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Docket: NRC-2015-0223

Revision of Fee Schedules; Fee Recovery for FY 2016

Comment On: NRC-2015-0223-0001

Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016

Document: NRC-2015-0223-DRAFT-0002

Comment on FR Doc # 2016-06284

Submitter Information

Name: Wyoming Mining Association

General Comment

See attached file(s)

Attachments

160420 WMA Comments on NRC Fees 2016



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April 11, 2016

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

Subject: Wyoming Mining Association (WMA) Comments on the Proposed Rule - Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016– (Federal Register Volume 81, Number 56 - Wednesday, March 23, 2016 - Proposed Rules)

Gentlemen:

The Wyoming Mining Association (WMA) is an industry association representing mining companies, contractors, vendors, suppliers and consultants in the State of Wyoming. Among its mining industry members are uranium recovery licensees, including five (5) operating in-situ uranium recovery licensees, one conventional uranium recovery operator in standby, several companies planning new uranium recovery operations that are currently in the permitting process and several companies conducting final reclamation/restoration operations.

Total uranium concentrate production in the United States in 2014 was 4,900,000 pounds (U.S. Energy Information Administration - *2014 Domestic Uranium Production Report*). 2014 Wyoming uranium production was 3,300,000 pounds (Wyoming State Geological Survey), accounting for 65% of United States production. Wyoming contributes the largest share of any state to the total production of uranium in the United States. As such the issues raised in this Proposed Rule are of special concern to the WMA and its uranium recovery industry members.

The following are the Association's comments on the ***Proposed Rule Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016:***

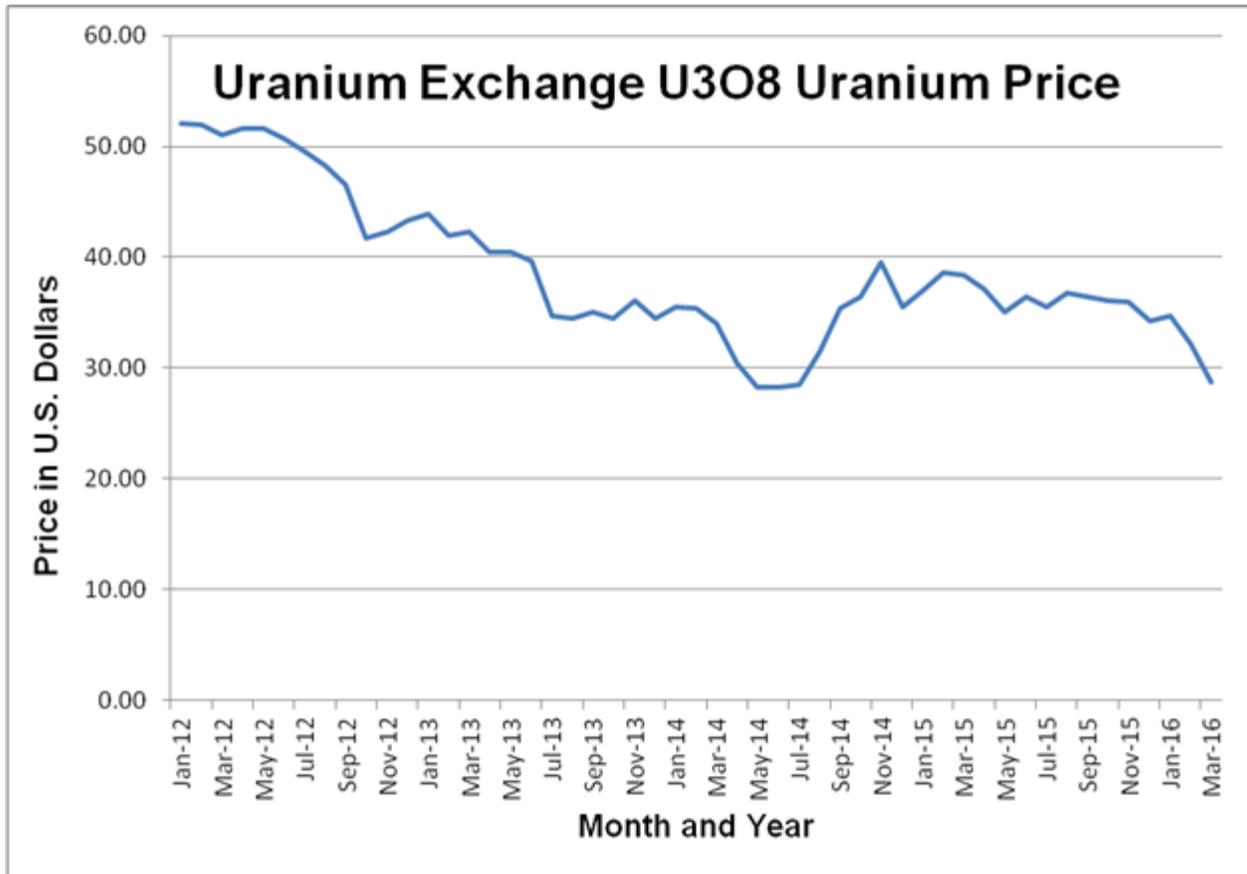
Changes in Uranium Recovery Fees (Proposed 2016 versus Fiscal Year 2015 Fees)

