 MR. TAYLOR: It's a broad request.

5 COMMISSIONER de PLANQUE: It's a broad
6 request.

7 MR. TAYLOR: It is a broad request because
8 of the health benefits.

9 CHAIRMAN SELIN: I don't think you want to
10 be in the position. I think you want to go forward
11 with today's situation and change it as petitions come
12 up.

13 COMMISSIONER de PLANQUE: Well, I don't
14 know if that should be considered because if it were
15 to have a large impact or a small impact and what you
16 would do to recover that, should it occur. You want
17 to be in the position to go twice. How soon might
18 that be resolved? Maybe that's the best way to --

19 MR. FUNCHES: I think part of the issue
20 will be alluded to in the paper on the non-profit
21 indication as we come forward with that paper. It's
22 on the concept of the exemption. If I recall the
23 petition right, but they have requested was that they
24 be considered similar to non-profit education
25 institutions and be exempted from fees. Part of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 issue will be dealt with as part of the paper on non-
2 profit education.

3 MR. TAYLOR: We can look at that and give
4 you that amount reasonably. If you were to include
5 that, that would then probably be treated the same
6 way, is what you're saying.

7 MR. FUNCHES: Yes.

8 MR. TAYLOR: It would not be recommended
9 to come out of the fee base.

10 COMMISSIONER de PLANQUE: And then maybe
11 the outcome and the amount involved may dictate what
12 you want to do in terms of seeking legislative
13 changes.

14 CHAIRMAN SELIN: What I believe we have to
15 do with the legislative changes is absolutely it will
16 be necessary to say not withstanding any of the
17 conditions, but in this first piece that no case would
18 the total amount exempted from the fee be more than --
19 we would have to cap it. We couldn't -- you know, the
20 Congress isn't going to give us something that would
21 lead to 20 to 30 percent of the fees. We'd have to
22 put a limit on that. Therefore, any particular
23 action, the impact it would have on our overall fee
24 base would be limited by the cap.

25 MR. TAYLOR: May I mention, our plan was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 to try to get this report, based upon everything we've
2 done after comments from the Commission and the form
3 by which we could provide that report without
4 necessarily legislative language. That would be on a
5 separate track.

6 COMMISSIONER de PLANQUE: Do we have to
7 follow a certain time line for that, if you're looking
8 for legislating changes?

9 MR. TAYLOR: The time line for submission
10 of legislation and we try to adhere to that, to meet
11 that.

12 COMMISSIONER de PLANQUE: Yes.

13 MR. TAYLOR: But the first thing we wanted
14 to do was to submit the report.

15 CHAIRMAN SELIN: I think you need a cover
16 letter. First of all, the Commission, of course, will
17 want to quote its comments on their cover letter. But
18 it's clear that we're doing a study. The study should
19 be submitted to the Congress. The Commission
20 shouldn't change the study. We should have the
21 benefit of the study.

22 But I think also in your own cover letter
23 you ought to say, if the steps that are taken in the
24 report were implemented -- those steps that do not
25 require statutory changes are X, Y, and Z, then here

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 would be the implication of implementing those. Then
2 say, further changes from statute would have these
3 effects, so that the status quo ante for the statutory
4 changes is that we would make the non-statutory
5 changes on our own so you get phase 1 non-statutory
6 changes, phase 2 statutory changes. There might even
7 be a phase 2 prime which says, if we have the statute
8 changes, we would undo some of these other changes.
9 I don't know what you would do on that. That's got to
10 be an impersonal language. It's got to be not the
11 recommendation of the Commission, but the implication
12 of the report. Consistent -- steps that would be
13 consistent with the report. We've got to decide what
14 we want to actually do as a Commission.

15 MR. TAYLOR: Yes, sir.

16 CHAIRMAN SELIN: Commissioner de Planque?

17 COMMISSIONER de PLANQUE: I have one more
18 question in a different area.

19 CHAIRMAN SELIN: Sure.

20 COMMISSIONER de PLANQUE: Just a general
21 question. Maybe I should use that term.

22 Did you at all address the issue of
23 general licensees and whether or not anything should
24 change with the policy with respect to general
25 licensees? I understand there are about 38,000

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 general licensees.

2 MR. FUNCHES: Yes, between 30,000 and
3 40,000 general licensees. We are working closely with
4 NMSS on their effort to relook at the general
5 licensing program. The current structure of that
6 program does not cause us significant resources. We
7 maintain a database and it would create a significant
8 amount of work to try to assess some small fee to that
9 large a population. We are working closely with NMSS
10 and if, as a result of their look at the general
11 licensing, they change that program and it changes it
12 such that it appears that an annual fee would be
13 appropriate for certain groups of that, we would be
14 willing to establish an annual fee similar to what we
15 have for a specific licensee.

16 I would note that a general license that
17 is issued under reciprocity, we do charge a fee for it
18 at the beginning when we issue that. In terms of
19 inspection, I understand that the number of
20 inspections is probably less than 100 a year.

21 COMMISSIONER de PLANQUE: Are you
22 suggesting that the cost for handling the general
23 licensees would be far less than the cost of any of
24 the one categories that are discussed in the report?

25 MR. FUNCHES: Yes, the amount of effort

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 expended by the NRC would be --

2 MR. TAYLOR: Is less.

3 MR. FUNCHES: Is less, based on my
4 understanding of how much we spend.

5 COMMISSIONER de PLANQUE: Okay.

6 CHAIRMAN SELIN: Just a last point on
7 structure and then go to other comments. I think what
8 you should do is your report should say, the efforts
9 that would actually reduce NRC costs we estimate would
10 save so many FTE and so many dollars and further steps
11 to redistribute those costs, some to the taxpayers as
12 opposed to the licensees, we estimate would make the
13 following changes. But the first -- you've got a
14 bunch of partial differentials. The first one should
15 be reduce the actual cost that we cost to operate and
16 then the second should be how we will distribute
17 what's left, not the other way.

18 Commissioner?

19 COMMISSIONER ROGERS: Well, I've had a lot
20 of discomfort over this whole question of fees ever
21 since we were directed to get 100 percent of our
22 budget. First I want to commend you on the report
23 because I think it's a very tough job to deal with and
24 I think that you've put some bounds on how to deal
25 with it and you've approached it in a rational way but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 I'm not sure that the distinctions that you've drawn
2 are as hard and fast and one would like, but they're
3 the best you can do.

4 You know, the very beginning of activities
5 not directly benefiting licensees. Commissioner
6 Remick, you know, somewhat jocularly said, "I'm not
7 sure that licensees see us benefiting them," and to
8 some extent that's absolutely correct and to some
9 extent we do benefit them. But sorting what
10 activities that we carry out do not really benefit
11 them, but benefit the general public and what
12 activities do we carry out that really are a benefit
13 to them is a difficult sort to make. I'm not sure
14 that it's worth trying to do it because it would be
15 somewhat arbitrary. But to me there is a clear
16 distinction between the activities that we carry out
17 that really are benefit to the entire public in terms
18 of maintaining their safety and those activities which
19 in carrying out our regulatory functions actually do
20 benefit the licensees themselves. I feel that they
21 have benefitted from regulatory attention, but not
22 from all regulatory attention, that the benefits
23 extend more broadly.

24 But the problem that I have is to what
25 extent we are able to address some broader questions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 in any statutory changes. I come back to the point
2 that the quality of what we do is extremely important
3 and how we do it is extremely important and that
4 there's certain basic activities that have to be
5 carried on within an agency to maintain its technical
6 and professional strength. I'm not sure that you can
7 make a one to one connection between all of those and
8 benefits to licensees. It's very clear that our
9 international programs don't have a direct benefit to
10 our licensees, not a direct connection. That's pretty
11 clear. That's pretty easy to see. But I would say
12 that while we have to throw it into the base, I
13 suppose, maintaining the professional standing of our
14 staff is fundamental to the quality of what we do and
15 benefits the entire -- everybody who could possibly be
16 affected by use of nuclear materials in the country
17 and not just all licensees.

18 Now, we're forced to direct it to
19 licensees, or we have been, but if we're talking about
20 some changes, it's my personal taste to try to
21 indicate that some of these costs cannot be directly
22 attributable to license benefits and should not be in
23 the base, fee base. My own estimate is that something
24 like two percent of our budget probably ought to go to
25 maintain the professional standing of our staff, and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 something of the order of perhaps \$10 million or so if
2 you try to count it up. I know that may be difficult
3 for us to put forward in some kind of request for
4 legislative changes, but somehow one of the very
5 fundamental bases of the quality of what we do is
6 something that we don't seem to be able to deal with
7 when we feel that we have to pass everything
8 directly -- connect what we do directly to our
9 licensee benefits.

10 It troubles me. It troubles me very much.
11 It may be that's just the cost of living in the real
12 world, but I must say that I think the way you've
13 sorted it out here is very good, but I'm troubled that
14 we don't seem to be moving at all in the direction of
15 somehow calling the Congress' attention to the fact
16 that everything is not so directly connected to
17 licensee benefits beyond these activities which you've
18 clearly sorted out here and which we all would agree
19 on.

20 So, this is an area that I have a great
21 deal of personal discomfort with and I don't know how
22 it's going to get resolved. But I think that if
23 there's any way in which we can indicate in not only
24 these direct, very direct activities that you've
25 sorted out here, would not be in the fee base, that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 there is also a provision for somehow the general
2 maintenance of the quality of the efforts here would
3 be very desirable.

4 COMMISSIONER REMICK: I certainly share
5 that same discomfort. I have just one question of
6 clarification. My impression was several years ago
7 that the NRC had about 8,000 licensees in agreement
8 states, about 16, for a total of about 24,000. Then
9 I heard that we'd lost about 2,000 and I assume those
10 were primarily NRC licensees because of the fee. So,
11 that brought it down in my mind to 16,000 for 22,000.
12 I don't know if those figures were right, but in your
13 figures today you had 7,000 NRC licensees. Now,
14 either my assumptions that we'd gone down to 6 are
15 wrong or it means we maybe have increased in the
16 number of licensees and I'm not sure which.

17 MR. FUNCHES: I think we started with
18 9,000 and I think maybe the difference was we also
19 count the sealed source and device registration.
20 That's probably a 1,000. So, you have 8,000 plus that
21 thousand. That's the 9,000 that we started with. So,
22 I think typically the 8,000 that you might have been
23 looking at in the past probably included the sealed
24 source and device registrations.

25 COMMISSIONER REMICK: Fine. I would like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 to say also I think you've done an excellent job in
2 the report. It's extremely well written. It's
3 concise. I think you've picked out the very important
4 points and I certainly am in general agreement with
5 what you've recommended. Thank you very much.

6 CHAIRMAN SELIN: Commissioner de Planque?

7 COMMISSIONER de PLANQUE: You've asked all
8 my specific questions, but I too would say the report
9 was extremely well done, very clear and very easy to
10 understand for a difficult subject. Thanks.

11 CHAIRMAN SELIN: I think this is a
12 terrific job.

13 I would like to demur a little bit from
14 Commissioner Rogers' statement, not in principle but
15 in practice. I agree certainly that the activities
16 that we undertake, and they go beyond just the staff
17 development, are of benefit to the entire public and
18 not just to the licensees. But as far as the study
19 goes, and I'm not talking about broader things, I
20 think the Congress' policy is pretty clear. They want
21 us to do 100 percent recovery. So, I read that as
22 saying when there are joint costs which go to our
23 licensees and to the general public, they want us to
24 attribute that to the licensees. Now, at some point,
25 we may or may not wish to contest the broader policy

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 question. But I think the function of this study is
2 within that general context what's fair. We're sort
3 of getting at the edge of the reservation to say even
4 within that context, gentlemen and ladies, we demur.
5 We think that eight or ten percent should be taken out
6 of the license base because it's so unfair to the
7 licensee.

8 So, as far as the general comments, I do
9 agree with Commissioner Rogers and Commissioner Remick
10 on these. But as far as the study goes, I think we do
11 have to stick within this overall congressional
12 guidance, unless we're prepared to go back and say,
13 "We so strongly disagree with the fee guide that we
14 want to recommend a different fee." I'd rather take
15 them in two steps. One is what we think we can do
16 within the OBRA-92 guidance and then a second is in a
17 fairer world what we would like to see happen
18 thereafter.

19 But in any event, I think it's a really
20 good study. I think we're all -- listening to the
21 comments, we're all pretty comfortable that although
22 we wouldn't edit your report at this time, the
23 Congress asked for a report and you've done a study,
24 we're not unhappy with the way it's turned out, but
25 the cover letter does have to be careful to say,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

1 "Here's the study." If the EDO cares to put his views
2 in, that's fine, and the Commission will add its
3 comments.

4 As far as the legislation, the General
5 Counsel has pointed out that this would be authorizing
6 legislation, not appropriation legislation. If we do
7 get authorization, we'll be asked about the middle of
8 '94 for our comments on authorization. But there is
9 a '93, '94 piece of authorizing legislation that's up
10 there. So, we would have to decide if we would like
11 to get that into the draft bill or --

12 MR. SCROGGINS: There is one that we've
13 been hearing from OCA that is a possibility of the
14 Senate Authorization Committee of having a specific
15 fee hearing maybe in the February time frame. The
16 intent would be that this report would be the focus of
17 that hearing.

18 CHAIRMAN SELIN: It's not always the
19 case --

20 MR. SCROGGINS: We don't know if that's
21 the case, that's correct.

22 CHAIRMAN SELIN: Well done. Thank you
23 very much.

24 (Whereupon, at 4:44 p.m., the above-
25 entitled matter was concluded.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVENUE, N.W.

WASHINGTON, D.C. 20005

CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting
of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON RESULTS OF FEE STUDY

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: DECEMBER 21, 1993

were transcribed by me. I further certify that said transcription
is accurate and complete, to the best of my ability, and that the
transcript is a true and accurate record of the foregoing events.



Reporter's name: Peter Lynch

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20005

(202) 234-4433

(202) 232-6600



**COMMISSION BRIEFING ON
THE FEE POLICY REVIEW
REQUIRED BY ENERGY POLICY ACT**

DECEMBER 21, 1993

**Contact: Jesse Funches or C. James Holloway, Jr.
Phone: 492-4750**

BACKGROUND

- **Omnibus Budget Reconciliation Act of 1990, (OBRA-90).**
 - **100 Percent Recovery of Budget Through Fees.**
 - **License and Inspection Fees Under Part 170.**
 - **Annual Fees Under Part 171.**
- **Four Rules Promulgated to Implement OBRA-90.**
- **Energy Policy Act of 1992 (EPA-92).**
 - **Solicit Public Comments on Need For Fee Policy Changes.**
 - **Recommend Legislative Changes to Prevent Unfair Burden.**
- **Public Comments Requested on 4/19/93.**

SCOPE OF REVIEW

- **Questions Beyond Scope of Review.**
 - **How to Raise Revenues (Taxes Versus Fees).**
 - **Appropriate Size of Budget and Resulting Magnitude of Fees.**
- **Fee-Related Issues Under Separate Review.**
 - **Exemption for Nonprofit Educational Institutions.**
 - **Small Entity Size Standards.**
 - **Final Decision on Two Petitions for Rulemaking.**
 - **Cost-Center Concepts.**

INPUT TO FEE POLICY REVIEW

- **Experience in Implementing OBRA-90.**
 - **About 98-99 Percent Collected for FY 1991-1993.**
 - **1,000+ Comments on Four Fee Rules.**
 - **5,000+ Telephone Calls and Letters on Fees.**
 - **Two Petitions for Rulemaking.**
 - **Court Case.**
- **566 Comments on EPA-92 Notice.**
- **OIG Review.**

CONCERNS

- **Two Major Fairness and Equity Concerns.**
 1. **Fees for Activities Not Directly Benefitting NRC Licensees.**
 2. **Fees Are Not Commensurate With Perceived Benefits.**
- **Streamlining of Fee Process.**
- **Other Specific Concerns Raised by Comments.**

CONCERN #1: ACTIVITIES NOT DIRECTLY BENEFITTING LICENSEE

- **Activities Not Associated With Existing Licensees.**
 - **International**
 - **Oversight of Agreement State Program**
 - **Low-Level Waste**
 - **\$21.4 Million in Total Fees**

CONCERN #1 (CONTINUED)

- **Fees Not Paid by Direct Beneficiary Because of Legislative or Policy Constraints.**
 - **Licensing and Inspection of Federal Agencies.**
 - **Exemption for Nonprofit Educational Institutions.**
 - **Reduced Fees for Small Entities.**
 - **\$18.2 Million in Total Fees.**

