



Global Laser Enrichment

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Attn: Maureen Wylie
Chief Financial Officer, NRC
Document Control Desk
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Docket 70-7016

Subject: Dispute of Fee Billing Error

References: (1) Letter from Maureen Wylie (NRC) to Jerry Head (GEH), January 22, 2016, "License Fee Billing Error"
(2) GLE -2016- 0008, Letter from Bob Crate (GLE) to Maureen Wylie (NRC), February 3, 2016, "License Fee Billing Error"
(3) Letter from Scott Moore (NRC) to Bob Crate (GLE), March 14, 2016, "Supporting Documents for License Fee Billing Error"

Global Laser Enrichment, LLC (GLE) in response to NRC's letter (Reference 1) requested further detail as is specified in 10CFR170.12 (b). GLE received your letter and appreciates your responsiveness to our request.

Based on our review of the referenced letter (Reference 3), GLE is disputing the fees in accordance with our right to review and appeal those proscribed fees as stated in 10CFR170.51 and 10CFR15.31. GLE's main dispute is that there is insufficient detail to provide GLE the ability to substantiate the charges and ensure that there is no double billing and that the charges relate directly to GLE. GLE also has similar issues as those raised by the Nuclear Energy Institute (NEI) in a letter to Ms. Annette L. Vietti-Cook from Antony R Pietrangelo in April of 2015. GLE finds that NRC fees as associated with DOE contractor costs lack transparency and predictability and inhibits sound financial planning by GLE in budgeting for future NRC Fees. Example in point:

As noted in previous conversations with NRC staff, an example of the negative effect of these unforeseen charges is illustrated in the case of performing a cost benefit analysis to set up a cleared laboratory room with a classified computer. GLE staff was able to determine the hardware cost of running cables, documentation costs for changing the Program Cyber Security Plan (PCSP), and cost of moving equipment. In order to minimize the cost of the change, GLE planned on the Authorizing Official (DOE) review and walk down to take place

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during a routine inspection. However, GLE is unable to accurately perform a cost benefit analysis due to the unknown and escalating cost of the DOE performing the PCSP documentation review now performed at DOE HQ and in Oak Ridge. This review is estimated to take up to 6 months. This one task could easily outweigh all other known costs of this project.

Although GLE notes that 10CFR170.12(g) allows for the NRC to collect for any underpayment in fees resulting from an error by the NRC, this rule change was not effective until August 29, 2014. This is as noted in 79FR37144. Therefore GLE would request consideration that all fees prior to August 29, 2014 be forgiven in that they are outside the effective date of the rule change.

In addition to the lack of transparency and predictability, GLE is greatly concern with the timeliness of these fees. This lack of timeliness presents an undue burden to GLE. By informing GLE up to three years after the charges were originally incurred, GLE's ability to budget accordingly and accurately for future NRC Fees has been greatly impeded. It also has precluded our ability to provide timely feedback and dispute of those charges in a manner that would have positively affected every year after 2013.

Regarding the supporting document letter (Reference 3) GLE finds that the original billing error and subsequent supporting document letters do allow GLE to substantiate the charges and appear to not meet the intent of 10 CFR 170.

- ❖ 10CFR170.12 (b)(2) Appropriate contractual support services (professional hourly rates in effect at the time the service was provided).
 - GLE has been concerned for several years about the number of DOE inspectors which is usually more than double that of NRC inspectors.
 - 2013 – 5 DOE, 1 NRC Contractor, 1 NRC NSIR, 1 RII Inspector (training)
 - DOE cost is 43% of NRC total cost for the year
 - 2014 – 5 DOE, 1 NRC Contractor, 1 NRC NSIR, 2 RII Inspectors
 - DOE cost is 42% of NRC total cost for the year
 - 2015 – 7 DOE, 3 RII Inspectors
 - DOE cost is 206% of the NRC total cost for the year
 - GLE is also concerned with the overall number of inspectors for a routine inspection. The cost vs. risk profile does not support 8-10 inspectors for two days. The total number of man-hours exceeds that of Emergency Preparedness and MC&A routine inspections
 - Reference 3 does not state the professional hourly rate for DOE. NRC goes to great lengths to meet regulatory obligations for hourly rates and provides that basis to licensees for their budgeting. But for Security inspections, DOE represents over half of the number of inspectors, yet the licensees are not provided any detail for hourly rates and therefore the use of DOE becomes an unestimatable portion of our regulation.
- ❖ 10CFR170.12(b)(3) The NRC intends to bill each applicant or licensee at quarterly intervals for all accumulated costs for each applicant Each bill will identify the

applications and documents submitted for review **and the costs related to each** [emphasis added].