The table below shows the proposed changes in the fee structure:

License Type	Fiscal Year 2015 Annual Fee	Proposed Fiscal Year 2016 Annual Fee	Proposed Percentage Increase
Conventional and heap leach mills	\$36,100.	\$40,200.	11.4%
Basic <i>in situ</i> recovery facilities	\$45,800.	\$50,900.	11.1%
Expanded <i>in situ</i> recovery facilities	\$51,800.	\$57,600.	11.2%
<i>In situ</i> recovery resin facilities	N/A	N/A	N/A
11e.(2) disposal incidental to existing tailings sites	\$20,500.	\$22,800.	11.2%
Uranium water treatment	\$6,000.	\$6,700.	11.7%

Comments on the Proposed Fee Increases and Regulatory Streamlining Issues

The increases for each category of uranium recovery license over the 2015 annual fees exceed 10 percent. This increase far exceeds the current rate of inflation and increases in costs from vendors, suppliers and contractors with which the uranium recovery industry does business. It far exceeds annual salary increases for uranium recovery workers as well. Uranium prices have been in decline for the past four (4) years as shown in the chart below:



The uranium recovery industry fails to see increases of this magnitude can be justified. In the preamble to the proposed rule, NRC states:

In comparison to FY 2015, the FY 2016 budgetary resources for uranium recovery licensees increased due to additional work expected for the Uranerz Energy-Jane Doe and Strata Energy-Kenderick expansions, increased inspection activities for Strata Energy-Ross (a new licensee to fleet), increased hearing activities, and the Uranium Mill Tailings Radiation Control Act (UMTRCA) bio-sequestration review for DOE-Monument Valley.

The WMA questions why work on specific projects should increase fees for all licensees. Costs related to specific projects should be recovered through hourly charges. Uranium recovery licensees are invoiced for every hour spent by staff on their projects. The resulting invoices are very large. For example, costs related to the Kendrick review were \$77,000 through January 2016, which is significant since the application was not accepted as complete until January 2016. Invoices for the Ross Project totaled approximately \$130,000 for the third and fourth quarters of 2015. Based upon these invoices, it appears to the WMA that uranium recovery licensees are adequately supporting the program through the payment of the hourly charges.

The NRC is proposing, for the first time, to recover costs when it responds to third party demands for information in litigation where the United States is not a party. The OBRA-90 statute first requires the NRC to use its IOAA authority to collect user fees for NRC work that provides specific benefits to identifiable applicants and licensees (such as licensing work, inspections, special projects). WMA's concern is how will the NRC ensure that these proposed costs are directly billed to the third party and will not be passed onto licensees either by increasing the

annual fees or increasing the hourly rate as this would not be work that provides specific benefits to identifiable applicants and licensees?

The WMA is concerned that other actions taken by NRC over time to streamline the regulatory process and by extension reduce fees and hourly costs have not been effective. These actions include:

- Preparation of NUREG-1910 - *Generic Environmental Impact Statement for In-Situ Leach Uranium Milling Facilities* dated May 2009
- Performance Based Licensing for Uranium Recovery Licensees

It was believed that when implemented these two (2) actions would result in lower costs to licensees and a general streamlining of the regulatory process. Specifically NUREG-1910 was prepared in the belief that it would result in a faster and less costly license application process. Instead licensing a uranium recovery facility now takes longer and costs more in NRC fees than ever before. Performance based licensing was initiated in the belief that it would reduce the number of amendment requests and NRC review costs. In recent years NRC staff has restricted the use of Safety and Environmental Review Panels (SERPs) to perform routine reviews such as those associated with development of new wellfields, resulting in more amendment requests that result in additional costs.

Uranium recovery is the lowest risk sector of the nuclear fuel cycle and should require the least oversight. Increasingly it is clear that the uranium recovery industry is enduring more (and more costly) oversight.