ALTERNATIVES FOR RESOLVING CONCERN #1

- **Alternatives:**
 1. **Relax Requirement to Collect 100 Percent of Budget;**
 2. **Charge Beneficiary of NRC Activities;**
 3. **Continue Current Policy of Assessing NRC Licensees.**
- **Factors Considered:**
 - **Minimize Impact on 100 Percent Recovery.**
 - **Do Not Recreate Resolved Concerns.**

RECOMMENDED RESOLUTIONS OF CONCERN #1

- **Modify OBRA-90 to Remove About \$25 Million From the Fee Base for:**
 - **International Activities,**
 - **Agreement State Oversight,**
 - **Nonprofit Educational Institutions, and**
 - **Small Entities.**
- **Modify Atomic Energy Act (AEA) to Assess Licensing and Inspection Fees to Federal Agencies.**
- **Continue Current Policy of Assessing Fees to Licensees for LLW.**

CONCERN #2: FEES NOT COMMENSURATE WITH PERCEIVED BENEFITS

- **Licensees Pay for Regulatory Program for Both NRC and Agreement State Licensees.**
 - **7,000 NRC Licenses**
 - **16,000 Agreement State Licenses**
 - **\$15 Million Considered Support To Agreement States**
 - **Additional Agreement States Possible**
- **Possible Solutions:**
 - **Remove Costs from Fee Base.**
 - **Charge Agreement States.**

CONCERN #2: (CONTINUED)

- **Large Fee Increases With No Added Value Caused By:**
 - **New Annual Fee**
 - **Reduced Number of Licensees**
 - **Increased Budget**
 - **Increased Licensing and Inspection Fees**
- **License Value Measured in Economic Terms.**
- **Solution:**
 - **Use Cost Center Concepts**

SUMMARY RESOLUTION OF CONCERN #2

- **Modify OBRA-90 To Remove \$15 Million From Fee Base.**
 - **Recognize Utilization of NRC Regulatory Program by Agreement States.**
 - **Recognize Inherent Difficulties in Charging Agreement States.**
- **Continue to Base Fees on Budgeted Regulatory Cost.**
 - **Improve Assignment of Costs and Explanation of Changes Using Cost Center Concepts.**

CONCERN #3: STREAMLINE FEE EFFORT

- **EPA-92 Federal Register Requested Comments.**
- **IG Review.**
 - **Fee Process is Very Labor Intensive**
 - **Combine Part 170 and 171 Fees**
- **About 25 FTE and \$725,000 expended for Part 170 and Part 171 Fees.**

STREAMLINING ALTERNATIVES

- **Alternatives Considered But Not Recommended:**
 1. **Eliminate Notice and Comment Rulemaking.**
 2. **Reduce the Number of Subclasses for Part 171.**
 3. **Assess Fees Only to Power Reactors and Fuel Facilities.**
- **Licensees Did Not Support Alternatives 1 and 2.**
- **Alternative 3 Creates Fairness and Equity Concerns.**

STREAMLINING ALTERNATIVES (CONTINUED)

- **Alternatives Considered and Recommended:**
 - **Modify OBRA-90 to Eliminate Requirement to Assess Part 170 Fees.**
 - **Discontinue Amendment, Renewal (materials only) and Inspection fees.**
 - **Continue Application Fees for New Licenses, Including Renewal of Reactor Licenses.**
- **Avoid Expending about 10 FTEs and \$200,000.**
- **Simpler Fee Structure**

OTHER SPECIFIC CONCERNS

- **Proration of Annual Fees.**
- **Annual Fees for Nonoperating Facilities.**
- **Sliding Scale For Small Entities Fees.**
- **Advanced Reactor Review Fee.**
- **Topical Reports.**
- **Expand The Scope of Part 170.**

SUMMARY OF RECOMMENDATIONS

- **Modify OBRA-90 to Collect Approximately 90 Percent of Budget.**
- **Modify AEA to Assess Licensing and Inspection Fees to Federal Agencies.**
- **Streamline Fee Effort by Modifying OBRA-90 to Eliminate Requirement to Assess Part 170 Fees.**



POLICY ISSUE

December 14, 1993

(Notation Vote)

SECY-93-342

FOR: The Commission

FROM: James M. Taylor
Executive Director
for Operations

SUBJECT: IMPLEMENTATION OF THE ENERGY POLICY ACT OF 1992
REQUIREMENT TO REVIEW NRC FEE POLICY

PURPOSE:

To request Commission decisions and guidance on the results of the review of fee policy that is required by the Energy Policy Act of 1992.

CATEGORY:

This paper covers significant fee policy issues requiring Commission action.

SUMMARY:

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) to recover 100 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund by

CONTACT: Jesse Funches, OC
492-7351

C. James Holloway, OC
492-4301

NOTE: TO BE MADE PUBLICLY AVAILABLE
AT THE COMMISSION MEETING ON
DECEMBER 21, 1993

assessing fees. The Energy Policy Act of 1992 (EPA-92) requires that the NRC review its policy for assessment of annual fees under the OBRA-90, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees. On April 19, 1993, the NRC published a notice that requested comments on NRC fee policies. The comment period expired August 18, 1993. The NRC received 566 comments in response to the notice.

Analysis of the comments received on the April 19, 1993, notice, and the staff's experience during the past three years administering the fee program to comply with OBRA-90 indicate two major concerns about the fairness and equity of the fees. The first major concern is that not all direct beneficiaries of NRC activities pay fees. Therefore, to recover 100 percent of the budget some licensees pay for activities that do not benefit them. The second major concern is that some licensees believe that fees for regulatory activities related to them are not commensurate with the benefits received. In addition, the staff has identified a concern that is not related to the equity and fairness issues. This concern is the amount of effort required to implement the current fee process.

The staff concludes that legislation is necessary to minimize these concerns. Accordingly, the staff recommends that the Commission pursue the following legislative changes:

1. Modify OBRA-90 to remove from the fee base costs for international activities, Agreement State oversight, the exempted fees for nonprofit educational institutions, and the amount of the fee reduction for small entities. This would minimize the major concern associated with NRC licensees paying for activities that do not benefit them. (This would reduce the amount to be collected by about \$25 million or about 5 percent of the FY 1993 budget recovered through fees.)
2. Modify OBRA-90 to eliminate from the fee base a portion of the cost of generic regulatory activities that supports NRC and Agreement States material licensees. This would eliminate the concern that NRC material licensees' fees, which support the regulation of both NRC and Agreement State licensees, are not commensurate with benefits received. (This would reduce the amount to be collected by about \$15 million or about 3 percent of the FY 1993 budget recovered through fees.)

3. Modify the AEA to permit NRC to assess application and other fees (about \$6 million) for specific services to all Federal agencies, so that other NRC licensees do not have to pay for the cost of these services that do not benefit them.¹
4. Modify OBRA-90 to eliminate the requirement that NRC assess Part 170 fees so as to reduce the resources required to assess and collect fees. (If this option is adopted, the NRC could avoid spending roughly 10 FTEs and about \$200,000 in contractual support for fees.)

The staff believes that if the Commission and Congress implement these recommendations, most of the concerns about fairness and equity of the fee schedules would be corrected. If these recommendations are implemented, this would require the NRC to recover approximately 90 percent of its budget authority, less the amount appropriated from the Nuclear Waste Fund.

Based on Commission decisions and guidance, the staff will convert this paper to a report that will be sent to the Congress and to the Office of Management and Budget. The staff does not plan to include draft legislation with the report to Congress. Specific implementing legislation would be developed in coordination with OMB after the report is sent to Congress. Given the likelihood of a Congressional hearing on fees in February 1994, the staff recommends that the decisions and guidance on this paper be made in a timeframe that would permit the Commission to submit the report to Congress by the end of January 1994.

The proposed fee rule for FY 1994 would implement the Commission policy decisions and other guidance resulting from this paper. Because the NRC should publish a proposed rule during the first quarter of calendar year 1994 to seek public comment on the recommended changes to the fee regulations, the staff recommends that the Commission make an exception to its normal rulemaking process by delegating to the EDO the authority to issue the proposed and final rules for FY 1994, as was done in FY 1992 and FY 1993. Additionally, the FY 1994 rule cannot reflect any proposed legislative changes because they will not be enacted in time.

BACKGROUND:

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as

¹This change would still be necessary if the requirement to assess Part 170 fees is eliminated, since the staff would want to assess an application fee to those agencies applying for new licenses who would not pay annual fees.

amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE)-administered Nuclear Waste Fund (NWF) for FYs 1991 through 1998 by assessing fees to NRC applicants and licensees. Two types of fees are required to recover NRC's budget authority. First, license and inspection fees, established by 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act (IOAA) and the Atomic Energy Act (AEA), as amended, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed are reviewing applications for the issuance of new licenses or approvals, amending or renewing licenses or approvals, and inspecting licenses. Second, annual fees, established by 10 CFR Part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

Since OBRA-90 was enacted, the NRC has published four final fee rules after evaluating over 1,000 public comments. On July 10, 1991, the NRC published the first rule that established fees to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule implemented Commission fee policy decisions and established the underlying basis and method for determining the hourly rate and fees. The Commission policy decisions and the fee methodology used for FY 1991 were also used in the final rules to recover approximately 100 percent of the FY 1992 and FY 1993 budget authority. The FY 1993 rule also included the results of the biennial review required by the Chief Financial Officers (CFO) Act of 1990. The purpose of that review was to ensure that fees and other charges imposed by the NRC reflect costs incurred in providing those services. The review resulted in significant fee increases for some materials licensees.

In April 1992, the NRC published a limited change to 10 CFR Part 171 to address licensee concerns about the unfair burden of fees on extremely small licensees. This change adjusted the maximum annual fee of \$1,800 that was assessed licensees that qualify as a small entity under the NRC's size standards. A lower-tier small entity fee of \$400 per licensed category was established for small businesses and nonprofit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on March 16, 1993. In summary, the court supported the basic fee methodology, but it remanded two issues for the Commission to reconsider. One of the issues related to annual fees for nonprofit educational institutions. In response to the court decision, the Commission revoked the

exemption from annual fees for nonprofit educational institutions. On September 29, 1993, in response to a petition for reconsideration, the NRC published a proposed rule seeking public comment on the reinstatement of this exemption. The comment period expired October 29, 1993, and the staff expects the final rule concerning this matter to be submitted to the Commission in December 1993. The second remanded issue was the method of assessing fees for low-level waste (LLW) activities. In response to the court decision, the allocation method was changed in the final FY 1993 rule published July 20, 1993.

The Energy Policy Act of 1992 (EPA-92) directed the NRC to review its policy for assessment of annual charges under OBRA-90, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes needed in existing law to prevent placing an unfair burden on NRC licensees. Consistent with these requirements, the NRC requested public comment on its fee policy in a Federal Register notice published on April 19, 1993 (Enclosure 1). The 90-day comment period expired July 19, 1993, and was extended an additional 30 days to August 18, 1993. Although EPA-92 required only public comments on the annual fees assessed by the NRC under 10 CFR Part 171, the NRC also requested comments on 10 CFR Part 170 fee policies because of the interrelationship of 10 CFR Parts 170 and 171 fees.

By the close of the comment period, 566 comments were received from individual licensees or their representatives as follows:

| | |
|------------------|------------------|
| Reactors | 26 |
| Fuel Facilities | 11 |
| Educational | 46 |
| Medical | 20 |
| Industrial | 450 ² |
| Federal Agencies | 5 |
| State Agencies | <u>8</u> |
| | 566 |

A listing of the commenters by group is included as Enclosure 2. Copies of the individual comments can be obtained from the Office of the Secretary or the Public Document Room.

²Of the 450 comments received from industrial licensees, 405 were form letters supporting comments submitted by Troxler Electronic Laboratories, Inc., opposing increased annual fees assessed to gauge users.

DISCUSSION:

This policy paper is based on the staff's experience in responding to the comments, letters, and telephone calls received during the past three years of implementing OBRA-90; a court case involving annual fees; two petitions for rulemaking involving annual fees; and the comments received on the EPA-92 notice. This paper also considers the Office of the Inspector General review of fees that was submitted to the Commission on October 26, 1993.

The staff has made the following two assumptions to establish the scope for this fee policy review:

1. The public policy question of how to raise revenues (taxes versus fees) will only be addressed to the extent that changes to existing law are necessary to make the fees more fair and equitable. This assumption is consistent with past Commission positions.
2. The amount of the budget necessary for NRC to perform its safety mission will not be addressed.

The following areas that are fee related will not be addressed in this paper because these items are being presented to the Commission for review and decision separately:

- The merits of whether to exempt nonprofit educational institutions from fees. (This paper, however, addresses how these costs should be treated, assuming the exemption is reinstated.)
- Utilization of cost-center concepts in financial management. (This paper will note areas where the cost-center concept will help resolve a fee concern.)
- The merits of whether the NRC small entity size standards should be changed. (The staff is evaluating whether the small entity size standards should be changed based on the results of a survey of NRC licensees and the recent proposed rule published in the Federal Register by the Small Business Administration that would amend the Small Business Size Standards).
- The decisions and the Federal Register notice on the petitions for rulemaking from the American Mining Congress (AMC) and the American College of Nuclear Physicians and the Society of Nuclear Medicine (ACNP/SNM). (The issues raised by the petitioners are

among those addressed here and in the final rule on the exemption for nonprofit educational institutions.)³

Proposed FY 1994 fees are not included in this paper. These fees will be based on decisions the Commission makes about policy discussed in this paper. The staff recommends that the EDO be permitted to issue the proposed and final rules without further Commission review as was done in FY 1992 and FY 1993.

Major Concerns:

Essentially, OBRA-90 requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the DOE-administered NWF, in a fair and equitable manner. To accomplish this, OBRA-90 provides that the NRC shall continue to collect IOAA fees to recover the Commission's cost of providing any service or thing of value to a person regulated by the NRC and shall establish a schedule of annual charges, fairly and equitably allocating the aggregate amount of the charges among licensees. To the maximum extent practicable, the charges shall reasonably reflect the cost of providing services to licensees or classes of licensees.

The NRC has met the first objective of OBRA-90, collecting approximately 100 percent of its budget authority. For FY 1991, the NRC recovered 98 percent of its budget, for FY 1992, 99 percent of its budget and for FY 1993, 98 percent of its budget. Despite this success, many NRC licensees, as well as members of Congress, have expressed concerns about the fairness and equity of the fees.

These major concerns evolve from the inability of the NRC to meet the principle summarized by one commenter; namely, that if the NRC is to be funded through user fees rather than taxes, then

"each direct beneficiary of NRC's activities -- not merely its 'licensees' -- should contribute to an extent commensurate with the benefits it receives."

This principle cannot be met for two reasons. First, not all

³Both petitioners identified several adverse impacts which they claim have affected their members. AMC, for example, suggests that NRC implement a system (e.g., a licensee review board) giving NRC licensees some control over their fees. They have also suggested that facilities no longer generating revenue be exempted from fees. ACNP/SNM suggest that NRC provide an exemption for medical services similar to that provided for nonprofit educational institutions. They also suggest a sliding scale for fees based on income.

direct beneficiaries of NRC activities pay fees because of legislative constraints and Commission policy. Second, fees are based on the agency's costs to perform its regulatory responsibilities, rather than on the licensee's perception of benefits received. This leads some licensees to conclude that the fees for regulatory activities related to them are not commensurate with the benefits they receive.

Another major concern, not directly related to the issue of fairness and equity, is the efficiency of the fee process. This concern was also addressed in the OIG memorandum to the Commission, dated October 26, 1993. Given the Administration's directive to reduce FTEs and costs in the future, the staff is concerned that unless efficiencies can be achieved through modification of the fee process, methods, and policies, many fee related activities cannot be performed in a timely manner.

The following sections discuss these three major concerns, and possible methods of resolving these concerns. Following the discussion of the three major concerns, other fee concerns and proposed solutions are also evaluated.

Major Concern: Not All Direct Beneficiaries of NRC Activities Pay Fees

The first major concern has been consistently identified by licensees during the past three years. This concern arises because costs for some NRC activities are not assessed to the beneficiaries of the activities because of legislative constraints and Commission policy. Thus, to recover 100 percent of the budget, these costs must necessarily be assessed to licensees that do not directly benefit from those activities. For this reason, the legislative requirement to collect 100 percent of the budget authority through fees inherently places an unfair burden on licensees. As one commenter stated, assessing fees fairly and equitably is difficult:

"through a system that exempts or excludes certain entities and at the same time must accomplish 100% budget recovery. Given that there are certain regulatory activities whose costs cannot be recovered fairly through user fees, it is clear that 100% recovery is at the root of the user fee allocation problems that the NRC seeks to address through this fee policy review."

