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NUCLEAR ENERGY INSTITUTE

March 1, 2017

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 2017; Docket ID NRC-2016-0081

Project Number: 689

Dear Ms. Vietti-Cook:

On behalf of the commercial nuclear energy industry, the Nuclear Energy Institute (NEI)[1] submits these comments on the above-referenced proposed rule to revise the hourly and annual fees charged to U.S. Nuclear Regulatory Commission (NRC) applicants and licensees. We appreciated the public meeting held on February 16 that provided an overview of the Fiscal Year (FY) 2017 proposed fee rule, future plans for fees transformation, and future billing enhancements. We encourage NRC to continue to conduct these meetings and additional stakeholder outreach on fees and budgetary issues in the future. We would like to thank the Chief Financial Officer for her leadership in overseeing Project Aim activities, adjusting the FY 2017 proposed fee rule from the budget request to account for re-baselining reductions, and proactive approach in seeking stakeholder input on the fee development and communications process.

The FY 2017 proposed fee rule represents a step in the right direction, particularly the timely publication of the fee revisions. However, we believe that there continue to be areas for improvement for NRC to prioritize and complete regulatory matters in an efficient, effective, timely, and transparent manner while continuing to assure public health and safety, particularly in light of the changing workload. The industry and the public

[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.

rely on the NRC to be an effective and credible nuclear safety and security regulator and NRC must become agile to meet the changing workload needs.

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

1. The NRC's plan to adjust the fee rule based on FY 2017 Congressional appropriations.
2. The agency's ability to adjust and effectively deploy resources to reflect the changing workload.
3. The portion of the budget allocated to non-Mission Direct activities remains disproportionately large.

FY 2017 Congressional Appropriations

The FY 2017 proposed fee rule is based on the FY 2017 Congressional Budget Justification (CBJ) with adjustments to reflect Project Aim re-baselining reductions. On Page 8697 of the Federal Register Notice, NRC states that the final fee rule will be based on actual appropriations or the FY 2016 final fee schedule if NRC receives a year-long continuing resolution. As of the date of this letter, Congress has not passed NRC's FY 2017 appropriations, however draft appropriations in 2016 from the House and Senate indicated that FY 2017 appropriations would be below NRC's CBJ. While Congressional action and schedule is outside of NRC's control, NRC should communicate any significant changes to this proposed fee rule prior to publication of the final fee rule if there are significant increases based on the FY 2017 appropriations or a continuing resolution. The proposed FY 2017 fee rule, based on right sizing agency activities and additional re-baselining reductions, represents a move in the right direction by lowering excessive annual fees, some significantly, for a majority of licensees. Adopting a fee structure based on FY 2016 spending levels would be a move backwards and would ignore the progress the agency has made to appropriately prioritize its work and staff size. Therefore, if NRC receives a continuing resolution for the remainder of the year, the FY 2017 proposed rule should be considered a ceiling for NRC spending.

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. Direct evidence of this effort yielding results is the re-baselining reductions from SRM-SECY-16-0009, "Recommendations Resulting from the Integrated Prioritization and Re-baselining of Agency Activities", which has led to real reductions from the 2017 CBJ. Beyond Project Aim, going forward NRC must continually evaluate regulatory activities and become more self-critical to verify that they have a safety or security benefit commensurate with the resources that NRC and industry spend on them. The industry cannot support funding regulatory requirements of low safety significance in lieu of more important plant initiatives directly related to safety and reliability.

While progress has been made, NRC programs and activities continue to lag behind the reality of a changing workload. Furthermore, the inability to have parity between staffing levels and the existing workload has a direct impact on the fees imposed on the regulatory community. With several recent premature power reactor shutdowns—and several reactors announcing early shutdown in the coming years—NRC's strategic

workforce planning must be flexible to avoid a fee structure that leads to a greater fee burden for the remaining licensees. There is ample planning time to account for these known closures.
The proposed fee rule contains a 9% annual fee increase for uranium recovery facilities due to, in part, an increase in the budgeted resources to "support contested hearing activities." The NRC should consider modifying the existing policy for treatment of contested hearings, particularly for fee categories comprised of a small number of licensees where imposition of these additional costs are punitive and disadvantage licensees' ability to compete in global markets. The industry supports treating costs associated with contested hearings, for all licensee classes, as non-fee activities. If the current 10 percent fee-relief offset is insufficient to cover hearing activities, the NRC should seek appropriations to cover these activities, i.e. similar to the $5 million for advanced reactor work. The NRC should not bill licensees, through hourly or annual fees, for activities that provide no direct benefit and are out of their control. While converting some of these activities to non-fee items may require appropriations or authorizing legislation, it is important for the NRC to address problems that members of Congress and industry have identified with the current system. Furthermore, it is not clear how NRC will address the change in workload for this licensee class when NRC will lose nearly all of the uranium recovery licensees with the entry of Wyoming as an Agreement State. Per the Fee Work Papers, there are approximately 29 FTE for 9 uranium recovery licensees. Basic In-Situ recovery facilities have seen annual fees increase 80% since FY 2012 and this small licensee class cannot continue to absorb additional losses to the fee base without corresponding NRC resource reductions.