WMA recognizes as well that industry plays a role in controlling the costs associated with licensing reviews through providing robust licensing documents and responding to agency requests in a timely manner. However, these efforts have been hamstrung by changing requirements made unilaterally by NRC staff without the benefit of industry or public input. NRC staff should work under existing Commission-approved guidance until staff prepares new guidance and solicits stakeholder comments. Regarding standardization WMA believes that some savings could be realized by standardized designs. However, the majority of the increased costs for licensing actions are not related to technical design reviews by NRC staff. The increases are clearly due to reinterpreted safety standards and huge increases in the costs of environmental and cultural resource reviews. An example of this sort of problem is the LC 12.10 Technical Evaluation Report (ADAMS Accession Number: ML14289A148) received by a Wyoming uranium recovery licensee. The National Mining Association (NMA) responded to this document with a letter to Mr. Larry W. Camper (now retired), Director, Division of Decommissioning, Uranium Recovery and Waste Programs dated January 23, 2015. The Wyoming Mining Association (WMA) sent a similar letter dated on or about February 9, 2015. The guidance discussed in these letters pertained to radon and its progeny at uranium recovery facilities and calculation of dose from them. The National Mining Association (NMA) received a response to its letter in June 2015, promising additional discussion and an additional workshop to try to resolve outstanding issues. To date, no meeting or workshop has been scheduled by the Nuclear Regulatory Commission (NRC). The longer it takes to resolve issues of this kind, the more its costs, since more staff time becomes involved. In addition, because completed guidance is lacking, staff is forced to spend additional time reviewing solutions developed and proposed by licensees without benefit of accepted guidance. Ultimately these issues involve consideration of risk. Section 84 of the Atomic Energy Act of 1954 as amended discusses 11(e).2 byproduct and by extension uranium recovery stating:

- a. *The Commission shall insure that the management of any byproduct material, as defined in section 11e.(2), is carried out in such manner as—*
 - (1) *the Commission deems appropriate to protect the public health and safety and the environment from radiological and nonradiological hazards associated with the processing and with the possession and transfer of such material taking into account the risk to the public health, safety, and the environment, with due consideration of the economic costs and such other factors as the Commission determines to be appropriate,*

A consideration of the low risks associated with uranium recovery would ultimately lead to lower regulatory costs.

Comments on the Hourly Rate

The Commission also proposed a decrease in the hourly rate from \$268.00 per hour to \$266.00 per hour, or a 0.75% decrease over 2015 rates. While any decrease is welcome, the hourly rate remains very high especially in comparison to the hourly rates of consultants working for the uranium recovery industry.

Although WMA appreciates the proposed reduction in the hourly fee rate along with the NRC overall budget reduction from FY2105, the current fee structure and lack of accountability is already burdensome to the licensee. The NRC continues to extend the uranium recovery licensing process even though the NRC states that mission-direct full time employee hours have increased. The drawn out process results in huge regulatory costs to licensees as demonstrated by the WMA member Cameco Resources Crow Butte relicensing process. On January 8, 2009, the ASLB entered an order which it noted that the NRC Staff estimated a December 2009 date for the completion of its final environmental review document and directed the Staff to file brief monthly reports advising the Board whether the estimated date for completion of that document and the Safety Evaluation report had changed or become more definite. In compliance with that directive, the NRC Staff submitted monthly status reports beginning January 2009 that continued until, seventy months later, the Staff released the final environmental review document, and Environmental Assessment (EA), in October 2014.

In addition, WMA's concern with the hourly rate is that the large number of hours expended by NRC staff on licensing reviews for the lowest risk sector in the nuclear power cycle results in huge regulatory costs that have become an existential threat to some operators.

Comments on Invoicing

WMA continues to be concerned about the agency's invoicing process. In her January 7, 2013 letter, Katie Sweeney of the National Mining Association (NMA) stated:

NRC invoices have been wholly lacking in standard detail that every consultant, law or accounting firm in the private sector must provide and NRC's hourly rates exceed those of many of these organizations in the Western part of the country. Accordingly, NRC's invoices do not offer industry any opportunity to gauge the reasonableness of fees incurred for different phases of the licensing process which, in turn, makes a lessons learned approach for future licensing actions virtually impossible to implement.

This continues to be a problem. In addition, there is no predictability for budgeting purposes regarding the magnitude of these invoices in regards to the review of a given submittal. The uranium recovery industry needs, for budgeting purposes, to be able to estimate the total value of future review invoices for a given submittal. Members of the uranium recovery industry have no idea of the magnitude of the quarterly review invoices until they arrive and must be paid. This creates a difficult situation in the form of large unanticipated expenses for uranium recovery operators. If the agency as part of its completeness review were to provide an approximate and non-binding estimate of cost to complete the review of a given submittal it would be very helpful to uranium recovery operators.

Request for Information - Fees Development and Communications ((Federal Register / Volume 81, Number 55 / Tuesday, March 22, 2016 / Notices – pages 15352 to 15353)

WMA has been reviewing this request for information with interest and believes that it is a positive step by the Nuclear Regulatory Commission (NRC) toward resolving issues regarding fees. The request states:

The focus of this information-gathering effort is to obtain information for the NRC to consider in evaluating the changes (if any) that the NRC can make to improve the transparency and the timeliness of its fees development and invoicing processes.

The Association supports this effort as a step toward improving the fee development and invoicing process.

The Wyoming Mining Association appreciates the opportunity to comment on this proposed rule. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jonathan Downing', with a stylized flourish at the end.

Jonathan Downing
Executive Director

Cc: Katie Sweeney – National Mining Association (NMA)