Many other comments expressed this same concern. This concern was also noted by the Senate Appropriations Committee, which

recently stated in its report on FY 1994 Appropriations for Energy and Water Development:

"The Committee believes that the Commission should ensure that these international costs are not collected through domestic licensees." S. Rpt. 103-147, at 188.

Two types of activities are not assessed to the direct beneficiary, but rather to other NRC licensees. They are activities that either (1) cannot be attributed to or associated with an existing NRC licensee or class of licensees or (2) can be attributed to NRC licensees or applicants but are not charged to them owing to statutory constraints or Commission policy decisions.

Under OBRA-90, annual fees can only be charged to licensees. Therefore, costs of activities that cannot be attributed to an existing NRC licensee or class of licensees must be assessed to licensees that do not directly benefit from them. These activities include:

- certain international activities;
- oversight of the Agreement State program.
- generic activities (e.g., research and rulemaking) for classes that do not currently have NRC licenses (i.e, LLW); and

For FY 1993, the fees for the above activities were equivalent to \$21.4 million, of which \$18.2 million was assessed to power reactor licensees and \$3.2 million to other licensees.⁴ Specific details on these costs are at Enclosure 3.

The NRC budget includes certain international activities that are not directly related to NRC applicants or licensees. These activities are performed because of their benefit to U.S. national interests. The NRC is required to perform some of these activities by the AEA and, therefore, must budget for them. Examples of international activities that are not directly related to NRC applicants and licensees are: statutorily required consultations with Executive Branch agencies on export activities within their jurisdiction; assistance to countries or international organizations that provide little, if any, benefit to NRC's regulatory programs; and support of international safeguards activities related to nuclear non-proliferation.

⁴In this paper, the dollar amounts used are the amount of the FY 1993 fees that would be assessed for the activities.

The NRC performs activities necessary to oversee and administer the Agreement States program. These activities include reviewing and approving new agreements, performing periodic program reviews to determine their adequacy and compatibility, developing guidance, and providing technical assistance (e.g., inspection assistance) and training to the Agreement States. Because neither the Agreement States nor their licensees are NRC licensees, they cannot be charged annual fees under OBRA-90. The NRC can assess 10 CFR Part 170 fees for specific services (e.g., review of requests for an agreement, periodic reviews of the programs, training and technical assistance) rendered to an Agreement State. However, the NRC has chosen not to do so for policy reasons.

There are no existing LLW disposal facilities licensed by the NRC. Therefore, the NRC generic LLW regulatory activities do not directly support an existing NRC licensee or class of licensees. However, some NRC licensees, as well as some Agreement State licensees, will realize an indirect benefit from these NRC LLW expenditures because they will eventually dispose of LLW at sites that are expected to be licensed in the future.

The second type of activities for which costs are not assessed to the direct beneficiary involves specific NRC costs that can be attributed to either NRC licensees or other organizations but are not assessed to them because of legislative constraints or Commission policy decisions. The following licensees are not assessed certain fees or pay reduced fees:

- most Federal agencies are not assessed Part 170 fees,
- nonprofit educational institutions are not assessed any fees, and
- small entities are assessed reduced annual fees.

For FY 1993 these activities involved fees equivalent to \$18.2 million, of which \$16.9 million was assessed to power reactors and \$1.3 million to other licensees as shown in Enclosure 3.

The first major category of costs covers those activities for which the NRC is unable, on the basis of existing law, to charge a fee to specific applicants or licensees even though they receive an identifiable service from the NRC. These activities include licensing reviews and inspections for Federal agencies (other than the Tennessee Valley Authority (TVA) and the United

States Enrichment Corporation).⁵ The IOAA prohibits the NRC from assessing 10 CFR Part 170 fees to Federal agencies for the costs of these activities. These activities include reviews of (DOD) DOE Naval reactor projects; licensing reviews and inspections of Federal nuclear materials users, such as Veterans Administration hospitals, Army irradiators, and NASA radiographers; safety and environmental reviews of the DOE West Valley Demonstration Project; review of DOE actions under the Uranium Mill Tailing Radiation Control Act (UMTRCA); and reviews of advanced reactor designs submitted by DOE. In addition, EPA-92 exempts from Part 171 annual fees certain Federally owned research reactors used primarily for educational training and academic research purposes.

In addition to certain licensees being exempted by law, two groups of licensees are either exempted or pay reduced fees based on prior Commission fee policy decisions. Nonprofit educational institutions are exempted from 10 CFR Part 170 fees and 10 CFR Part 171 annual fees.⁶ The Commission has also reduced annual fees for those licensees who can qualify as a small entity. These reduced fees are consistent with the Regulatory Flexibility Act of 1980 requirement that agencies consider the impact of their actions on small entities.

To address the fairness and equity concerns related to licensees paying fees for activities not benefitting them, either: (1) the laws and NRC fee policy must be changed to assess all beneficiaries of NRC activities fees that are commensurate with the cost of those NRC activities; or (2) the requirement to collect 100 percent of the budget by fees must be relaxed. Reactor licensees, who currently pay fees for most of the activities discussed above, have proposed another alternative. They suggest that these costs be distributed among all NRC licensees. Although this would "reduce the unfairness" to reactor licensees, it would shift some "unfair" costs to

⁵Section 161w. of the Atomic Energy Act of 1954, as amended, authorizes the NRC to impose fees under 10 CFR Part 170 on a Federal agency that applies for or is issued a license for a utilization facility designed to produce electrical or heat energy (e.g., licensing reviews and inspections of TVA's nuclear power plants) or which operates any facility regulated under sections 1701 or 1702 of the Atomic Energy Act (the enrichment facilities of the United States Enrichment Corporation).

⁶On September 29, 1993, the Commission published a proposed rule seeking public comment on a proposal to restore the generic exemption from annual fees for nonprofit educational institutions. This paper assumes that the Commission will adopt this proposal in a final rule.

materials licensees. Given the impact that existing fees are having on materials licensees, the staff does not consider this as a desirable alternative. Further, the conference report accompanying OBRA-90 stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment.

While appearing to be fairer, the staff believes that assessing fees to all the licensees and organizations that do not currently pay fees would create problems in some instances. In particular, the staff believes the Commission should not reverse its policy of reduced fees for small entities. To do so would recreate the concerns about unfair burdens and inequities that the Commission rectified by earlier policy decisions and rulemaking. The policy issue regarding the nonprofit educational exemption is being addressed in a separate paper. Over the past several years, the staff considered various means to recover NRC's costs for international activities which serve broad U.S. national interests, but found no viable fair way to do so. Further, it would not be practical to assess fees to foreign organizations, foreign governments, or to the State Department to whom some of the support is provided. For example, assessment of such fees might create foreign policy tensions that could complicate U.S. goals such as foreign reactor safety and nuclear non-proliferation.

The Agreement States are the direct beneficiary of NRC oversight and direct technical assistance and some of these costs could legally be recovered under 10 CFR Part 170. However, the staff believes that, absent legislation, assessment of fees to Agreement States for this oversight would create strong opposition similar to that which occurred over the nonprofit educational issue. Agreement States and their representatives commented that Section 274(g) of the AEA requires the NRC to cooperate with the States in the formulation of standards that may well entail regulatory development costs. They indicate that the 29 Agreement States expend over \$13 million annually and have over 200 professional staff in their radiation control programs for radioactive materials. This, they say, contributes substantially to the protection of the public health and safety and provides a cadre of qualified personnel for assisting the NRC and other Federal agencies. The Organization of Agreement States indicated that they would be adamantly opposed to charging fees to Agreement States. One Agreement State commented that any attempt to recover generic costs from Agreement States or their licensees would be "cumbersome and ill advised." Another State indicated that if the NRC attempted to assess fees to Agreement State licensees, a number of States would probably return their authority to the NRC, thus defeating the purpose of the Agreement State Program.

Regarding Federal agencies, however, the staff believes that

Federal agencies should pay Part 170 fees for their license reviews and inspections in the same manner as commercial licensees and State or local government agencies. There is no compelling justification for asking the private sector to pay for NRC licensing and inspection of other Federal agencies. Note that Federal agencies already pay annual fees and TVA and the Uranium Enrichment Corporation pay Part 170 licensing and inspection fees.

The staff believes that the current policy and practice of assessing a surcharge to licensees to recover the costs associated with LLW is the right approach. It is not unfair because these costs indirectly support existing classes of licensees. Any LLW site that is licensed would provide facilities for the disposal of LLW from reactors, fuel facilities, and some materials licensees.

To resolve the concerns about some beneficiaries of services not paying fees, commenters also overwhelmingly endorsed legislative change that would reduce the amount of the fees to be collected by the costs of those activities that cannot be attributed to an existing NRC licensee or class of licensees and would assess 10 CFR Part 170 fees to Federal agencies.

In summary, the staff agrees with the commenters and proposes that the Commission minimize the concerns about fairness and equity resulting from some beneficiaries of NRC activities not paying fees by--

- Proposing that OBRA-90 be modified to remove from the fee base costs (about \$25 million in FY 1993 fees) for international activities, Agreement State oversight and direct technical assistance, nonprofit educational institutions, and the small entity subsidy.
- Proposing that the AEA be modified to permit the NRC to assess Part 170 fees (about \$6 million) to all Federal agencies.⁷
- Continuing to assess fees (about \$9 million in FY 1993) to NRC licensees for generic activities for classes (i.e., LLW) that do not currently have licenses.

⁷Although the legislation would permit recovery of costs for all licensing reviews and inspections performed for Federal agencies, an alternative proposed later in this paper would only require that licensing application review costs be recovered.

The staff notes that these recommendations would reduce the fee revenues available to the Congress and Administration to offset the NRC budget. This could affect the viability of this recommendation. If modification to the existing legislation is not a viable option, then the current approach of assessing these costs to NRC licensees (with the majority going to power reactors) with its inherent problems of fairness and equity should be continued, except that the Commission should then seriously consider seeking legislation that would require assessment of fees to Agreement States.

Major Concern: Fees Not Commensurate With Benefits Received

The second major concern is that some licensees believe that the benefits received are not commensurate with the NRC fees they are assessed. This issue is of most concern to materials licensees, especially with regard to their annual fees. The decreasing number of materials licensees demonstrate their belief that the fees are unfair and inequitable. While the number of licenses remained stable before FY 1991, the number of licenses decreased by about 2,000 (from about 9,100 licenses to about 7,100) during FY 1991, the first year of 100-percent fee recovery. Some licensees consolidated licenses, others turned in unused licenses, and some terminated licensed activities. For FY 1992, the number of materials licenses decreased by about 300 to 6,800 and that number, by about 300 during FY 1993. The overall decrease in the number of materials licenses has resulted in increases in the annual fees to the remaining licensees.

This concern is also reflected in comments that fees comprise a large percentage of the cost of procuring and operating a licensed product. For example, small gauge users have commented that the FY 1993 annual fee of \$2,100 equals about half the purchase price of a new gauge. Others have indicated that the NRC budget, and therefore fees, are higher than what they believe is necessary. Therefore, commenters suggested that the Commission must, as its licensees have already done in their increasingly competitive markets, build cost-effectiveness into its regulatory strategy.

On the basis of NRC's three years of experience administering the annual fees for the materials program and the comments received on the fee policy notice, the staff concludes that materials licensees perceive their annual fees to be inequitable and unfair for the following three reasons:

- (1) The NRC materials regulatory program is necessary for NRC licensees and supports both NRC and Agreement State licensees. However, only NRC licensees pay the annual fees.

- (2) From the licensees' perspective, the NRC has assessed large increases in fees without added value, and
- (3) Licensees measure the value of the license in economic terms, not NRC regulatory costs.

There is truth to the claim that the fees are not commensurate with benefits because the NRC material regulatory program supports both NRC and Agreement State licensees, yet only NRC licensees pay fees to recover the cost of these activities. The NRC performs generic regulatory activities for nuclear materials users and uranium recovery licensees. These activities include conducting research, developing regulations and guidance, and evaluating operational events. These generic activities provide the basis for the NRC to regulate its approximately 7,000 materials and uranium recovery licensees. Because many Agreement States adopt NRC regulations, these NRC activities also provide the regulatory basis for the 29 Agreement States to regulate their 16,000 materials licensees. Under OBRA-90, the NRC cannot charge an Agreement State or its licensees an annual fee because they are not NRC licensees. Therefore, only about 30 percent (7,000 NRC licensees of the total population of 23,000) of all licensees can be assessed annual charges to recover the cost of generic activities supporting both NRC and Agreement State licensees. As a result, part of the costs (about \$15 million in FY 1993 fees) for these generic regulatory activities that are included in the annual fees for NRC materials and uranium recovery licensees could be considered an unfair burden on NRC licensees.

NRC licensees also believe that NRC fees place them at an unfair competitive advantage with licensees in Agreement States. For example, one commenter stated that the fee legislation:

"creates a market place in which approximately 17,000 competitors have an unfair advantage when it comes to competing in the national market place. It is unfair to require certain NRC licensees to carry the burden for activities conducted for government agencies, foreign governments, treaty commitments, or other NRC licensees who, because of special status, are not supporting their share of the NRC's costs. It is also unfair to place these NRC licensees at a financial disadvantage with their Agreement State competitors simply because they are doing business in a Non-Agreement State."

The staff believes that licensees' perception of unfairness as it relates to activities that support both NRC and Agreement State licensees will continue and grow worse as more states become Agreement States. The potential exists for additional Agreement States to be approved by NRC in the near future. Both Pennsylvania and Massachusetts have filed letters of intent with the NRC and Oklahoma and Ohio are seriously considering agreements. This would shrink the existing materials license fee base further and result in higher annual fees for the remaining NRC materials licensees. If these four states were to become Agreement States, the NRC would lose approximately 2,000 licenses and the annual fee for the remaining 4,500 - 5,000 materials licensees would increase by about 30 percent.

To alleviate this concern, either (1) some of the costs under discussion should be assessed to Agreement States or (2) the requirement to recover 100 percent of the budget should be relaxed.

Significant problems with assessing fees to Agreement States were previously discussed. The materials licensees and Agreement States present valid arguments for not paying fees for the costs involved in this issue. The staff believes the best means to address the issue is to exclude certain of these regulatory costs from the fee base.

With respect to reason (2), that licensees view the increases in annual fees during the past three years as unfair because they received no additional benefits, the staff reviewed the changes in annual fees for various categories of materials licenses, which are given in the following table.

| <u>Categories of Materials Licenses</u> | <u>Annual Fees</u> | | | |
|---|-------------------------------|----------------|----------------|----------------|
| | <u>FY 1990 and Before</u> | <u>FY 1991</u> | <u>FY 1992</u> | <u>FY 1993</u> |
| Broad Scope Manufacturing | 0 | \$7,800 | \$11,150 | \$18,420 |
| Large Irradiators | 0 | 10,800 | 16,550 | 22,020 |
| Broad Scope R&D | 0 | 6,300 | 9,150 | 14,320 |
| Well Loggers | 0 | 7,000 | 10,450 | 11,420 |
| Broad Scope Medical | 0 | 9,900 | 13,950 | 28,020 |
| Other Medical | 0 | 3,500 | 4,750 | 5,220 |
| Small Gauge Users | 0 | 1,500 | 2,250 | 2,120 |

In FY 1991, materials licensees were assessed annual fees for the first time. Although the NRC explained that the annual fee was a new requirement, not an increase in existing Part 170 licensing and inspection fees, many licensees believed that they were paying more than they had in the past with no value being added. The annual fee increased in FY 1992 because of both an increase in the NRC's budget and about a 25 percent reduction in the number of material licensees available to pay the discretionary fixed costs recovered by annual fees. Again, from the licensees' perspective, fees had increased with no commensurate increase in benefit or value. One commenter stated that "the increasing fees draw attention to whether they reflect the value of the services being provided to regulated entities." Annual fees also increased substantially for some materials licensees in FY 1993. The reasons for these increases were the same as in FY 1992, plus the addition of large increases in inspection fees that are used as a basis to calculate annual fees for materials licensees. The inspection fees increased as a result of the CFO Act requirement to review fees biennially. These increases in inspection fees appropriately shifted the amount of the annual fee among the various material licensees, resulting in relatively large increases for the more complex licenses, such as broad scope medical and research and development licenses and minor increases for the small and less complex material users.