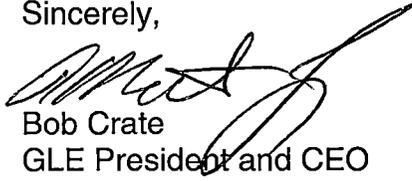
- By providing a bill 12 quarters in the arrears, an undue burden is placed on GLE. Both 2013 and 2014 calendar year books are closed. There is no slush fund to cover billing errors made by NRC. Additionally GLE is in the process of talking to future investors in order to continue the program. A billing error this many years in the past causes great concern to these future investors.
- It is absolutely crucial for a business to provide for accurate estimates for each calendar year. However a substantial portion of our Security Program regulation is non-transparent and unpredictable. Additionally the lack of detail provides no insight into future costs. The NRC understands the need for a well-developed and accurate cost estimate, based on the NRC response to GAO Report 15-98 which called for "*developing comprehensive, well-documented, accurate, and credible estimates*" in order for the NRC to produce reliable cost estimates. In order for GLE and the NRC to provide for well-developed comprehensive, well-documented estimates, we both need the information required by the Regulation for costs related to each activity.
- ❖ 10CFR170.12(b)(4) The NRC intends to bill each applicant or licensee for costs related to project manager time on a quarterly basis. Each bill will identify the costs related to project manager time.
 - Again the regulation states NRC intent to be timely, transparent by identifying the costs associated with Project Manager's time and presumably others under NRC's auspices and to aid in predictability of future years costs.

In summary GLE has determined that the rule change allowing NRC to bill after determining that there was a billing error was effective in August 29, 2014. Over half of the submitted bill is prior to that effective date. GLE is concerned over the billing error due to the lack of detail and unsubstantiated billing which would allow GLE and NRC to verify that the charges are accurate and correct and not double billed. GLE is also very concerned with the lack of timeliness, lack of transparency, and subsequent lack of predictability. GLE has previously voiced concern over the number of inspectors. Had the real cost of those inspections been known, GLE would have expressed these concerns and disputed the necessity of that many outside inspectors in 2013.

GLE did review the limited details that were provided. There are several anomalies with the information given. These anomalies are listed in Attachment 1. However, overall we have an underlining concern of charges for questions or inquiries to a Federal Classification Officer and charges for being on an update status call. These two types of charges inhibit good communication between the licensee and the USG which could lead to NRC/DOE not being informed of current events or issues that fall outside of normal reportability issues.

If there are any questions regarding this letter and its contents, please do not hesitate to contact me at 910-819-5400 or at bob.crate@ge.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Crate', written over the typed name and title.

Bob Crate
GLE President and CEO

Cc: O. Siurano-Perez (NMSS) NRC
S. Moore (NMSS) NRC
M. Blair (OCFO) NRC
M. Doane (OGC) NRC
J. Head (GEH)
J. Schlueter, NEI

Attachment 1
Anomalies from Reference 3

- DOE detail letter to NRC states that charge code J5709 is for *Classification of Information at GEH GLE Enrichment Facilities*, this appears to be the same charge as NRC's charge code L34346 which is for *Classification of Information at GLE facilities*. However the charges do not match.
 - DOE charge is \$7317.10
 - NRC charge is \$7561.10 (244)
- Due to a lack of detail, the Equipment charge occurring in 2013 cannot be verified as having been paid or not in the quarterly bills that NRC sent.
- In 2013 it appears as though GLE is paying \$62,000 for one contractor from DOE. GLE did not have 233 man-hours (assuming a NRC hourly rate) of work from any one DOE contractor in that year. This charge is far out of line with the anticipated or expected charge.
- 1Q2013 – GLE is being charged for “Preparing for Workshop for all NRC licensees for Cyber Security and giving training” – Is GLE being charged for all time associated with this workshop? GLE did not request the workshop. GLE did not attend the workshop to best of our recollection. But of course without the detail to say when and where the workshop was conducted it is unverifiable.
- 2Q2013 – There is a line item charging GLE for “Program Review and Material for DOE HQ Personnel”. Why is GLE being charged for a DOE activity and preparation time. Again without the detail, it is impossible to know whether this was pertinent to GLE at all. It is also not clear whether NRC requested DOE to do a program review of GLE activities.
- 3Q2013 - Charges are for \$32,000+ , yet the level of detail does not support approximately 119 man-hours of work (again assuming NRC billing hours). Is there more detail to justify this charge?
- 4Q2013 – There are several repetitive line items comparing 3Q2013 to 4Q2013 that do not appear to warrant work over two quarters, as well as other anomalies.
 - *Further clarification of the understanding of the responsibilities associated with having access to COMSEC material, and reestablishment of cost accounting based on the amount of COMSEC equipment held by individual licensees*
 - It appears that this line item was carried over for two quarters. The validity of the charge is impossible to determine; however, it does appear to warrant that this charge be spread over multiple licensees. GLE request verification that this charge is not being solely charged to GLE and further detail to validate that the work happened over two quarters.
 - *Performed one determination concerning when does a classified part become classified during the manufacturing process.*
 - Again this is a repeat from the previous quarter. Again it does not appear to warrant being carried over to another quarter. GLE request further detail in order to validate this charge.

