SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 19, 2016

COMMISSION VOTING RECORD

DECISION ITEM: SECY-16-0097

TITLE: FEE SETTING IMPROVEMENTS AND FISCAL YEAR 2017 PROPOSED FEE RULE

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of October 19, 2016.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:
1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Burns
Commissioner Svinicki
Commissioner Baran
OGC
EDO
PDR

VOTING SUMMARY – SECY-16-0097

RECORDED VOTES

	APPROVED	DISAPPROVED	ABSTAIN	NOT PARTICIPATING	COMMENTS	DATE
Chrm. Burns	X	X			X	10/17/16
Cmr. Svinicki	X	X			X	10/13/16
Cmr. Baran	X	X			X	9/2016

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Chairman Burns

SUBJECT: SECY-16-0097: FEE SETTING IMPROVEMENTS AND FISCAL YEAR 2017 PROPOSED FEE RULE

Approved_X__ Disapproved_X__ Abstain___ Not Participating___

COMMENTS: Below___ Attached_X__ None___

Entered in STARS
Yes__X____

No_____

SIGNATURE

17 October 2016
DATE

Chairman Burns Comments on SECY-16-0097
"Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule"

I appreciate the staff's efforts to evaluate potential changes to improve transparency and simplify how the NRC calculates and accounts for fees. The staff identified four policy areas where it requested Commission approval to analyze potential long-term improvements. Based on a review of the paper and on stakeholder input, I am not convinced that pursuing these proposed improvements would ultimately result in meaningful improvements to the license fee process or make our fee process more transparent and equitable. Therefore, except as noted below, I disapprove any further efforts pursuing these areas of improvement.

Notwithstanding my disapproval, I do want to compliment the staff for taking the initiative to take a hard look at our fee setting processes. In particular, I encourage the staff to continue its work in the 14 administrative areas identified in SECY-16-0097. I would also concur with Commissioner Baran that staff should look at accelerating efforts to transition to an electronic billing system. I was frankly surprised that the agency still relies on hardcopy bills and postal mail, so the benefits of an electronic billing system seem apparent.

I do support the staff's further exploration of the proposed policy improvement to charge a flat fee for each license amendment review or other similar routine activity for materials program licensees. This change will provide a degree of predictability in fees. However, I only approve further exploration of this policy change in a piloting form for uranium recovery licensees at this time. At the Commission meeting on this subject, the representative from the National Mining Association indicated her belief that there are activities that are well suited to flat fees. Therefore, staff's analysis should initially be focused in this area. To accelerate the timeframe this change could be implemented, the staff should also assess whether existing data can be used to establish the baseline and evaluate two years of future data rather than collect and analyze three years of future data.

Stephen G. Burns
17 October 2016

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER SVINICKI

SUBJECT: SECY-16-0097: FEE SETTING IMPROVEMENTS AND FISCAL YEAR 2017 PROPOSED FEE RULE

Approved In-Part Disapproved In-Part Abstain___Not Participating___

COMMENTS: Below___ Attached XX None___

Entered in "STARS"
Yes ✓ No ___

SIGNATURE

10/13/2016
DATE

Commissioner Svinicki's Comments on SECY-16-0097
Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule

At the outset, I sincerely commend the staff for having brought an expansive mindset to the consideration of the Commission's direction to look at the transparency, simplicity, and timeliness of the NRC's fee setting and billing processes. It is clear that the staff was open and innovative in its thinking and that broad external input was received and considered. The Commission's public meeting on this topic was also informative. After careful consideration of the specific policy proposals advanced by the staff, however, I do not find promise in pursuit of the policy proposals and disapprove any further effort to refine or implement these proposals, with the exception of one narrow pilot initiative, mentioned below.

I note, however, that I do find strong and immediate potential for further progress towards the objectives of transparency, simplicity, and timeliness in the activities described both in Enclosure 1 to the paper, entitled, "Administrative Changes in the Fiscal Year 2017" and in the section of the Fee Transformation List starting on page 5, headed "Process Changes Recommended for Future Consideration – FY 2018 and Beyond." In fact, these changes are so meritorious that I do not support delaying their consideration for over a year. The same NRC steering committee that was formed by the Office of the Chief Financial Officer (OCFO) to develop the policy proposals should instead turn its attention to these other areas of administrative change and internal process improvement. In addition, the staff should examine more exhaustively any opportunities to accelerate adoption of electronic billing processes, to include opportunities to enhance the level of detail contained in the invoices provided. Any future consideration of substantive policy changes to our process would rest on a stronger foundation if a number of the administrative changes were implemented first.

Also, I considered carefully the proposal related to billing for vendor inspections. Although this proposal had some initial, intuitive appeal, when I solicited for reaction among representatives of the Vogtle Units 3 & 4 and Summer Units 2 & 3 construction teams, I received strong cautions against introducing any change to this billing policy in light of the likely negative, disruptive effect on the supply chain for each project. Since these projects are among the largest construction undertakings in the United States, and certainly the largest under NRC's regulatory purview, I cannot support introducing any supply chain instability in the absence of compelling regulatory need, which does not exist here.