Some commenters expressed a concern that the NRC budget is out of control and that fees will continue their upward spiral in the future. They contend that because the NRC is required to collect 100 percent of its budget authority and licensees are paying for the entire budget, a mechanism should be created, either through

the establishment of a separate office or an advisory committee, to (1) assess the cost-effectiveness of proposed generic programs and to eliminate potential duplication of industry-sponsored programs; (2) review agency cost trends and accounting practices; and (3) develop and propose future revisions to the fee regulations. They also suggested that the NRC freeze fees at FY 1991 levels or limit the increases to some multiple of inflation.

The staff believes that the primary causes of the previous large, across-the-board annual fee increases are less likely to occur in the future. License terminations in the past two years have been minimal. Large increases in Part 170 fees used to calculate the annual fee should not occur because the fees will be reviewed every two years in response to the CFO Act. In addition, Administration efforts to streamline government are expected to result in smaller budget increases. The use of cost-center concepts should also improve the tracing of costs to the diverse classes of material licensees. The annual fee is not new and most licensees now understand its purpose.

However, a large fee increase could occur for a specific category of licenses because a relatively small increase in the budget could result in a large percentage increase in annual fees. For example, a \$2-million medical study, which would be unique to medical licensees, would increase the base annual fee for each of the medical licensees by about \$1,000 (from \$5,100 to \$6,100), a 20-percent increase for most of the hospitals and physicians. If the \$2-million study were budgeted for small gauge licensees, the small gauge base annual fee would increase by about \$700 (from \$2,000 to \$2,700), a 35-percent increase. The use of cost-center concepts, however, will provide a means to explain the specific increases.

Also the annual fees, as noted above, could go up if new Agreement States are added, reducing the number of NRC licensees unless the fee base is adjusted accordingly.

With respect to reason (3), the fact that licensees measure fees in terms of the economic value of the license as opposed to NRC regulatory costs, licensees continuously request that fees be based on the amount of material possessed, the frequency of use and sales generated from using the licensed material, the number of hospital beds, the size of the facilities, market competitive positions, or other indicators of the economic value to the licensee.

This issue has been addressed by the NRC in the Regulatory Flexibility Analysis presented in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513). Based on that analysis, the Commission did not adopt the approach recommended by licensees because it would require licensees to submit large amounts of new data and would require additional NRC staff to

evaluate the data submitted and to develop and administer even more complex fee schedules. The staff continues to believe that uniformly allocating generic and other regulatory costs to the specific license to determine the amount of the annual fee is a fair, equitable, and practical way to recover its costs. The staff believes that establishing annual fees (or "price") based on indicators of the economic value of a license is not practical, would lead to even more concern regarding the equity and fairness of NRC fees, and result in increased fee administration costs.

In summary, to minimize the concerns that fees paid are not commensurate with benefits received, the staff believes that two actions are necessary. First, the material licensees should not be required to pay for all of the regulatory costs that support both NRC and Agreement States. This could be accomplished through legislation to relax the 100-percent fee recovery requirement or through legislation that would allow the NRC to charge Agreement States an annual charge that they could pass along to Agreement State licensees. The staff recommends against this latter option for the reasons discussed relating to charging Agreement States for NRC oversight by the Office of State Programs. The NRC could also include these costs as agency overhead in calculating the hourly rate. This would reduce the fees for materials licensees and shift most of these costs to power reactors. This would be considered unfair by the power reactors since it would be viewed as adding costs for additional activities that do not benefit them.

The second action necessary is to minimize large, across-the-board increases in fees and to improve the explanation of specific increases for specific regulatory needs. To accomplish this, the NRC fee policies and methods need to be stabilized. Although the staff believes future large across-the-board increases in fees are unlikely, large increases could occur for specific subclasses of licensees if NRC makes large budget increases for safety reasons. Implementation of cost-center concepts will provide better tracing of the costs to the specific subclass of licensees and will provide additional information to help explain the increases.

Another option considered by the staff and strongly supported by those who commented is to place a cap on the amount of fee increases in any given year. For example, the increase could be limited to a multiple of the Consumer Price Index (CPI). The staff does not support this alternative because it may be perceived by some as indicating that the NRC budget should be limited to the same increases instead of being determined on the basis of resources needed to carry out the agency mission.

In summary, to minimize the concern over the fees not being commensurate with benefits received, the staff recommends the

following actions:

1. No longer require material licensees to pay for all NRC generic regulatory costs that support both NRC and Agreement State licensees. Towards this end, the staff recommends that OBRA-90 be modified to exclude a portion of the generic costs for materials licenses from the fee base.
2. Utilize cost-center concepts to provide better data on which to base and explain fees, including specific changes.

Major Concern: Streamline Fee Effort

During the past three years of implementing OBRA-90 to collect 100 percent of the NRC's annual budget authority, the staff has evaluated over 1,000 public comments on fee-related rules; and responded to several hundred requests for exemptions, dozens of letters from Congress, and thousands of telephone calls from licensees concerning the assessment of annual fees and overdue bills. As a result, the workload necessary to implement the fee program has been extremely burdensome on the available staff. Even with the use of contractor assistance, the staff has struggled to meet the existing workload. As a result, the staff specifically requested comments on how to reduce the NRC efforts necessary to implement the 100 percent fee recovery legislation.

The OIG in its October 26, 1993 review of fees for licensees also alluded to this question and concluded that:

"The agency's license fee development process is very detailed and labor intensive. It has been shaped over the years by the implementation of new Federal regulations and court decisions. Substantial effort is expended in attempting to make the process equitable and the costs reasonable".

The OIG report went on to note that:

"NRC could significantly reduce time and effort, and related resources devoted to license fee development by adopting a fee schedule similar to that used by FERC. The Part 170 fees could be eliminated completely or, at least, to the maximum extent practicable. Secondly, the determination of the Part 171 fees could be simplified by eliminating/streamlining much of the detailed analyses performed as part of the process."

The staff believes that in addition to efficiency, other benefits would accrue from a simpler fee process and policy. Although not likely to result in more fairness and equity, a simpler fee

structure would make it easier for licensees to understand NRC fees and would lower NRC's budgeted costs and resulting fees.

Given the comments received as well as the problems encountered in implementing OBRA-90, the staff has considered several ways to reduce the staff workload.

One option is to eliminate the requirement to promulgate the fees by notice and comment rulemaking. On the one hand, the staff would prefer to use notice and comment rulemaking only when fee legislation, fee policy, or fee methodology changes. The staff sees limited value added to establishing fees through notice and comment when the underlying bases for the fees have not changed. Further, the budget on which the fees are based has already been decided by OMB and Congress by the time the fees are promulgated. On the other hand, those who commented on the EPA-92 notice strongly prefer that the NRC continue to use notice and comment rulemaking to promulgate fees. Their primary reason for wanting to continue the notice and comment rulemaking process is that they consider this the only opportunity to express their position on the NRC budget and associated fees that they must pay. For example, some stated that the courts have long recognized that Congress enacted the notice-and-comment rulemaking procedures of the Administrative Procedures Act to "give the public an opportunity to participate in the rulemaking process" and to enable "the agency promulgating the rule to educate itself before establishing rules and procedures which have a substantial impact to those regulated." Others expressed the view that publication of a fee rule in final form without comment ignores the significant monetary changes in fees that have been assessed licensees in the previous year even if the methodology or policies do not change. To publish the fee schedules in final form "would deny an adversely affected licensee an opportunity to voice its objection." One licensee stated "a lack of oversight currently exists regarding NRC policy" and that providing for public comment on the basic fee methodology and policies gives the public and the regulated community a rightful voice in the development of those policies.

As indicated by the comments, most licensees feel strongly that although the policies and procedures related to fee assessment might be the same as before, this should not be used to foreclose the opportunity for new commentary or renewed dissent. Given these strong views, the staff proposes that the Commission retain notice and comment rulemaking of fee schedules at this time. This issue should be revisited if the fees become less controversial in the future.

Another option considered by the staff to streamline the fee calculations was reducing the complexity of the fee calculation by reducing the number of subclasses of fees for some major classes of licensees. For example, seven subclasses of power

reactors paid annual fees in FY 1993 that vary by only three percent (from \$2,935,000 to \$3,031,000). This difference is relatively small and could be considered de minimus and therefore not commensurate with the effort necessary to reach an apparent level of precision. Those who commented on the fee policy notice, however, disagree with this suggested policy change. They indicated that OBRA-90 guidance requires that those entities who require the greatest expenditures of the NRC's resources pay the greatest annual fee; therefore, the existing policy of assessing each reactor design a charge that reflects the varying amounts of NRC resources spent on generic research and other regulatory activities unique to that design should be retained. They believe the difference in reactor fees of \$96,000 between the highest and lowest annual fee is significant enough to warrant the effort to calculate the fees using the existing method.

Fuel facility licensees also stated that with respect to a uniform annual fee for all fuel facility licensees, such a "simplification" would ignore the significant differences between the various steps in the low-enriched fuel fabrication process and the differences between low- and high-enriched fuel as well as the differences in the NRC's budgeted safety and safeguards costs allocated to each class. Commenters indicated that, for example, the two high-enriched uranium fuel manufacturers require much greater safety and safeguards oversight by the NRC because they possess strategic quantities of nuclear materials. According to these commenters, if a uniform fee were assessed, low-enriched uranium manufacturers and uranium hexafluoride converters would be subsidizing the regulation of high-enriched uranium fuel manufacturers while receiving no tangible benefit. This suggested policy change, they indicate, contradicts OBRA-90's mandate that fees be fairly and equitably allocated among licensees. Again, the staff defers to the commenters' position but will continue to look toward ways of reducing the number of subclasses if the differences in the annual fee to be assessed is a small amount.

Another option for streamlining the fee process is to assess only an annual fee, along the lines suggested by the OIG in its October 1993 review of fees. This option will require modifying OBRA-90 to eliminate the requirement for NRC to assess Part 170 licensing and inspection fees. If this option is adopted, the Office of the Controller, the program offices, and the Regions could avoid spending on the order of 10 FTEs and about \$200,000 in contractual support used to collect Part 170 fees.

Under this option, the staff would include the NRC costs for inspections and licensing amendments, including materials license renewals, in a single increased annual fee. Thus, there would no longer be Part 170 amendment or renewal or inspection fees assessed for specific services to specific licensees. A review

fee would continue to be assessed for review of applications for initial licenses, such as standard design certifications, renewal of power reactor licenses, new material licenses, etc., since these applicants would not pay an annual fee.

The primary benefits from this approach are the NRC resource savings and an overall simpler fee structure. This fee structure, however, will likely be perceived by some licensees as less fair than the current one, which assesses fees for services rendered to each licensee, because of differences in the amount of fees for inspections and amendments that licensees in the same class currently pay. For example, the inspection hours and fees for different reactors may vary. Also, some materials licensees may be inspected more frequently than others. Allied Signal, in the most recent fee case,⁸ argued that Sequoyah Fuels, another fuel facility in its license class, was a problem facility that causes NRC to incur considerably more facility-specific costs.

The staff understands the concerns associated with eliminating the Part 170 fees. However, on balance, the staff believes that roughly 10 FTE and \$200,000 in resource savings resulting from streamlining the NRC fee process to charge only an annual fee outweighs the potential unfairness that some licensees are likely to voice. The staff also believes the concerns can be mitigated. First, although fees assessed on a yearly basis may vary, the differences in the average cost over longer periods of time should be reduced. The staff can also adjust the subclasses of licensees to minimize these differences. Second, as stated in the previous paragraph, staff would continue to charge fees for new license applications because applicants for a new license would not pay an annual fee until the license is issued. Also, licensees (e.g., decommissioning and possession only (POL) licenses) that currently do not pay an annual fee but pay Part 170 fees would have to pay an annual fee, if Part 170 fees are eliminated.

The option that would result in the most resource savings (about 20 FTE) is to modify OBRA-90 to allow NRC to assess 100 percent of the budget to operating power reactors and major fuel cycle licensees only.⁹ This option, the staff believes, would be considered as totally unfair by the power reactors and major fuel facilities, because they would be paying fees for materials regulatory activities. However, it would eliminate all of the materials licensees' concerns, including the letters and phone

⁸Allied-Signal v. NRC, 988 F.2d 146 (D.C. Cir. 1993).

⁹If this option is pursued, previous legislative options to improve fairness and equity, such as deleting certain costs from the fee base, should not be pursued.

calls about annual fees. Although this approach would result in significant resource savings, the staff does not believe it would be prudent to pursue this option because of the major concern related to fairness that it raises. It would, from the power reactor perspective be more unfair than the current fee structure. It may also be considered inconsistent with the EPA-92 request that the NRC recommend changes in existing law to prevent placing an unfair burden on NRC licensees.

In summary, the staff believes that the most appropriate way to reduce the administrative burden on staff, while retaining a reasonable degree of fairness and equity in the fee schedules, is to modify OBRA-90 so that the NRC can charge only an annual fee. However, the staff will continue to look for opportunities to reduce the number of subclasses for annual fees. With regard to publishing the fees without notice and comment, the staff will revisit this concept in the future if the controversy over fees subsides.

Other Concerns:

Several other specific concerns have been raised about the fairness and equity of fees.

A. Proration of Annual Fees for Terminated Licenses

Currently the full annual fee is assessed to all licensees which have not filed a termination or POL request by the beginning of the fiscal year. One commenter suggested that to be more fair and equitable the NRC should provide in its regulation a provision for prorating of the annual fee for the fiscal year in which a licensee requests an amendment to remove the license authority. During the past three years, many materials licensees have written the NRC requesting an exemption from the fees or an extension of time (beyond October 1) to terminate the license and be relieved of the annual fee because (1) no material was ever possessed under the license; (2) the licensed material was never or infrequently used; (3) the material was in storage; or (4) they have attempted to sell the device without success.

The staff acknowledges this concern and plans to include a proration provision for termination as well as issuance of new licenses in the FY 1994 proposed rule.

B. Annual Fees for Possession Only, Decommissioning and Reclamation Licensees

Some reactors, major fuel facilities, and uranium recovery facilities are inoperative but continue to benefit from NRC regulatory activities, primarily those activities related to decommissioning or site reclamation. For example, some power reactor licensees have received a POL from NRC and are in the

process of decommissioning their facilities. In addition, many uranium recovery licensees (mills) are no longer operating and have filed reclamation plans for approval by the NRC. These licensees benefit from the research, rulemaking, and issue resolution that the NRC performs for decommissioning or reclamation. Licensees believe, however, that having non-operating facilities pay annual fees is unfair because they no longer generate revenue and require very little NRC supervision. Some cannot complete decommissioning for lack of a place to dispose of waste. Therefore, they conclude that they must retain a non-operating license, through no fault of their own. Another concern is that in the uranium recovery area only a few active licenses will remain in the near future to pay for generic activities, including those related to reclamation.

The staff recommends that the Commission continue the present policy of assessing annual fees to licensees until the license is amended to authorize possession only or decommissioning. This would be consistent with policy decisions that those who benefit from a license that authorizes operation or use of material pay annual fees.

C. Fees For Small Entities

Currently, the NRC assesses two fees for licensees that qualify as small entities under the NRC's size standards. In general, licensees with gross annual receipts of \$250,000 to \$3.5 million, pay a maximum annual fee of \$1,800. A second or lower-two small entity fee of \$400 was established for small entities with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

Commenters have indicated that more variation in the fees assessed to small entities should be provided. For example, one commenter indicated that NRC should "create more fee categories based on gross annual receipts." Some commenters argued that reducing the gap between the minimum small entity fee of \$400 and the maximum fee of \$1,800 would eliminate some of the competitive disadvantage experienced by those who are slightly above the established NRC thresholds.

As indicated earlier in this paper, the merits of whether the NRC small entity size standards should be changed is being reevaluated and would be separately presented to the Commission for review and decision. The staff recommends that the issue raised by commenters be deferred until the Commission has made a decision on whether or not to revise the current small entity size standards, since a change in the size standards could cause the NRC to change its small entity fees.

D. Defer license review fees for advanced reactors.

The Commission changed its policy of deferring the costs for standardized reactor design reviews in the final FY 1991 rule implementing 100-percent recovery. The Commission decided that for fairness and equity reasons, the cost of these reviews, whether for domestic or foreign applicants, should be assessed under Part 170 to those filing an application with the NRC for approval or certification of a standardized design. The Senate Energy and Water Committee recently noted that:

"The Committee is also concerned that the NRC review fees charged to the ALWR design certification applicants are becoming overly burdensome. The recent schedule delay will exacerbate the problem. The Commission should reconsider its policy for allowing payment of those fees to be deferred until the certification is actually employed." S. Rpt. 103-147 at 188.