- GLE is charged for *assisting NRC consultant with classifying and marking a document*. This is not justifiable charge. NRC and GLE have derivative classifiers that readily could have marked up a document at no additional charge to GLE.
- For several quarters there is a charge associated with Wireless Devices. It is mentioned in 4Q2013, 1Q2014, and 2Q2014. Based on the limited detail in the summary provided, it appears that GLE is being charge for research into the issue by DOE for NRC, preparation of guidance for all licensees with cyber networks, and resolution of comments associated with that guidance. This was an industry (Cleared licensees) issue. On Dec. 2, 2013 letters went out to at least four licensees on this subject from Brian Smith. GLE request further detail to ensure that GLE is not being charged for an industry wide issue but rather only for charges directly associated with GLE program.
- 1Q2014 – It appears that GLE is being charged for several DOE administrative duties. Please verify that these duties are directly relatable to GLE and inform us as to the association:
 - *Received destruction receipts for keying material and created a new destruction SF-153 to send to HQ. This included generating paperwork, inventory SF-153, scan and send to HQ, and update the database with changes.*
 - *Received, inventoried, signed, and processed new equipment. This included processing the information in the database and scanning this information to HQ.*
 - *Updated appointment memorandum appointing additional KIK 20 electronic key loader auditors to the account, created memorandum for Dale King's signature, scanned and emailed to him. Received back scanned memorandum and sent to HQ for approvals.*
 - *Generated electronic key order for equipment, placed the order, and emailed to HQ.*
 - *Received the keys, through the KIK 20 electronic key loader, signed, faxed information back to HQ, and updated all database information.*
 - *Scanned and resent all extended hand receipt memorandums to Dale King for signature.*
 - Wireless Device issue mentioned again.
- 2Q2014 – Wireless Device issue is mentioned again. Additionally about this time, GLE initiated monthly status calls on various documents. This call was to keep NRC/DOE informed on the status or progress of work and to ask NRC/DOE the status of reports back to GLE. This charge is of a concern in that the status calls were to foster accurate and complete communication with our regulator. Yet it appears that GLE is being charged for wanting to keep our regulator informed. Is it NRC's intent to charge all licensees with keeping NRC/DOE informed on the progress of work?
 - There are other additional charges that do not appear to relate to GLE
 - *Conducting Research of DOE/Industry procedures for classified Cyber Security Systems*
 - *Participation in Teleconferences between DOE/NRC*
 - *Prepared USEC Piketon Site Visit*

- *Prepared USEC Annual Tempest Threat Assessment* (this is done usually as part of the annual security inspection, however, MSF's was in Sept and Wilmington's was in Oct)
- 3Q2014 – A line item charge for keeping our regulator informed on work progress. There is also another charge that does not appear to directly relate to GLE.
 - *Participated in Derivative Classifier training of Region II personnel*
- 4Q2014 – A line item charge for keeping our regulator informed on the work progress. Additionally there appears to be a double charge between 3rd and 4th quarter for participating in the MSF annual inspection which was in September.
- 1Q2015 – We announced slowdown in July 2014 for MSF and in August 2014 for Wilmington. Therefore the charge for *Participation in Meetings to discuss Reduction of activities for GLE* appears to be outside the anticipated “discussion period”. Also if the government is discussing aspects about GLE (not with GLE or for GLE) then is it expected that GLE will pay for anytime they are discussing this program.
- 2Q2015 – Again there is a line item *Coordinated and participated in meetings, telecons, and discussions regarding GE-Hitachi efforts to reduce the Wilmington, NC facility operations*. How will GLE know when the government is discussing GLE to anticipate cost associated with that discussion?
- 4Q2015 – There appears to be charges not associated with GLE.
 - *Conduct annual inventory of all equipment for Oak Ridge facilities and provide to HQ*
 - *Attend required COMSEC/Tempest training at ORNL*
 - *Processed tempest letter and assessment for the account to HQ and updated files to reflect the requirement*