PR 10 CFR Parts 9, 170 and 171
81 FR 15457

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As of: 4/22/16 10:58 AM
Received: April 22, 2016
Status: Pending_Post
Tracking No. 1k0-8p7p-k31y
Comments Due: April 22, 2016
Submission Type: API

PUBLIC SUBMISSION

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-0003
Comment on FR Doc # 2016-06284

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General Comment

See attached file(s)

Attachments

04-22-16_NRC_Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016

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April 22, 2016

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

Subject: Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016; Proposed Rule (81 *Fed. Reg*. 15457); Docket ID NRC-2015-0223

Dear Ms. Vietti-Cook:

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

We appreciate the opportunity provided in the April 13 public meetings to discuss the key features of the proposed Fiscal Year (FY) 2016 fee rule and the broader request for information on general fee policy issues. We encourage NRC to continue to conduct these meetings and additional stakeholder outreach on fees and budgetary issues in the future, and would like to thank the Chief Financial Officer for her proactive outreach to stakeholders regarding fees and the budget process.

The industry remains concerned about the NRC's ability to prioritize and complete regulatory matters, and efficiently manage its internal processes, particularly in light of the changing workload. Although we welcome the agency's Project Aim efforts, progress is not being made quickly enough, and the limited reductions in the budget evidence continued inefficiencies in the agency management and operations. The industry also continues to hold the view that agency fees are not transparent, simple, or predictable.

[1] NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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

1. Agency programs and activities need to reflect the changing workload, which has a direct impact on the amount of fees imposed on the regulated community.
2. The portion of the budget allocated to non-Mission Direct activities—a key factor in both the hourly rate and annual fee calculation—remains disproportionately large.
3. The funding for International Activities lacks transparency and does not describe the benefit provided to the regulated community that pays for cooperation activities.

The NRC Should More Quickly Adjust to the Changing Workload

We commend the NRC's efforts through Project Aim to improve efficiency, right-size the agency to retain skill sets needed to accomplish its mission, and to be more responsive to anticipated changes in workload over the next five years and beyond. The Commission's direction in SRM-SECY-16-0009, approving the staff's recommendations on items to shed, de-prioritize, and perform with fewer resources, is a good start that aligns well with the concurrent effort to address the cumulative effects of rulemakings and other regulatory actions. In particular, we agree with the Commission's direction that "the re-baselining effort and the other Project Aim tasks must be viewed by the NRC staff and stakeholders as the beginning and not the end."[2] NRC must continually evaluate regulatory activities to verify that they have a safety or security benefit commensurate with the resources that NRC and industry spend on them. Resources devoted to low-risk compliance issues should not dilute the focus on more important NRC and plant initiatives directly related to safety and reliability improvements.

While progress has been made, NRC programs and activities continue to lag behind the reality of a changing workload, which has a direct impact on the amount of fees imposed on the regulatory community. The overall amount to be recovered through fees appears to be unjustified, given the numbers of operating reactors and materials licensees has declined in recent years. Because the NRC's budget has not correspondingly declined, the remaining licensees are responsible for paying higher annual fees under Part 171 to fund the NRC's corporate support and generic rulemaking activities. With several recent premature power reactor shutdowns—and several additional reactors planning or considering decommissioning in the coming years—the current fee structure guarantees that remaining licensees will be left with an even higher annual fee burden.

The proposed fee rule contains an 11 percent annual fee increase for uranium recovery facilities due to a reduction in the number of licensees. A reduction in the number of a small set of licensees unfairly increases the fee burden on the remaining licensees. The loss of fees obtained through hourly and annual fees from terminated licenses or discontinued reviews cannot continue to be spread among a small licensee set. For example, basic In Situ recovery facilities have seen annual fees increase 71 percent since FY 2012. NRC

[2] April 13, 2016, Commission Voting Record on SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-Baselining of Agency Activities"

must adjust to the reduced workload. This concern will become acutely relevant when NRC will lose nearly all of the uranium recovery licensees when the Wyoming Agreement State program goes into effect.

The FY 2016 proposed fee rule provides some relief for fuel cycle facilities after years of double digit yearly fee increases. However, since the publication of the proposed rule, one facility has ceased activities and is in the process of license termination. It is our expectation that the termination of this license will decrease the licensing and oversight resources needed and the overall budget in the fuel facilities business line, and therefore, this closure should not result in an increased fee burden to the remaining licensees. Furthermore, NRC should reevaluate whether resources can be further reduced because while three fuel facility licenses were approved and issued in recent years, at these facilities' construction has not begun.

Non-Mission Direct Activities are Excessive

We are concerned that an excessive portion of the budget is funding non-mission direct activities. The proposed fee rule Table II, "Hourly Rate Calculation," identifies $362.9 million to mission direct program activities, which represents 41 percent of the total adjusted amount to be recovered through fees ($883.9 million). The portion of the budget allocated to corporate support—a key factor in both the hourly rate and annual fee calculations— appears to be disproportionately large with respect to the resources allocated for mission direct and mission indirect activities. Table II identifies $324.6 million for corporate support and the Inspector General, which represents 36.7 percent of the total adjusted amount to be recovered through fees.