The limited pilot proposal that I approve is that advanced by Chairman Burns, namely, a pilot initiative to explore whether a flat fee structure could be established for routine licensing matters in the area of uranium recovery. At the Commission's public meeting, the representative of the National Mining Association indicated that some association member companies may be interested in volunteering for this pilot. If a willing volunteer does not come forward, however, this pilot should not be pursued because NRC effort is best invested where some dissatisfaction with our fee processes is evident, is clearly expressed, and can be addressed with particularity.

Kristine L. Svinicki 13 October 2016

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: Commissioner Baran

SUBJECT: SECY-16-0097: FEE SETTING IMPROVEMENTS AND FISCAL YEAR 2017 PROPOSED FEE RULE

Approved X Disapproved X Abstain___ Not Participating___

COMMENTS: Below___ Attached X None___

Entered in "STARS"
Yes X
No____

SIGNATURE

9/20/16

DATE

Commissioner Baran's Comments on SECY-16-0097,
"Fee Setting Improvements and Fiscal Year 2017 Proposed Fee Rule"

In order to enhance the transparency, timeliness, and fairness of NRC's fees, the Chief Financial Officer is recommending that the agency further analyze four potential fee process policy changes in the near term. This recommendation is based on the work of a staff steering committee, which considered public comments submitted by interested stakeholders. The steering committee also identified seven additional fee policy changes and 18 fee process changes for possible future consideration. I appreciate the staff's efforts and the valuable stakeholder feedback we have received.

The first potential change recommended for further analysis is to base annual fees on the size of the licensed facility instead of charging all licensees in a fee class the same fee. For example, this could mean charging annual fees for operating power reactors based on their megawatt thermal generation rather than a flat annual fee for each unit. I disapprove pursuing this change. Licensees are not questioning the equitability of the current approach, and it is not clear that the size of a facility is an accurate indicator of the costs of regulating the facility.

The second idea recommended for study is charging operating reactors a new combined fee instead of separate annual and hourly fees. I disapprove pursuing this change because it would likely be more complicated than the current approach and require significant staff resources to develop without providing a clear benefit.

The third concept is to charge flat fees rather than hourly fees for some types of routine materials regulatory reviews. I approve the staff taking a closer look at this idea. Flat fees would be less precise than hourly fees so a given licensee might be charged a bit more or less than it would if it were charged hourly. On the other hand, this approach would provide upfront fee certainty, which licensees view as a significant benefit. Uranium recovery licensees have stated that some uranium recovery licensing actions may be particularly well-suited for this potential fee change. In examining the concept of flat fees, the staff should initially focus on the feasibility and mechanics of charging flat fees for appropriate uranium recovery licensing actions.

The fourth potential change recommended for additional analysis is to charge hourly fees for all contested hearing costs instead of spreading these costs among licensees through annual fees. I disapprove pursuing this change. I think it is unfair to require applicants and licensees to automatically pay the costs of other parties (in this case, the NRC staff) to a contested proceeding. While it is appropriate for an applicant or licensees to pay the costs of a staff regulatory review, it is very different to require them to pay the hourly costs of attorneys who may take opposing positions in litigation. I see contested hearings as a special case where an entity should not be directly charged for agency costs clearly associated with that particular entity.

A number of stakeholders have expressed the concern that the shutdown of nuclear power plants will leave fewer operating reactors to fund the agency's costs, resulting in higher annual fees every time a plant shuts down and stops paying operating reactor fees. As a practical matter, this has not occurred because the agency's budget has been shrinking. Even though there are fewer operating reactors, the annual fee per reactor has actually decreased in recent years. But the underlying dynamic is real. One way to address this issue is to rely less on annual fees and more on hourly fees. The staff's list of potential policy changes for future consideration includes charging hourly fees to vendors for vendor inspections and charging

hourly fees for white papers. In each case, the idea is that the clear beneficiary of a regulatory action is not currently being charged an hourly fee for that action. I propose that the staff actively explore these two potential improvements in the near term.

One process improvement identified for implementation in fiscal year 2020 is to re-design NRC's billing system to send electronic (rather than hardcopy) invoices by email (instead of postal mail). I recognize that this upgrade will require significant resources and work, but I encourage the staff to look for opportunities to accelerate this transition within the agency's resource constraints.

There are a number of fee process changes for future consideration that warrant careful attention to avoid unintended safety consequences. For example, having NRC inspectors provide up-front cost estimates before conducting a baseline inspection could enhance transparency and provide advanced notice of billing for inspection hours. But this step should not apply to resident inspectors or reactive inspections. And it will be important for NRC managers to ensure that NRC inspectors are focused on safety rather than on meeting an estimate of the hours required for an inspection that is made before the inspectors know what they are going to find when they begin their work. That imperative to focus on safety also applies to the potential changes of including the number of hours taken to perform an inspection in inspection reports and providing the names of individual NRC employees who performed billed work on invoices. The staff should thoroughly consider the implications of these potential changes before deciding whether to implement them.

Because the staff would need to further develop the details of the remaining policy and process changes identified for future consideration, I am not expressing a view on those potential changes at this time.