The staff believes that for the same reasons of fairness and equity that led to the reversal of the decision in FY 1991, the review fees should continue to be assessed to advanced reactor applicants. There is no compelling justification for singling these classes of applications for special treatment and shifting additional costs to power reactors.

E. Place a cap or ceiling on topical report fees.

The issue of the establishment of a ceiling on Part 170 licensing fees for the reviews of topical reports was raised by an owners group commenting on the notice. The group stated that some activities that require NRC review and approval are voluntarily originated by them in order to improve plant safety and performance. The reinstatement of a fee ceiling for topical reports will encourage the continuation of this practice to assure plant safety benefits. The group said that knowing in advance the limit on the cost of the reviews would enable them to more effectively and efficiently plan the allocation of their limited resources.

Another issue that has recently been raised concerns the assessment of Part 170 fees for review and approval of topical reports. That is, whether the submittal of the reports by utilities and owners groups should be viewed as "generic," in the broadest sense and the costs recovered through annual fees instead of Part 170 fees. This might encourage the submittal of additional reports in the interest of efficient and effective agency operations, which would be cost beneficial to both the NRC and the industry.

The Commission decided in the final FY 1991 fee rule to eliminate the ceiling for topical report reviews based on the 100-percent recovery principle and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. NRC costs for topical report reviews vary significantly, depending on the particular topical report reviewed, and therefore make it impractical to establish a fair and equitable ceiling or flat fee.

The staff believes the NRC should continue the present policy of assessing Part 170 fees, without a ceiling, for the review and approval of topical reports. Inherent in the initial decision to assess Part 170 fees, was the fact that the reports were being voluntarily submitted for review and approval and there was no compelling reason not to charge for the review and approval cost. Although a topical report can be used by more than one licensee, this use typically benefits the organization that submits the topical report. The staff is examining whether it is practical and cost effective to bill the members of a certain organization instead of the organization itself.

F. Expand Scope of Part 170.

Presented in the notice was the question of whether to broaden Part 170 to recover costs incurred for specific activities that are now collected as part of the annual fee, including Independent Investigation Teams (IITs), allegations, contested hearings, vendor inspections, orders and amendments resulting from orders, and reviews that do not result in approvals.¹⁰

A majority of the commenters indicated that if Part 170 were expanded, they would support billing for orders and amendments resulting from such orders. These actions, the comments stated, although not licensee-initiated are provided to a specific licensee and should be assessed on an individual basis. One commenter argued that NRC should correct the situation in which a licensee who does not submit an amendment request recommended by an NRC generic letter until ordered to do so is not charged a fee, but a licensee who voluntarily submits such an amendment is subject to Part 170 fees.

With respect to the remainder of the items, most commenters believed that many activities listed in the notice do not constitute a specific service to an identifiable licensee and that the costs should continue to be collected under Part 171. For example, commenters claim that the cost of allegations and

¹⁰This issue becomes moot if the Commission requests and the Congress enacts legislation that removes the requirement to assess Part 170 fees.

contested hearings are beyond the licensee's control and should not be billed on an individual basis. Instead, the NRC should continue to include costs for these activities in the Part 171 annual fee. Other comments indicated that investigations of allegations and contested hearings often raise generic issues of concern to all licensees. Therefore, saddling individual licensees with these additional costs is unfair and inequitable because they arise at NRC's direction, are not requested by a licensee and are beyond a licensee's control. Others commented that all licensees benefit from these regulatory activities and that the costs should be recovered through the annual charge.

The staff agrees with these comments and the staff plans to continue to include the costs of IITs, vendor inspections, contested hearings, allegations, and reviews that do not result in approvals, and so forth, in the annual fee. The staff also recommends that we not charge for orders and amendments resulting from orders because most orders are used to impose civil penalties. Thus, charging for orders could be perceived as additional fines to the licensee. In some cases (e.g. requests for hearing as a result of an order), charging for orders could be perceived as penalizing a licensee for exercising its right to disagree with NRC.

RECOMMENDATIONS:

For the reasons discussed in this paper, the staff concludes that modification of existing fee legislation is necessary to minimize the major concerns about fairness, equity, and administrative burden of fees. To this end, the staff recommends the following legislative changes:

1. Modify OBRA-90 to remove from the fee base costs for international activities, Agreement State oversight, the exempted fees for nonprofit educational institutions, and the amount of the fee reduction for small entities. This would minimize the major concern associated with NRC licensees paying for activities that do not benefit them. (This would reduce the amount to be collected by about \$25 million or about 5 percent of the FY 1993 budget recovered through fees.)
2. Modify OBRA-90 to eliminate from the fee base a portion of the cost of generic regulatory activities that supports NRC and Agreement States material licensees. This would eliminate the concern that NRC material licensees fees, which supports the regulation of both NRC and Agreement State licensees, are not commensurate with benefits received. (This would reduce the amount to be collected by about \$15 million or about 3 percent of the FY 1993 budget recovered through fees.)

3. Modify the AEA to permit NRC to assess application and other fees (about \$6 million) for specific services to all Federal agencies, so that other NRC licensees do not have to pay for the cost of these services that do not benefit them.¹¹
4. Modify OBRA-90 to eliminate the requirement that NRC assess Part 170 fees so as to reduce the resources required to assess and collect fees. (If this option is adopted, the NRC could avoid spending about 10 FTEs and about \$200,000 for fees.)

If legislation to relax the 100-percent recovery requirement is not viable, the staff recommends that the current policies be continued, except the Commission should seriously consider requesting legislation that would require the assessment of fees to Agreement States so as to improve the fairness and equity of the fees for NRC materials licensees. This is especially appropriate, given the likelihood of more States becoming Agreement States.

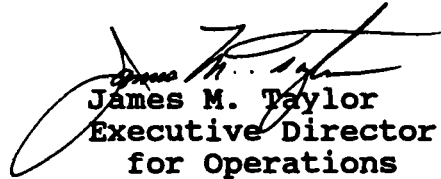
The Commission should note that:

- a. The staff plans to continue current fee policies, except that it will prorate the annual fee.
- b. The staff plans to develop Notices of Proposed and Final Rulemakings for FY 1994 based on Commission decisions and guidance on this paper. The FY 1994 rule cannot reflect any proposed legislative changes because they will not be enacted in time.
- c. The staff will convert this paper, based on Commission decisions and guidance, to a report that will be sent to the Congress and to the Office of Management and Budget.
- d. The staff does not plan to include draft legislation with the report to Congress.

¹¹This change would still be necessary if the requirement to assess Part 170 fees is eliminated, since the staff would want to assess an application fee to those agencies applying for new licensees who would not pay annual fees.

COORDINATION:

The Office of the General Counsel has reviewed and has no legal objection to the recommendations of this paper.


James M. Taylor
Executive Director
for Operations

Enclosures:

1. April 19, 1993, Federal Register Notice
2. List of Public Comments
3. Fees Related to Fairness and Equity Concerns

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Tuesday, January 4, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, December 28, 1993, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for discussion at an Open Meeting on Tuesday, December 21, 1993.

DISTRIBUTION:

Commissioners

OGC

OCAA

OIG

OPA

IP

OCA

OPP

EDO

SECY

**NUCLEAR REGULATORY
COMMISSION****10 CFR Parts 170 and 171****RIN 3150-AE54****NRC Fee Policy; Request for Public
Comment****AGENCY:** Nuclear Regulatory
Commission.**ACTION:** Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is soliciting public comment on the need for changes to its fee policy and associated legislation. This action responds to recent legislation that requires NRC to review its policy for assessment of annual fees, solicit public comment on the need for changes to this policy, and recommend to the Congress the changes in existing law the NRC finds are needed to prevent the placement of an unfair burden on NRC licensees. The NRC is presenting various options, alternatives, and questions for consideration and comment concerning potential legislative changes as well as potential policy changes that would require amendments to NRC's fee regulations. The NRC is also announcing the receipt of and requesting comment on a petition for rulemaking submitted by the American Mining Congress (PRM-170-4) that requests that NRC conduct a rulemaking to evaluate its fee policy.

DATES: The comment period expires July 19, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure only that comments received on or before this date will be considered. Given the relatively long comment period, requests for extensions of the comment period will not be viewed with favor.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-504-1678).

Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Washington, DC 20555, in the lower level of the Gelman Building.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-4301.

SUPPLEMENTARY INFORMATION:**Background**

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF) for FYs 1991 through 1995 by assessing fees. The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. The services provided by the NRC for which these fees are assessed are generally for the review of applications for and the issuance of new licenses or approvals, amendments to licenses or approvals, and inspections of licensed activities. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA-90, the NRC published three final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the Federal Register which established the 10 CFR part 170 professional hourly rate and the materials licensing and inspection fees, as well as the 10 CFR part 171 annual fees to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and method for determining the 10 CFR part 170 hourly rate and fees, and the 10 CFR part 171 annual fees. Portions of the 1991 rule were recently remanded to the Commission for reconsideration as a result of the Court's decision in *Allied-Signal v. NRC*, (D.C. Cir. March 18, 1993). A separate Federal Register notice addressing the remand issues will be published in April, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the Federal Register two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR part 171 adjusted the maximum annual fee of \$1,800 assessed a materials licensee who qualifies as a

small entity under the NRC's size standards. A lower tier small entity fee of \$400 per licensed category was established for small businesses and non-profit organizations with gross annual receipts of less than \$250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), the NRC published a final rule in the Federal Register that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992. The basic methodology used in the FY 1992 rule was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR part 170, and the 10 CFR part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472).

Purpose

On October 24, 1992, the Energy Policy Act was enacted. Section 2903(c) of the Act requires the NRC to review its policy for assessment of annual fees under section 6101(c) of the Omnibus Budget Reconciliation Act of 1990, solicit public comment on the need for changes to this policy, and recommend changes in existing law to the Congress the NRC finds are needed to prevent the placement of an unfair burden on certain NRC licensees, particularly those who hold licenses to operate Federally owned research reactors used primarily for educational training and academic research purposes. The Act also exempted from fees certain Federally owned research reactors used primarily for educational purposes. On February 4, 1993, the NRC received a petition for rulemaking submitted by the American Mining Congress (AMC). The petition was docketed as PRM-170-4 on February 12, 1993. The petitioner requested that the NRC amend 10 CFR parts 170 and 171 concerning fees for facilities, materials licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended. The petitioner requested this action to mitigate alleged inequities and problems with the present fee system. Because the issues raised by the petitioner concern the same subjects as the fee policy review required by the Energy Policy Act, the NRC is announcing receipt of the petition and requesting public comment on the issues raised in PRM-170-4 in this document.

The purpose of this notice is to solicit public comment on the need, if any, for changes to the existing NRC fee policy and associated laws in order to comply with section 2903(c) of the Energy

Policy Act and to respond to the AMC petition.

In the legislative area, the NRC encourages commenters not to address the public policy issue of whether the Federal government should fund its activities through user fees rather than assessing taxes on the general population. Instead, the NRC asks that commenters focus on this central question: "Given that user fees will be assessed to NRC licensees, what specific legislative or NRC policy changes are needed to eliminate any unfair burden?"

With respect to suggested amendments to the fee policies set forth in 10 CFR parts 170 and 171, comments that request a fee reduction for one licensee or a class of licensees should explicitly indicate who should be assessed the budgeted costs for the proposed fee reductions in order to recover 100 percent of the NRC budget authority. It should be noted that any changes to the existing 10 CFR parts 170 and 171 would require notice and public comment before the changes are made.

The NRC has had two years of experience in implementing the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget authority. During that time, the NRC has evaluated over 500 public comments on fee related rules; responded to several hundred requests for exemptions, letters from licensees, and letters from the Congress; and responded to thousands of telephone calls from licensees concerning the assessment of annual fees. Many of these comments and letters expressed concern about the burden of fees.

Based on previous public comments and letters, the NRC has developed potential options and alternatives for change as well as questions for further consideration and comment by the public. While comments may be made on any and all aspects of the NRC fee policy and the existing laws upon which the fees are based, it would be particularly helpful to the NRC if the comments addressed the specific items identified in this document. This would facilitate the process of analyzing and evaluating the comments in an efficient and timely manner. This would also enable the NRC to provide the Congress with specific recommendations concerning any legislative changes to OBRA-90, and the Atomic Energy Act.

Although the Energy Policy Act requires only comments on the annual fees assessed by the NRC under section 6101(c) of OBRA-90 and 10 CFR part 171, the NRC is also seeking comments on whether or not to broaden the scope of 10 CFR part 170 to recover some costs

that are currently recovered as annual fees under 10 CFR part 171. These costs are associated with specific NRC actions for specific applicants, licensees, or other organizations.

Four Major Areas of Concern Identified By NRC

To assist in focusing comment, the NRC has identified four broad areas where previous public comment or concern indicated that the fees may place an unfair burden on licensees. The areas include (1) the surcharge assessed to certain licensees under 10 CFR part 171 and the generic regulatory costs that support the Agreement States; (2) fluctuating annual fees; (3) simplifying the development of annual fees; and (4) the recovery of some costs for specific identifiable services through annual fees.

1. Annual Fee Surcharge and Regulatory Support of Agreement States

Both the Congress and the NRC have recognized that the NRC budget includes costs for required NRC activities but for which the costs cannot be attributed to existing NRC licensees. According to the Conference Report accompanying OBRA-90, "increasing the amount of recovery to 100 percent of the NRC's budget authority will result in the imposition of fees upon certain licensees for costs that cannot be attributed to those licensees or classes of licensees." The Conference Report further stated that: "The conferees intend the NRC to fairly and equitably recover these expenses from its licensees through the annual charge even though these expenses cannot be attributed to individual licensees or classes of licensees." Therefore, to implement 100 percent fee recovery, the NRC must impose the cost of some activities on licensees who neither requested nor derive direct benefit from those activities. In addition, the Commission has made certain policy decisions that result in charging fees to licensees for activities that do not provide regulatory support to those licensees. Under OBRA-90, the costs of those activities can only be recovered by assessing annual fees to existing NRC licensees. To recover these types of costs, the NRC assesses a surcharge to certain licensees.

Activities Included In The Current Surcharge

The following discussion presents the three broad categories of activities that are included in the current annual fee surcharge:

1. *Activities not associated with an existing NRC licensee or class of*

licensees. The first major category of costs covers those NRC activities that cannot be attributed to an existing NRC licensee or class of licensees. This category includes international, Agreement State, generic low-level waste (LLW), and generic uranium enrichment activities.

Some international activities are not directly tied to an individual licensee or class of licensees. These activities include some safety assistance provided to foreign countries and some non-proliferation reviews.

In addition, the NRC's budgeted costs for administering the Agreement State program are attributed only to Agreement State licensees. Only Agreement State licensees benefit from this program. Because Agreement State licensees are not NRC licensees, they cannot be charged an annual fee under OBRA-90.

The three existing LLW disposal facilities are licensed by Agreement States. Two of these facilities also have NRC licenses for disposal of special nuclear material. Therefore, the NRC generic LLW regulatory activities do not fully support an existing NRC licensee or class of licensees. However, some NRC licensees, as well as Agreement State licensees, will indirectly receive the benefits from these NRC LLW expenditures because they will dispose of LLW at sites that are expected to be licensed in the future.

Another area where NRC is establishing the regulatory framework to regulate future licensees is uranium enrichment. Although an application has been filed for an enrichment facility, the license has not been issued and, therefore, there is no uranium enrichment licensee that may be assessed an annual fee for these generic activities. Under OBRA-90, annual fees can only be charged to licensees, not to license applicants.

For FY 1992, approximately \$14 million was included in the power reactor surcharge for this category; approximately \$4 million was assessed as a surcharge to classes of nonreactor licensees that generate low level waste; and \$3 million for administering the Agreement State program was included in the NRC professional hourly rate and assessed to all licensees.

2. Specific applicants and licensees or classes of licensees that are not subject to fee assessment under IOAA or other law. The second major category of costs covers those activities for which the NRC is unable, on the basis of existing law, to charge a fee to specific applicants or licensees even though they receive an identifiable service from the NRC. These activities involve licensing

reviews and inspections for Federal agencies other than the Tennessee Valley Authority (TVA) and the United States Enrichment Corporation.¹ In addition, the Energy Policy Act exempted from annual fees certain Federally owned research reactors used primarily for educational training and academic research purposes.