Based on recommendations from EY, the FY 2016 proposed fee rule reclassifies office support activities as either corporate support or mission indirect support. This reclassification resulted in a decrease of 23.2 percent compared to FY 2015 funding for corporate support. However, mission indirect program support increased by 104.8 percent compared with FY 2015. While there are modest reductions between the FY 2016 and FY 2015 agency support and mission indirect activities (approximately 5 percent), the reclassification gives the appearance of a greater reduction in corporate support activities than actually took place. With these new allocations, the fact remains that the mission indirect and corporate support activities still account for an excessive (52 percent) amount of the fees compared with mission direct activities.

The NRC's overhead costs remain excessive compared to its peer agencies. Ernst and Young provided the NRC with an overhead assessment report that found that the NRC's peer agencies only spend between 20 and 32 percent of their total budgets on mission support. The additional re-baselining efforts identified in SECY-16-0035 may help in reducing the overhead costs, but these savings have not been quantified and are longer-term initiatives with implementation timelines in FY 2018 and later.

Transparency of International Activities

The breakdown of fee recoverable and fee relief international activities are not transparent and the benefit provided to the regulated community is not clear. The proposed fee rule Table III, "Fee-Relief Activities", identified $12.6 million for international assistance activities. There are no other listed budgeted costs related to international activities in the proposed rule. Further analysis of the work papers and NRC's FY 2016 Congressional Budget Justification lists the funding for international activities as $23.2 million. In the FY 2016 proposed fee rule, $12.6 million is fee relief, which leaves approximately $10.6 million that is rolled into the fee base through annual fees.

To be clear, NRC assistance and cooperation activities are beneficial to the safety and security of the world and United States and we are not advocating for them to be reduced. Fundamentally, this is a fairness and equity issue. Most, if not all international activities advance U.S. foreign policy objectives and obligations. It is not clear as to what direct benefit the regulated community is receiving for payment of these activities. The split between assistance and cooperation is difficult to justify and NRC has not provided any information on the benefit that is being provided by fee recoverable international cooperation.

General Comments:

Efficiency of Mission-Direct Hours per FTE

The industry continues to encourage the NRC management to more thoroughly analyze and understand the data derived from its time and labor system used to determine mission-direct hours per FTE. As explained in the proposed fee rule, the hourly rate used 1,440 hours per direct FTE to calculate the hourly fee rate, which is higher than the FY 2015 rate of 1420 hours per direct FTE, and represents increased efficiency. While encouraging, there is no basis given for the reason why productivity increased. The industry encourages the NRC to establish a performance metric for mission-direct FTE in order to achieve a higher level of efficiency and reduce overhead.

Travel Funding

While we encourage NRC to look for opportunities to reduce budget costs and be efficient with resources, these reductions should not impact the NRC in conducting their core mission of ensuring safety and security. Specifically, there are concerns that NRC is cutting their travel funds for audits of topical and technical reports. NRC's travel limitations due to budgetary restrictions is hampering the efficient review of topical and technical reports which subsequently provide safety improvements to utilities. We encourage the program offices to review this issue.

Fuel Facility Budget Drivers

The overview of the fuel facilities business line during the April 14, 2016 proposed fee rule public meeting identified the revision to the fuel cycle oversight process (RFCOP) as a FY 2016 budget driver. In SRM-SECY-16-0005, the Commission directed staff to discontinue additional efforts towards the RFCOP. We expect to see a decrease in the budget due to the elimination of this activity.

Project Manager Overhead

The FY 2015 final fee rule revised the methodology of charging overhead time for project managers and resident inspectors under 10 CFR Part 170. This change intended to allocate overhead costs to each licensee based on direct time to each docket to ensure that a licensee's overhead costs are proportional to the regulatory services rendered by the NRC. While we approved of this change to reflect the actual costs of NRC regulatory services, in some cases licensees are being double or triple charged for project manager time. For example, some licensees have received invoices for project manager time being charged through the 6% Project Manager/Resident Inspector allocation, project management TACs, and directly with a technical TAC. We advise consistency with regards to project manager Part 170 invoicing and awareness training for project managers of the 6% allocation to avoid multiple billings for the same work.

Conclusion

The industry appreciates the opportunity to comment on the proposed fee rule for FY 2016 and encourages the NRC to carefully consider these comments. The industry and the public rely on the NRC to be an effective and credible nuclear safety and security regulator. NEI stands ready to work with the NRC in furthering ongoing efforts under Project AIM to enhance the agency's ability to plan and execute its mission while adapting in a timely and effective manner to a dynamic environment.

If you have any questions, please contact me, or Nima Ashkeboussi (202.739.8022, nxa@nei.org).

Sincerely,

Anthony R. Pietrangelo

Anthony R. Pietrangelo