The FY 2017 proposed fee rule continues to provide fee relief for fuel cycle facilities. However, Page 8701 states that the fuel facilities fee class will be adjusted in the final rule with the expected departure of a current licensee. The loss of this licensee has been known for over one year and represents approximately 5% of the total annual fees collected from fuel facilities. It is our expectation that NRC has appropriately planned for this license termination and will decrease the licensing and oversight resources needed and the overall budget in the fuel facilities business line, rather than force operating facilities to absorb these annual fees. Therefore, this closure should not result in an increased fee burden to the remaining licensees.

Non-Mission Direct Activities are Excessive

We continue to be concerned that an excessive portion of the budget is funding corporate support and non-mission direct activities. NRC has cumulatively reduced budgeted amounts for mission direct and mission indirect expenditures by 6.5%. That represents a move in the right direction from re-baselining agency activities. However, the budget for agency support increased by 3%. The proposed fee rule Table II, "Hourly Rate Calculation," identifies $340.5 million for mission direct program activities and $136.7 million for mission indirect program support, which represents 60% of the total adjusted amount to be recovered through fees ($801.4 million). Yet, the portion of the budget allocated to corporate support is $324.2 million and represents 40% of budgeted resources. Agency support, which is 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. These overhead costs not only remain excessive compared to its peer agencies, but have also increased from FY 2016. In order to maintain credibility, NRC must focus their resources on mission critical activities that have a direct correlation with maintaining public health and safety and must reduce overhead costs.

Additional Comments:

Transparency

While the NRC provided a clear explanation of the difference between international cooperation and assistance activities and how fees are accounted for each, there continues to be a lack of transparency with the benefit provided to the regulated community. The proposed fee rule Table III, “Fee-Relief Activities”, clearly identifies $13.9 million for international assistance activities. However, to ascertain the international cooperation budgeted activities requires going through each product line to add the budgeted costs. Clear transparency of the cooperation activities budget and a better description of the specific activities and how they benefit the regulated community is needed. This request does not question the overall value of the benefits of assistance and cooperation activities to the safety and security of the world and United States. The split between assistance and cooperation is difficult to ascertain without laborious work.

The NRC estimates that it will collect approximately $324 million through Part 170 fees. While detailed calculations of the annual fee are provided, there is a lack of detail related to the basis behind Part 170 fees. In the interest of transparency, NRC should provide the data or assumptions used to make these estimates. For example, historical information could be provided for average inspection hours for a licensee class, estimated number of staff hours for license reviews, and hours spent on pre-application activities for small modular and advanced reactors. This information would provide stakeholders with the ability to analyze the efficiency and effectiveness of NRC’s review.

Earlier Publication of the Proposed and Final Fee Rule

Industry appreciates the move in the right direction to publish the proposed FY 2017 fee rule earlier in the year. However, greater transparency and predictability in fee policy could be realized if the NRC published the proposed rule in the first quarter of the fiscal year and the final fee rule in the second quarter or early in the third quarter of the fiscal year. Accelerating the rulemaking schedule would not appear to be problematic for the NRC because the CBJ is publicly-released coinciding with transmittal of the President’s Budget Request to Congress (i.e., in February before the fiscal year begins), and the CBJ currently provides a fee recovery estimate. Early publication would allow licensees to plan, adjust budgets and manage cash flow.

Uranium Recovery Congressional Hearing

Page 8702 of the Federal Register Notice states that uranium recovery licensee fees increased, in part, due to the “increased workload for congressional hearings and inquiries”. It is inappropriate to seek compensation from any licensee for this activity. The level of NRC resources to support this activity is not transparent. We expect to see the recovery amount for this business line to go down as a result of the removal of this activity.

Project Manager Overhead

The administrative change from the FY 2015 final fee rule to revise the assessment of administrative time for project managers by adding a 6% Project Manager/Resident Inspector allocation continues to be an excessive burden on licensees that double, and in some instances triple charge, for project manager work. 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 understand that this is a temporary charge, it continues to be a hidden extra fee for the licensee for non-direct work activities when these activities are already being fully billed as cost recovery items that project managers charge for work on a specific task. For example, some licensees have received invoices for project manager time on the same activity being triple charged under 1). project management general work CACs; 2). technical CAC; and 3). the 6% Project Manager/Resident Inspector allocation. The 6% allocation on all NRC staff hours effectively increases the proposed hourly rate from $267 to $283. 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 2017 and encourages the NRC to carefully consider these comments. We also continue to encourage the NRC to seek off-fee base funding to accelerate support of advanced reactors. The industry looks forward to working with the NRC staff and stakeholders to achieve these improvements.

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

Sincerely,

Joseph E. Pollock

From:	POLLOCK, Joseph
To:	Vietti-Cook, Annette
Subject:	[External_Sender] Revision of Fee Schedules; Fee Recovery for Fiscal Year 2017; Docket ID NRC-2016-0081
Date:	Wednesday, March 01, 2017 2:55:30 PM
Attachments:	03-01-17_NRC_Revision of Fee Schedules; Fee Recovery for FY17.pdf

THE ATTACHMENT CONTAINS THE COMPLETE CONTENTS OF THE LETTER

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[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.