With regard to Federal agencies, the NRC performs licensing and inspection activities, and conducts other reviews for which fees, except for IOAA prohibitions, would normally be charged under 10 CFR part 170. For example, the NRC reviews DOD/DOE Naval reactor projects; issues licenses to and conducts inspections of Federal nuclear materials users, for example, Veterans Administration hospitals, Army irradiators, and NASA radiographers; and performs safety and environmental reviews of DOE West Valley and uranium mill tailings actions as required by the West Valley Demonstration Project Act and the Uranium Mill Tailing Radiation Control Act (UMTRCA), respectively. The NRC also reviews advanced reactor designs submitted by DOE.

The IOAA prohibits the NRC from assessing 10 CFR part 170 fees to Federal agencies for the costs of these activities. The Energy Policy Act prohibits the assessment of 10 CFR part 171 annual fees to certain Federally owned research reactors used primarily for educational purposes. Therefore, under OBRA-90, the NRC must assess annual fees to other licensees to recover the costs of these activities in order to comply with the 100 percent recovery requirement.

For FY 1992, approximately \$4 million was included in the surcharge for operating power reactors for this category of NRC activities.

3. Activities relating to applicants and licensees currently exempt from 10 CFR parts 170 and 171 fees or assessed reduced annual fees for small entities based on current Commission policy. The third major category of costs covers those activities for which specific applicants or licensees receive NRC services and could be assessed fees. However, as a result of existing Commission fee exemption and fee reduction policy decisions, certain

licensees are exempt from fees or pay reduced annual fees.

Nonprofit educational institutions, for example, certain nonpower reactor and nuclear material users, are exempted from 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. The Commission has also reduced the annual fees for those licensees who can qualify as a small entity under the Commission's regulations. This action is consistent with the requirements of the Regulatory Flexibility Act of 1980 that agencies consider the impact of their actions on small entities.

For FY 1992, approximately \$7 million in NRC costs for nonprofit educational institutions was assessed as a surcharge to operating power reactors and approximately \$6 million in reduced fees for small entities was assessed as a surcharge to all licensees that are not small entities.

Activities That Support Both NRC and Agreement State Applicants and Licensees

This area covers generic activities that are attributed to a specific class of NRC licensees but also support Agreement State licensees. These activities are associated with the NRC nuclear materials and uranium recovery regulatory program.

The NRC performs generic regulatory activities for nuclear materials users and uranium recovery licensees such as conducting research, developing regulations and guidance, and evaluating operational events. These generic activities provide the basis for NRC to regulate its approximately 7,000 materials and uranium recovery licensees, as well as for the twenty-nine Agreement States to regulate their 16,000 materials licensees. However, under OBRA-90, the NRC cannot charge the Agreement State licensees an annual fee to recover a portion of the cost of these activities because they are not NRC licensees. Therefore, only about 30 percent (7,000 NRC licensees of the total population of 24,000) of the licensees can be assessed an annual charge to recover the cost of generic activities that support both NRC and Agreement State licensees. NRC licensees have indicated that this creates an unfair burden and competitive disadvantage for them. This means that about 70 percent of the generic regulatory costs (about \$23 million) that are included in the annual fees for NRC materials and uranium recovery licensees could be considered as an unfair burden.

Legislative options. The NRC has identified the following legislative

¹ Section 161w. of the Atomic Energy Act authorizes the NRC to impose fees under 10 CFR part 170 on a Federal agency that applies for or is issued a license for a utilization facility designed to produce electrical or heat energy (e.g., licensing reviews and inspections of TVA's nuclear power plants) or which operates any facility regulated under sections 1701 or 1702 of the Atomic Energy Act (the enrichment facilities of the United States Enrichment Corporation).

options to address the issues discussed above.

1. Modify OBRA-90 to eliminate the costs of certain activities from the fee base so that the NRC is required to collect approximately 100 percent of its budget, less appropriations from the Nuclear Waste Fund (NWF) and the budgeted costs for other activities that would be specified by the NRC. With respect to this alternative, the NRC is particularly interested in receiving public comment on the following question: Should OBRA-90 be modified to remove all specified activities identified in the four items above from the fee base? If all four activities are excluded, approximately \$61 million, based on the FY 1992 budget, would be removed from the fee base.

2. Modify OBRA-90 to permit the NRC to assess annual fees to organizations other than NRC licensees and approval holders that benefit from regulatory activities. For example, if this alternative is pursued, it could result in the NRC charging generic regulatory costs to NRC applicants. This would mean that the first applicant for a new class of licensee could be required to pay for all NRC regulation development and research costs to put a regulatory program in place to regulate an entire class of licensees.

3. Modify the Atomic Energy Act to permit the NRC to assess 10 CFR part 170 fees to Federal agencies, other than those that already are subject to such assessments, for identifiable services such as reviews, approvals and inspections where direct recovery for these costs is currently prohibited by IOAA. This would result in approximately \$4 million in additional fees being collected from Federal agencies.

Policy changes. Policy changes to address the concerns with the surcharge include the elimination of exemptions currently contained in 10 CFR parts 170 and 171. This would include, for example, elimination of the exemption for nonprofit educational institutions.

II. Fluctuating Annual Fees

The amount of the annual fees fluctuates depending on the amount of the budget and the number of licensees available to pay the relatively fixed generic and other regulatory costs. Changes in the budget and the number of licensees can cause relatively large changes in the amounts of the annual fees. For example, the FY 1992 annual fee for some licensees increased by 50 percent due to these factors. Because of the timing of Congressional approval of the NRC's budget, it is not possible to give licensees much advance notice of

these increases. Licensees have complained that it is unfair for the NRC to assess such large increases because they do not have sufficient warning to adjust prices and contracts to recover the increases.

Legislative Option

To minimize the potential of large increases in annual fees, one option would be to modify OBRA-90 to limit the annual fee increase for each class of licensees. Any cost not recovered as a result of this limitation would be excluded from the fee base. If this legislative option is pursued, should the increase be limited to the increase as reflected by the Consumer Price Index or some other fixed percentage, for example, 25 percent?

III. Simplifying the Development of Annual Fees

OBRA-90 requires that annual fees be established by rulemaking. Therefore, the NRC must publish a proposed rule for comments, evaluate the comments, and issue a final rule each year, even though the basic fee methodology and policy are unchanged from the previous year. This results in extra staff effort and delay in establishing the annual fees for a particular year.

In addition, the NRC has received comments indicating that the annual fees for operating power reactor licensees and fuel cycle licensees should be simplified. They point out that annual fees for the operating power reactor class of licensees are determined in three ways. First, within the operating power reactor class, a distinction is made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric, and Westinghouse. Second, within each vendor group, a distinction is made by the type of containment, for example, General Electric Mark I, II and III. Third, a distinction is made based on location of the reactor, that is, whether or not it is located east or west of the Rocky Mountains. As a result, the amount of the fees for any one vendor with a specific containment type could vary significantly from year to year leading one commenter to conclude that the "variability of the difference is greater than the attempted refinement" (56 FR 31479; July 10, 1991). Similarly, for the class of fuel cycle facilities a distinction is made between high enriched fuel fabrication, low enriched fuel fabrication, UF₆ conversion facilities and other fuel facility licensees. NRC's safety and safeguards budgeted costs are separately allocated to these classes.

The NRC is seeking comment on ways to simplify the process of establishing annual fees and simplifying the method for determining annual fees for operating power reactors and fuel fabrication licensees without causing an unfair burden.

Legislative Option

To simplify the process one option is to modify OBRA-90 so fee schedules can be published without soliciting public comment, provided the basic fee methodology and policies remain unchanged from the previous year.

Policy Changes

One option to address the different annual fees for various classes of operating power reactors and fuel facility licensees is to modify 10 CFR 171 to assess one uniform annual fee for all operating power reactors and one uniform annual fee for all fuel facilities.

IV. Expanded Scope for 10 CFR Part 170

The authority for NRC's assessment of the 10 CFR part 170 licensing, approval, and inspection fees by the NRC is the IOAA. The 10 CFR part 170 fees are assessed for specific services rendered by the NRC to identifiable applicants and licensees. Two Supreme Court cases and four Circuit Court decisions relating to the Federal Communications Commission (FCC) and the Federal Power Commission (FPC) fees assessed under the authority of the IOAA, as well as a Fifth Circuit Court of Appeals case relating to IOAA-type NRC fees, have provided additional guidance to the NRC in fee assessment under 10 CFR part 170. The past and current 10 CFR part 170 fees were established based on these court decisions.

Based on the courts' guidance, NRC IOAA-type fees have been structured and are assessed for the review of applications for and the issuance of (1) new licenses; (2) amendments and renewals to existing licenses; (3) approvals, such as topical reports; and (4) for inspections. Under the current 10 CFR part 170 fee policy, an application must be filed for a new license, an amendment, renewal, or approval; or an inspection must be conducted by the NRC in order for a 10 CFR part 170 fee to be assessed.

The courts' decisions on which the current 10 CFR part 170 fees are based were issued before the OBRA-90 requirement to recover 100 percent of the NRC's budget authority through fees. Because there are instances where NRC performs specific services for identifiable applicants, licensees, or other organizations that do not meet existing policy for assessing 10 CFR part

170 fees, the costs of these services are recovered through 10 CFR part 171 annual fees assessed to all licensees in a particular class. If the costs of these types of activities were recovered under 10 CFR part 170, the annual fee would be decreased.

The NRC is seeking comments on the option of broadening the scope of 10 CFR part 170 to recover costs incurred for specific actions for identifiable recipients because of the interrelationship of 10 CFR parts 170 and 171 in recovering 100 percent of the NRC budget authority. Some of these activities are identified and listed below. The listing provided is not intended to be all-inclusive.

1. Incident Investigation Teams (IITs)

The purpose of the agency's incident investigation program is to investigate significant operational events involving power reactors and other facilities in a systematic and technically sound manner. Causes of the events are determined so the NRC can take corrective actions. An incident investigation team investigates events of a potentially major significance. Currently the costs of these investigations are recovered through annual fees.

2. Vendor Inspections

NRC conducts inspections of suppliers of nuclear components, materials, and services in response to specific hardware failures, regulatory concerns, or allegations to determine whether these suppliers are in compliance with applicable NRC and industry requirements. Currently part 170 fees are not assessed for these inspections because vendors are not applicants or licensees of the Commission. The costs of these inspections are recovered through annual fees assessed to power reactors.

3. Allegations

NRC conducts investigations of allegations of wrongdoing by NRC licensees and others within its regulatory jurisdiction. NRC also conducts inspections of allegations made by third parties regarding specific licensees. Not all allegations are substantiated. The Commission previously decided it would not charge 10 CFR part 170 fees for inspections resulting from third party allegations (49 FR 21298; May 21, 1984). The budgeted costs for these investigations are recovered from each class of licensee through annual fees.

4. Site Decommissioning Management Plan (SDMP)

NRC performs reviews and conducts inspections with respect to those companies identified in the Site Decommissioning Management Plan to ensure the clean-up of the sites. Currently, 10 CFR part 170 fees are not assessed because the companies are not NRC applicants or licensees. The budgeted costs for these reviews and inspections are recovered from fuel facilities and materials licensees through annual fees.

5. Reviews That Do Not Result in Formal NRC Approvals

The NRC performs reviews that do not result in the issuance of formal or legal approvals. For example, the NRC staff reviews the results of the Individual Plant Exams (IPE) submittals requested by a generic letter and prepares a draft Safety Evaluation Report (SER) on the findings. 10 CFR part 170 fees are not assessed because the IPE review does not result in a letter of approval or an amendment to the technical specifications or license. NRC also conducts Probabilistic Risk Analysis (PRA) reviews of specific reactors. These reviews have resulted in the generation of a SER. The SER provides a general description of the staff's conclusions on the strengths and weaknesses of the PRA, with more specific conclusions on areas identified by NRC as subject to potential licensing action, such as changes in the technical specifications. 10 CFR part 170 fees are not assessed because the review does not result in a letter of approval or an amendment to the technical specifications or license. Another example is NRC's review of financial assurance/decommissioning funding plans or medical quality management programs. NRC review of such submittals does not result in an approval or license amendment. Therefore, no 10 CFR part 170 fee is currently assessed. To recover 100 percent of the budget authority, the budgeted costs for these reviews are recovered through annual fees.

6. Orders to Licensees and Amendments Resulting From Those Specific Orders

NRC issues orders to licensees and reviews and approves amendments to licenses resulting from the specific orders. Under current policy (contained in footnote 1 to § 170.21 and footnote 2 to § 170.31), 10 CFR part 170 fees are not assessed for the orders or amendments resulting from the orders because the NRC, on its own initiative, issues an order. The order is not

incident to a voluntary act because the licensee does not request it. Similarly, amendments resulting from orders are not assessed 10 CFR part 170 fees because such amendments are not filed voluntarily by the licensee but are filed as a requirement of the order. The budgeted costs of these activities are recovered through annual fees to all licensees.

7. Contested Hearings

Contested hearings are conducted by the NRC on specific applications, usually at the request of intervenors. The Commission previously decided not to charge fees for contested hearings because a hearing gives the public an opportunity to intervene or participate in the licensing process and serves an educational purpose (42 FR 22159; May 2, 1977). The budgeted costs are recovered through annual fees assessed to all licensees of a particular class.

Policy Changes

One option to address the actions for applicants, licensees, or other organizations identified above is to modify 10 CFR part 170 to recover the costs incurred for specific actions from the identifiable recipients.

American Mining Congress Petition (PRM-170-4)

The Petitioner

The American Mining Congress (AMC), which filed a petition for rulemaking on February 4, 1993, is a national trade association of mining and mineral processing companies that includes owners and operators of uranium mills, mill tailings sites, and *in situ* uranium production facilities who are NRC licensees. Members of the AMC who use byproduct radioactive materials must be licensed by either the NRC or an Agreement State. Because the issues raised by the petition concern the same subject as the Energy Policy Act fee requirement, the NRC is also requesting public comment on the issues raised in PRM-170-4 in this document.

Adverse Impacts on the Petitioner

The AMC has submitted this petition for rulemaking on behalf of its members that hold NRC licenses because it believes they have been adversely affected by the current license fee rule. The petitioner states that many of its members who hold NRC licenses are Class I uranium recovery sites that have ceased operations and are waiting for NRC approval of reclamation plans, or are on standby. The petitioner believes it unfair that these facilities must

continue to pay the NRC an annual fee because they no longer generate revenue and require very little NRC supervision. The petitioner also asserts that some of these facilities have been awaiting NRC approval of final reclamation plans for as long as six or seven years, but in the meantime must continue to pay the NRC an annual fee.

The Petitioner's Concerns

The petitioner's primary concern is that a system that allows an agency to recover 100 percent of its costs invites regulatory abuse as there are no safeguards present to ensure that fees are collected in relation to the amount of necessary NRC oversight and regulation. The petitioner states that, under the current fee system, the NRC is not accountable to anyone and has no oversight or quality control for inspection efforts. There are no limits on how often inspections occur, no provisions for licensees to object to costs, and no assurance for expeditious service by the NRC.

The petitioner claims the NRC is violating the "fundamental principle of law" that a reasonable relationship must exist between the cost to licensees of a regulatory program and the benefit derived from the regulatory services. The petitioner believes the 67 percent increase in fees for Class I facilities over the prior year is excessive in comparison with the 6 percent increase in the annual NRC appropriation. The petitioner believes that fee increases should be consistent with the NRC practice of using the consumer price index for annual adjustment of surety bonds. The petitioner believes the annual fee is exorbitant for Class I uranium recovery sites, especially those that have ceased operations and have been waiting for several years for NRC approval of reclamation plans.

The petitioner also states that the \$123 hourly charge for regulatory services is excessive for NRC staff efforts and notes that such an amount is equivalent to the rate charged by a senior consultant at a nationally recognized consulting firm.

The Petitioner's Proposals

The petitioner requests that 10 CFR parts 170 and 171 be amended to alleviate the inequitable impacts of NRC-imposed fees on its members, specifically for Class I uranium recovery sites that have ceased operation and await NRC approval of reclamation plans. The petitioner also suggests that the NRC implement certain standards for services provided. The petitioner offers the following specific suggestions for ensuring that the fee schedule bears

a reasonable relationship to the benefit provided by NRC oversight and regulation.

1. The petitioner suggests the implementation of a system that allows NRC licensees to have some control over fees they are assessed. According to the petitioner, no rational relationship exists between the fees charged by the NRC and the benefits derived by its licensees. A licensee review board should be established that reviews the NRC fee system annually, monitors NRC inspection activities to prevent regulatory abuse, and proposes revisions to the fee system to eliminate inequitable treatment of licensees.

2. The petitioner suggests that the NRC develop a consistent method for applying charges. The petitioner believes that the NRC should supply licensees with a cost sheet that describes charges for various types of services and a specific response interval schedule that prescribes deadlines for all NRC regulatory services. This would eliminate inequities that may occur when the processing of simple amendment requests takes some NRC staff members longer than others to complete. The petitioner also suggests that the NRC establish time limits for processing, such as 30 days for simple license amendment requests, and publish the response times for various regulatory services in a table that would be distributed to licensees.

3. The petitioner suggests that the NRC provide a more complete and detailed accounting of the services it provides. Currently, the NRC lists only the hours spent and the hourly rate on bills sent to licensees. In addition to simply listing the time spent and the hourly rate, the petitioner believes that NRC charges should be itemized to also include a description of the work performed, the name(s) of the individual(s) who performed the work, and the dates on which the work was performed.

4. The petitioner suggests that the NRC eliminate factors that contribute to the inequitable treatment of licensees. The petitioner believes that fees should be waived for facilities that no longer generate revenue and require very little NRC supervision, such as uranium fuel cycle sites that have ceased operation and are waiting for NRC approval of reclamation plans. According to the petitioner, the intent of Congress in enacting the Omnibus Budget Reconciliation Act of 1990 was that non-power reactor facilities should be exempt for the most part from annual fees because they comprise less than three percent of the NRC's regulatory costs. The petitioner also believes that

the Department of Energy (DOE) is improperly receiving NRC oversight and review of its mill tailing site reclamation activities without being charged fees by the NRC. Furthermore, NRC attention to DOE sites prevents adequate NRC resources to be committed to address private sector licensing matters, resulting in exorbitant costs to certain NRC licensees who must continue to pay the NRC fees for many years while awaiting NRC action.

The Petitioner's Conclusion

The petitioner has identified several significant adverse impacts which it claims have affected its members as a result of the current NRC fee system which provides for inequitable treatment of licensees and the potential for regulatory abuse. The petitioner believes that the fees imposed by the NRC unfairly burden its uranium recovery facilities that have ceased operation and are awaiting NRC approval of reclamation plans, in some cases for many years. The petitioner requests that the NRC consider its proposals to amend the rules in 10 CFR parts 170 and 171.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

The authority citation for this document is: Sec. 2903(c), Public Law 102-486, 106 Stat. 3125.

Dated at Rockville, Maryland this 13th day of April 1993.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93-9065 Filed 4-16-93; 8:45 am]

BILLING CODE 7550-01-P

Comments - Reactor Licensees and
Their Representatives

| | |
|---|-------------|
| 1. Aerotest | (149) |
| 2. Arizona Public Service Co. | (534) |
| 3. B&W Owners Group | (528) |
| 4. Carolina Power & Light Co. | (527) |
| 5. Centerior Energy | (524) |
| 6. Commonwealth Edison | (473) |
| 7. Duke Power Co. | (523) |
| 8. Duquesne Light Co. | (520) |
| 9. Entergy | (488) |
| 10. Florida Power & Light Company | (519) |
| 11. General Atomics | (151) (532) |
| 12. Georgia Power | (493) |
| 13. Karl W. Gross, Reactor Operator | (460) |
| 14. Northeast Utilities | (526) |
| 15. NUMARC | (475) |
| 16. Pennsylvania Power & Light Co. | (522) |
| 17. Philadelphia Electric Co. | (529) |
| 18. Southern California Edison Co. | (508) |
| 19. South Carolina Electric & Gas Co. | (444) |
| 20. Southern Nuclear Operating Company | (494) |
| 21. TU Electric | (463) |
| 22. Union Electric | (141) |
| 23. Virginia Power | (535) |
| 24. Washington Public Power Supply System | (480) |
| 25. Winston & Strawn | (509) |

Comments - Fuel Facility Licensees and
Their Representatives

| | | |
|-----|-----------------------------------|-------------|
| 1. | ABB-Combustion Engineering | (518) |
| 2. | Allied Signal | (495) |
| 3. | American Mining Congress | (496) (554) |
| 4. | B&W Fuel Company | (474) |
| 5. | Hunton & Williams | (552) |
| 6. | Louisiana Energy | (489) |
| 7. | Rio Algom Mining Corporation | (505) |
| 8. | Siemens Power Corporation | (512) |
| 9. | U.S. Council for Energy Awareness | (510) |
| 10. | Westinghouse Electric Corporation | (492) |

Comments - Educational Licensees and
Their Representatives

| | |
|---|----------------------|
| 1. American Council on Education | (541) |
| 2. American Society for Engineering Education | (557) |
| 3. Central Michigan University | (555) |
| 4. Christopher Plavney | (483) (516) |
| 5. Cornell University | (490) |
| 6. Eastern Michigan University | (507) |
| 7. Fermin M. Perez | (542) |
| 8. Georgia State University | (1) |
| 9. John R. Anderson | (560) |
| 10. Margaret R. Kunselman | (461) |
| 11. Massachusetts Institute of Technology | (481) (547) (566) |
| 12. Mount Holyoke College | (533) |
| 13. National Organization of Test, Research and Training Reactors (TRTR) | (546) |
| 14. National Science Foundation | (521) |
| 15. North Carolina State University | (543) |

| | | | |
|-----|---------------------------------|-------|-------|
| 16. | Ohio State University | (464) | (466) |
| | | (472) | (544) |
| | | (545) | |
| 17. | Oregon State University | (558) | |
| 18. | Penn State University | (465) | |
| 19. | Princeton University | (457) | |
| 20. | Purdue University | (430) | |
| 21. | Saint John's University | (538) | |
| 22. | Saint Mary's College | (559) | |
| 23. | Simmons College | (564) | |
| 24. | Smith College | (530) | |
| 25. | South Dakota State University | (549) | |
| 26. | University of California-Irvine | (548) | |
| 27. | University of Cincinnati | (553) | |
| 28. | University of Delaware | (138) | |
| 29. | University of Florida | (556) | |
| 30. | University of Illinois | (504) | |
| 31. | University of Massachusetts | (459) | |
| 32. | University of Miami | (531) | |
| 33. | University of Michigan | (561) | |
| 34. | University of Missouri (Rolla) | (550) | |
| 35. | University of Texas | (537) | |
| 36. | University of Wisconsin | (551) | |
| 37. | Washington & Lee University | (539) | |
| 38. | Washington State University | (536) | |
| 39. | Xavier University | (563) | |

Comments - Medical Licensees and
Their Representatives

| | |
|--|-------|
| 1. American Association of Clinical Endocrinologists | (434) |
| 2. American College of Nuclear Physicians | (511) |
| 3. American College of Radiology | (517) |
| 4. Association of Independent Research Institutes | (497) |
| 5. Colorado Hospital Assn. | (503) |
| 6. Dean W. Broga, Ph.D. | (486) |
| 7. Elias C. Dow, M.D. | (449) |
| 8. HCA Johnston-Willis Hospital | (471) |
| 9. Hospital Association of Pennsylvania | (485) |
| 10. Hospital Pavia | (62) |
| 11. Hot Springs County Memorial Hospital | (478) |
| 12. John R. Sinkey, M.D. | (453) |
| 13. Lahey Clinical Medical Center | (421) |
| 14. Medical College of Wisconsin | (2) |
| 15. Metabolism Associates | (67) |
| 16. New England Medical Center | (514) |
| 17. Northern Virginia Endocrinologists | (4) |
| 18. Richard B. Guttler, M.D. | (439) |
| 19. Stan A. Huber Consultants, Inc. | (5) |
| 20. St. John's Mercy Medical Center | (441) |

Licensees - Industrial

| | |
|---|------------|
| 1. AGG Rok Materials | (98) |
| 2. Air Transport Assn. | (515) |
| 3. Apgee Corporation | (484) |
| 4. Applied Geoscience & Engineering | (433) |
| 5. Applied Radiant Energy Corporation | (540) |
| 6. Atchison Casting | (452) |
| 7. Berthold Systems, Inc. | (501) |
| 8. Bowen & Lawson | (60) (422) |
| 9. Braun Intertec | (491) |
| 10. City of Toledo, Ohio | (442) |
| 11. Consol Inc. | (143) |
| 12. Duratek | (455) |
| 13. Earthtec Inc. | (562) |
| 14. Ebasco | (477) |
| 15. Froehling & Robertson | (429) |
| 16. Frontier Logging Corporation | (75) |
| 17. Glovier & Associates, Inc. | (6) |
| 18. Glover Construction Co., Inc. | (146) |
| 19. Grinnell Corporation | (450) |
| 20. Homestake Engineering | (454) |
| 21. Intermountain Testing Co. | (502) |
| 22. International Hydronics | (59) |
| 23. IRRITEC | (500) |
| 24. Isomedix | (435) |
| 25. J. H. Shears' Sons, Inc. | (123) |
| 26. John R. Mercier, H. P. | (458) |
| 27. McDonald-Maas Associates | (144) |
| 28. Merillat | (7) |
| 29. Metropolitan Waste Control Commission | (482) |
| 30. National Asphalt Pavement Assoc. | (150) |
| 31. Novagen | (424) |
| 32. Okanogan County Dept. of Public Works | (476) |
| 33. Pashelinsky Smelting & Refining Corp. | (61) |

| | |
|--|-----------|
| 34. Passaic Valley Water Commission | (451) |
| 35. Radiation Monitoring Devices, Inc. | (427) |
| 36. Springfield Water Department | (436) |
| 37. Stocker & Yale, Inc. | (487) |
| 38. Teledyne Engineering Services | (565) |
| 39. TERRA Engineering & Construction Corp. | (3) |
| 40. Troxler Electronic Laboratories, Inc. | (8) (467) |
| 41. Vecellio & Grogan, Inc. | (145) |
| 42. Wilson Engineering | (423) |
| 43. Yankee Engineering & Testing, Inc. | (425) |

COMMENTS REFERENCING TROXLER ELECTRONIC LABORATORIES,
INC. FORM LETTER (COMMENT NUMBER 8) DATED 5/19/93

| | |
|--|-------------|
| 44. Ackenheil & Associates | (139) |
| 45. Ackenheil Engineers, Inc. | (363) |
| 46. Adams Construction Co. | (16) (53) |
| 47. Ajax Paving Industries | (448) |
| 48. Allied Construction Technologies, Inc. | (315) |
| 49. Allied Corporation, Inc. | (63) |
| 50. Allied Testing Labs, Inc. | (394) |
| 51. Ambric Engineering, Inc. | (158) (358) |
| 52. Ambric Testing & Engineering Associates of VA | (152) |
| 53. Ambric Testing & Engineering Associates of PA | (157) |
| 54. Ambric Testing Assoc. of New Jersey, Inc. | (216) |
| 55. American Engineering & Testing, Inc. | (446) |
| 56. Anco Testing Laboratories, Inc. | (101) (250) |
| 57. Anderson Engineering, Inc. | (302) |
| 58. APAC-Virginia, Inc. | (251) |
| 59. ARTCO Contracting, Inc. | (382) |
| 60. Ashco, Inc. | (192) |
| 61. Asphalt Materials Inc. | (190) |
| 62. Asphalt Road & Materials Co., Inc. | (22) |

| | |
|--|-------------|
| 63. Asphalt Paving, Inc. | (364) |
| 64. Atec Associates, Inc. | (187) (296) |
| 65. Banner Associates, Inc. | (44) |
| 66. Bardon Trimount, Inc. | (389) |
| 67. Barrett Paving Materials, Inc. | (54) |
| 68. Barrientos & Associates, Inc. | (140) |
| 69. BBC & M Engineering, Inc. | (219) |
| 70. Beaver Excavating Co. | (15) |
| 71. Becher-Hoppe Engineers | (409) |
| 72. Beery & Assoc., Inc. | (329) |
| 73. Bellezza Company, Inc. | (212) |
| 74. Bernardin, Lochmueller & Assoc. Inc. | (213) |
| 75. Berrien County Road Commission | (202) |
| 76. Betteroads Asphalt Corporation | (262) |
| 77. Blacktop Products Co. | (56) |
| 78. Blair Bros., Inc. | (330) |
| 79. Blazosky Associates, Inc. | (29) |
| 80. Blue Rock Industries | (206) |
| 81. Borings Soils & Testing, Co. | (255) (256) |
| 82. Boss Engineering | (347) |
| 83. Bowen Construction Co. | (19) |
| 84. Bowen Engineers & Survey | (199) |
| 85. Bowers & Assoc. | (227) |
| 86. Bowser Morner, Inc. | (271) |
| 87. Braken Construction Co. | (97) |
| 88. Bridge Construction Corp. | (121) |
| 89. Brooks Construction Co., Inc. | (203) |
| 90. Bruschi Brothers, Inc. | (311) |
| 91. Bucher, Willis & Ratliff | (130) |
| 92. Buckley - Lages, Inc. | (26) (81) |
| 93. Burgess & Niple | (72) (295) |
| 94. Byrne Sand & Gravel Co., Inc. | (384) |
| 95. Campbell Paris Engineers | (307) |
| 96. Capital Consultants, Inc. | (156) |
| 97. Canonie Environmental | (31) (83) |

| | |
|---|-------------|
| 98. Carl Kelly Paving | (279) |
| 99. C. C. Mangum, Inc. | (248) |
| 100. Central Paving Co. | (301) |
| 101. Charleston Construction Co. | (11) |
| 102. Chester Bros. Consturction Co. | (412) (437) |
| 103. CHMP, Inc. | (134) |
| 104. City of Bryan, Ohio | (416) |
| 105. City of Detroit, Michigan | (287) |
| 106. City of Flint, Michigan | (162) |
| 107. City of Goshen, Indiana | (249) |
| 108. City of Kettering, Ohio | (392) |
| 109. City of Newport News, VA | (185) |
| 110. City of Sault Ste. Marie, Michigan | (291) |
| 111. City of West Bend, Indiana | (169) |
| 112. Civil Engineering Services | (207) |
| 113. Civil & Environmental Consultants, Inc. | (177) |
| 114. CMC Engineering | (222) |
| 115. Cole Associates | (186) |
| 116. Commercial Asphalt Co. | (9) |
| 117. Commonwealth of Virginia | (377) |
| 118. Compton Construction Co. Inc. | (88) |
| 119. Con-Spec, Inc. | (274) |
| 120. Construction Design Consultants | (338) |
| 121. Construction Engineering Consultants, Inc. | (359) |
| 122. Construction Services Assoc. | (181) |
| 123. Construction Testing Services, Inc. | (242) |
| 124. County of Fairfax, VA | (232) |
| 125. County of Henrico, Virginia | (166) |
| 126. County of St. Clair | (215) |
| 127. C. T. Consultants, Inc. | (278) |
| 128. CTI & Assoc., Inc. | (155) |
| 129. CTL of Virginia, Inc. | (104) |
| 130. Cumberland Geotechnical | (99) |
| 131. Cuyahoga County Engineers Testing Lab | (118) |
| 132. D'Appolonia | (161) |

| | |
|--|-------------|
| 133. David Blackmore & Assoc., Inc. | (383) |
| 134. Dell Contractors | (167) |
| 135. Donaldson Mine Company | (375) |
| 136. Donegal Construction Corp. | (297) |
| 137. EACCO Construction Co. | (173) |
| 138. Earth Engineering, Inc. | (373) |
| 139. Ebasco | (418) |
| 140. Earth, Inc. | (195) |
| 141. Earth Exploration, Inc. | (336) |
| 142. Ebony Construction Co., Inc. | (349) |
| 143. EDP Consultants, Inc. | (95) |
| 144. E. L. Conwell & Co. | (30) (90) |
| 145. Elkhart County Highway Department | (180) |
| 146. Empire Construction & Materials, Inc. | (267) |
| 147. EMSI Engineering, Inc. | (170) |
| 148. Engineering & Testing Consultants, Inc. | (419) |
| 149. Engineering Mechanics, Inc. | (312) (388) |
| 150. Engineering & Testing Services, Inc. | (351) (380) |
| 151. English Construction Co., Inc. | (93) |
| 152. Erdman, Anthony Assoc., Inc. | (293) |
| 153. Esmer & Assoc., Inc. | (354) |
| 154. E. T. & L. Construction Corp. | (324) |
| 155. E. V. Williams Co., Inc. | (132) (260) |
| 156. Farlow Environmental Engineers, Inc. | (86) (362) |
| 157. Fenwick Enterprises, Inc. | (253) |
| 158. Flexible Pavements, Inc. | (114) |
| 159. Flexible Pavements Council of W.Va. | (360) |
| 160. Foster Grading Co. | (244) |
| 161. Foxfire Consultants, Inc. | (28) |
| 162. Frank Bros., Inc. | (117) |
| 163. Gannett Fleming, Inc. | (172) |
| 164. Gaunt & Son Asphalt, Inc. | (320) |
| 165. GEI Consultants | (411) |
| 166. General Engineering Company, Inc. | (366) |
| 167. Gennaro Pavers, Inc. | (74) |

| | |
|--|-------------|
| 168. George Harms Construction Co., Inc. | (269) (381) |
| 169. George & Lynch, Inc. | (264) |
| 170. Geo-Science Engineering Co., Inc. | (125) |
| 171. Geotechnical Group, Inc. | (66) |
| 172. Geotecnics, Inc. | (323) |
| 173. Geotech Inc. | (148) |
| 174. Geo-Test, Ltd. | (178) |
| 175. Gerken Materials, Inc. | (17) |
| 176. Gilmore & Assoc. Inc. | (355) |
| 177. Glasgow, Inc. | (76) |
| 178. G. M. T. Inc. | (408) |
| 179. Gohmann Asphalt & Construction Co. | (37) |
| 180. Golder Assoc., Inc. | (397) |
| 181. Gosling Czubak Assoc. | (209) |
| 182. Goyle Engineering, Inc. | (78) |
| 183. Grannas Bros. Contracting Co., Inc. | (289) |
| 184. Grindle & Bender | (68) |
| 185. Gust K. Newberg Construction Co. | (321) |
| 186. Haines and Kibblehouse, Inc. | (228) |
| 187. Haley & Aldrich, Inc. | (374) |
| 188. Haller Testing Labs | (137) |
| 189. Hamilton & Assoc. | (396) |
| 190. Hancock Asphalt & Paving, Inc. | (71) |
| 191. Hanson Testing & Engineering, Inc. | (378) |
| 192. Harms Inc. | (116) |
| 193. Hatcher-Sayre, Inc. | (395) |
| 194. Hayes, Seay, Mattern & Mattern | (304) (305) |
| 195. Heffner Construction Co. | (106) |
| 196. Hempt Bros., Inc. | (280) |
| 197. Hennessey Engineers, Inc. | (401) |
| 198. Herbert and Assoc., Ltd. | (350) |
| 199. Herzog Contracting Corp. | (335) |
| 200. Highway Materials, Inc. | (58) |
| 201. Hills Materials Company | (13) |
| 202. H&D Inc. | (40) |

| | |
|---|-------------|
| 203. H. J. Schneider Construction, Inc. | (339) |
| 204. Hobet Mining Inc. | (225) |
| 205. Hornor Brothers Engineers | (18) (82) |
| 206. HRI Inc. | (184) (346) |
| 207. Hunt Engineers, Inc. | (348) |
| 208. Huntington Asphalt Corporation | (352) |
| 209. Hurt & Proffitt, Inc. | (233) |
| 210. Indianapolis Airport Authority | (406) |
| 211. Independent Materials Testing Labs, Inc. | (85) |
| 212. Inspectorate | (220) |
| 213. Interstate Construction Corp. | (333) |
| 214. Isabella County Road Commission | (160) |
| 215. James D. Cummins Co., Inc. | (198) |
| 216. Jeff Zell Consultants | (163) |
| 217. Jersey Technology Labs, Inc. | (322) |
| 218. J. H. Rudolph & Co., Inc. | (128) (129) |
| 219. J&L Engineering, Inc. | (27) |
| 220. John E. Munsey | (445) |
| 221. John T. Boyd Company | (188) |
| 222. Johnson Soils Engineering Co. | (122) |
| 223. Julian & Wilmarth, Inc. | (34) |
| 224. Kent County Michigan Bd. of Public Works | (240) |
| 225. Kent County Road Commission | (224) |
| 226. Keystone Landfill, Inc. | (420) |
| 227. Keystone Lime Co., Inc. | (398) (399) |
| 228. Key Tech | (261) |
| 229. KFC Airport, Inc. | (102) |
| 230. Killam Associates | (231) (410) |
| 231. Klug Bros., Inc. | (371) |
| 232. K & M Construction Co. | (393) |
| 233. Knight Consulting Engineers, Inc. | (309) |
| 234. Koester Contracting Corp. | (96) |
| 235. Kokosing Materials, Inc. | (230) |
| 236. K & S Testing & Engineering, Inc. | (285) |
| 237. Kupper & Co. | (133) |

| | |
|---|----------------------|
| 238. Lawhorne Brothers | (32) |
| 239. L-C Associates, Inc. | (110) |
| 240. Lee Highway Paving Corp. | (282) |
| 241. Lee-Simpson Assoc., Inc. | (235) |
| 242. Limestone Products Corp. | (313) |
| 243. Livingston County Road Comm. | (254) |
| 244. L. Robert Kimball & Assoc., Inc. | (196) |
| 245. MAC Construction Co. | (298) (299) |
| 246. Macallum Testing Labs, Inc. | (283) |
| 247. Mackin Engineering Co. | (36) |
| 248. Macomb County Road Commission | (332) |
| 249. Management Engineering Corporation | (179) |
| 250. Marvin-Moberly Construction Co. | (100) |
| 251. Marvin V. Templeton & Sons, Inc. | (35) |
| 252. Mashuda Corp. | (193) (276) (277) |
| 253. Mason-de Verteuil Geotechnical Services | (41) (252) |
| 254. Massachusetts Bay Transportation Authority | (52) |
| 255. Mayer Bros. Construction Co. | (415) |
| 256. M-B Contracting Co., Inc. | (14) |
| 257. McCallum Testing Laboratories, Inc. | (45) |
| 258. McTish, Kunkel & Assoc. | (300) |
| 259. Mead & Hunt, Inc. | (175) |
| 260. Mega Contractors, Inc. | (57) |
| 261. Melick-Tully & Associates, Inc. | (153) |
| 262. Meshberger Brothers Stone Corp. | (194) |
| 263. Midland County Road Commission | (316) |
| 264. Midwest Environmental Consultants, Inc. | (405) |
| 265. Midwestern Consulting, Inc. | (387) |
| 266. Miller Associates | (403) |
| 267. Miller Bros. Construction, Inc. | (165) |
| 268. Miller-Mason Paving | (303) |
| 269. Moore Brothers Company, Inc. | (77) |
| 270. Moore & Bruggink | (218) |
| 271. Morrison-Maierle | (131) |

| | |
|--|-------------|
| 272. Morley and Assoc., Inc. | (428) |
| 273. M. S. Consultants, Inc. | (310) |
| 274. Mt. Pleasant Central Asphalt Paving Co. | (126) |
| 275. Muskegon County Road Comm. | (243) |
| 276. New Prince Concrete Construction Co. | (226) (308) |
| 277. Nordlund & Assoc., Inc. | (204) |
| 278. Northwoods, Inc. | (286) |
| 279. Northeastern Road Improvement Co. | (247) |
| 280. Norwood Asphalt Products | (92) |
| 281. NTH Consultants, Ltd. | (265) |
| 282. Nowak & Fraus Corp. | (413) |
| 283. Ohio Valley Electric Corp. | (356) |
| 284. Ohio Valley Paving Corp. | (353) |
| 285. OHM Remediation Services Corp. | (379) |
| 286. Old Forge Testing Co. | (46) |
| 287. Oldover Corp. | (361) |
| 288. OMM Engineering | (176) |
| 289. Orders Construction Co. | (87) |
| 290. Orders & Haynes Paving Co. | (197) |
| 291. Oscoda County Road Commission | (211) |
| 292. Ottawa County Road Commission | (221) |
| 293. Pavers, Inc. | (317) |
| 294. P.C. Goodloe & Son, Inc. | (39) (79) |
| 295. Penn-Carrington Engineering Group | (154) |
| 296. Pennsylvania Asphalt Pavement Assoc. | (111) |
| 297. Pennsylvania Testing Labs | (105) |
| 298. Phend & Brown, Inc. | (214) |
| 299. Pike Industries, Inc. | (168) |
| 300. Port Engineering Assoc., Inc. | (245) |
| 301. Potomac Construction Co. | (272) |
| 302. Professional Engineering Assoc., Inc. | (200) |
| 303. Professional Service Industries of MA | (376) |
| 304. Professional Service Industries of PA | (400) |
| 305. PSI Energy | (127) |
| 306. Quality Environmental Services, Inc. | (229) |

| | |
|--|----------------------|
| 307. Ranger Fuel Corp. | (294) |
| 308. RBS Inc. | (38) |
| 309. REA Construction | (107) |
| 310. Rieth-Riley Construction Co., Inc. | (135) (171) (367) |
| 311. Rissler & McMurry, Co. | (112) |
| 312. Robert A. Kinsley, Inc. | (266) |
| 313. Rock Road Companies, Inc. | (259) |
| 314. Rogers Group, Inc. | (65) |
| 315. Regional Services Corp. | (147) |
| 316. R. H. Armstrong, Inc. | (33) |
| 317. Richard H. Howe | (275) |
| 318. Road Commission, Oakland County, Michigan | (386) |
| 319. Rogers Group, Inc. | (318) |
| 320. Roncari Industries | (43) |
| 321. Roofing Consultants of VA, Inc. | (263) |
| 322. Roy N. Ford Co., Inc. | (73) |
| 323. R. S. Scott Associates, Inc. | (47) |
| 324. Rust Environmental & Infrastructure | (223) |
| 325. S. A. Charnas, Inc. | (113) |
| 326. Saginaw Asphalt Paving Co. | (103) |
| 327. SAI Consulting Engineers, Inc. | (246) |
| 328. Samtest, Inc. | (326) |
| 329. Sanilac County Road Commission | (345) |
| 330. Sarver Paving Co. | (20) |
| 331. Schloss Paving Co. | (417) |
| 332. Schnabel Engineering Assoc. | (119) |
| 333. SCI Consultants, Inc. | (370) |
| 334. Scott Civil Engineering Co. | (443) |
| 335. Scott Construction Co. | (189) |
| 336. Scott Consulting Engineers | (80) |
| 337. S. E. Johnson/Stoneco, Inc. | (237) |
| 338. Seneca Petroleum Co., Inc. | (124) |
| 339. Shelly Company | (234) |

| | |
|---|----------------------|
| 340. Shilts, Graves & Associates, Inc. | (51) (70) |
| 341. Site Engineers, Inc. | (201) (217) (325) |
| 342. Slusser Bros. Trucking & Excavating Co. Inc. | (120) |
| 343. Soil Consultants, Inc. | (281) |
| 344. Soil Testing, Inc. | (94) |
| 345. Soils & Engineering Services, Inc. | (136) |
| 346. Soils & Materials Engineers, Inc. | (258) |
| 347. Sumat Engineering | (238) |
| 348. South Atlantic Coal Co. | (241) |
| 349. South State, Inc. | (268) |
| 350. Southern West Virginia Paving, Inc. | (319) |
| 351. S. R. Draper Paving Co., Inc. | (257) |
| 352. Stack Engineering | (407) |
| 353. Stafford Consultants | (10) |
| 354. Standard Testing and Engineering Co. | (42) |
| 355. Stavola Company | (391) |
| 356. STS Consultants Ltd. | (369) |
| 357. Stuart M. Perry, Inc. | (290) |
| 358. STV Sanders & Thomas | (284) |
| 359. Summit Testing & Inspection Co. | (343) |
| 360. Summers Construction Co., Inc. | (327) (342) |
| 361. Superior Asphalt Company | (341) |
| 362. S. W. Cole Engineering, Inc. | (344) |
| 363. Swecker Engineering & Surveying | (12) |
| 364. Sweetland Engineering | (273) |
| 365. T. A. Houston & Assoc. | (174) |
| 366. Technical Testing, Inc. | (142) |
| 367. Terry Eagle Coal Co. | (438) |
| 368. Testing Engineers & Consultants, Inc. | (159) |
| 369. Testwell Craig Labs of CT., Inc. | (208) (239) |
| 370. Tibbetts Engineering Corp. | (365) |
| 371. Tikon Maine, Inc. | (191) |
| 372. T. J. Campbell Construction Co. | (64) |
| 373. Trap Rock Industries, Inc. | (23) |

| | |
|---|--------------------|
| 374. Triad Engineering | (50) (84) (337) |
| 375. T. R. Valentine & Assoc., Inc. | (108) |
| 376. Valley Asphalt Company | (314) (390) |
| 377. Valley Asphalt Corporation | (55) |
| 378. Valley Forge Laboratories, Inc. | (447) |
| 379. Valley Sanitation Co., Inc. | (164) |
| 380. Vanderburgh County Engineering | (334) |
| 381. Vantage Paving, Inc. | (49) (109) |
| 382. Vermont Testing | (236) |
| 383. VHB Associates | (404) |
| 384. Viking Coal Company, Inc. | (25) |
| 385. Watts Contractors, Inc. | (69) |
| 386. Wehran Engineering | (288) |
| 387. Weldon Asphalt Co. | (182) |
| 388. West Penn Asphalt Paving Co., Inc. | (292) |
| 389. West Virginia Division of Highways | (183) |
| 390. West Virginia Testing, Inc. | (205) |
| 391. Whitman & Howard | (328) |
| 392. Whitworth-Muench Co. | (414) |
| 393. Widmer Engineering, Inc. | (357) |
| 394. Wightman Environmental, Inc. | (368) |
| 395. Wilbur Smith Associates | (372) |
| 396. William F. Loftus Assoc. | (331) |
| 397. William Beaudoin & Sons, Inc. | (48) |
| 398. William A. Green Assoc. | (340) (525) |
| 399. Wine Construction Inc. | (402) |
| 400. Whitta Construction Co. | (21) |
| 401. Windsor Service, Inc. | (24) |
| 402. Wolverine Engineers | (431) |
| 403. Woodward-Clyde Consultants | (270) (385) |
| 404. Wyandet Dolomite Assoc. | (89) (91) |
| 405. Wyoming Sand & Stone Co. | (201) |
| 406. Zannino Engineering | (115) (306) |

Federal Agencies

- | | |
|-----------------------------------|-------------|
| 1. Department of Army | (506) |
| 2. Department of Energy | (498) (499) |
| 3. Department of Veterans Affairs | (456) |
| 4. U.S. Department of Agriculture | (432) |

State Agencies and Their Representatives

| | |
|-------------------------------------|-------|
| 1. Minnesota Department of Health | (440) |
| 2. Organization of Agreement States | (468) |
| 3. State of Colorado | (513) |
| 4. State of Florida | (469) |
| 5. State of Hawaii | (426) |
| 6. State of Illinois | (462) |
| 7. State of Washington | (470) |
| 8. Texas Radiation Advisory Board | (479) |

FY 1993 Fees Related To
Fairness and Equity Concerns
(\$ In Millions)

| | <u>Total</u> | <u>Current Allocation</u> <u>Power Reactors</u> | <u>Other Licensees</u> |
|--|--------------------------|--|------------------------|
| <u>Activities Not Related to an Existing NRC Licensee</u> | | | |
| International | \$8.4 | \$8.4 | -- |
| Low-Level Waste | 9.2 | 6.7 | 2.5 |
| Agreement State Oversight | <u>3.8</u> | <u>3.1</u> | <u>0.7</u> |
| Subtotal | \$21.4 | \$18.2 | \$3.2 |
| <u>Activities Not Assessed To Direct Beneficiary Due to Legislative or Policy Constraints</u> | | | |
| Part 170 Exemption for DOE and Other Federal Agencies | 5.7 | 5.2 | .5 |
| Non-Profit Educational Exemption | 7.1 | 7.1 | -- |
| Small Entity | <u>5.4</u> | <u>4.6</u> | <u>0.8</u> |
| Subtotal | \$18.2 | \$16.9 | \$1.3 |
| <u>Share of NRC Regulatory Activities that also Support Agreement State Licensees</u> | <u>15.0^{1/}</u> | <u>--</u> | <u>15.0</u> |
| Total | \$54.6 | \$35.1 | \$19.5 |

^{1/}Represents 70 percent of the cost for generic regulatory activities (e.g., rulemaking, research, program development, and operating experience evaluations) that support both NRC and Agreement State material licensees.