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January 17, 2018

Mr. Craig Erlanger, Director
Division of Fuel Cycle Safety, Safeguards, and Environmental Review
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Comments on Fuel Cycle Facility Fee Matrix

Dear Mr. Erlanger:

On behalf of the Nuclear Energy Institute's (NEI)¹ fuel cycle facility members (hereinafter referred to as industry), we are writing in response to the NRC's effort to re-evaluate the fuel cycle facility fee matrix.

We appreciate the public meeting held on December 13, 2017 to discuss NRC's methodology and potential alternative approaches to the fee matrix and to solicit industry input. We also support NRC's decision that, given ongoing discussions and related NRC efforts, no sudden changes to the fee matrix will occur in the FY18 fee rule. We understand that the December meeting is part of a larger effort to analyze other "transformational changes" within the Office of Nuclear Material Safety and Safeguards' (NMSS) budget and organizational structure, which will be submitted to the Commission for consideration in 2018. We applaud NMSS for seeking additional efficiencies in a time of significant economic stress to the industry.

Although the public meeting was focused specifically on potential alternatives to the fee matrix, we nevertheless need to reference and reinforce the points from NEI's September 15, 2017 letter to the Office of the Chief Financial Officer (CFO) entitled "NRC Budget Adjustments to Reflect a Decreasing Workload." In today's current economic environment, the points of that letter address industry's most pressing and fundamental concerns regarding NRC's budget, a top priority for the industry at large. For example, as recently as November 2017, one fuel cycle licensee announced the idling of its plant, and reduction in force of over 200 employees. Similar difficult decisions have been made in the area of uranium recovery, compounded in part by existing announcements of premature commercial nuclear power plant closures. Such recent examples, which span several different NRC business lines, highlight the vital importance for NRC's ability to make timely budget adjustments. Furthermore, continued licensee operations could be negatively impacted, in part, by future NRC budgets and corresponding fees.

¹ NEI is responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory, financial, technical and legislative issues. NEI members include all companies 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.

Fee Facts and Follow Up to the December 2017 Public Meeting

The NRC noted during the public meeting that the fee matrix was updated in 1999, and the NRC has recently seen “significant reductions in budget.” In 1999, annual fees totaled \$16.1M for 11 operating fuel cycle facilities. At present day, annual fees have nearly doubled, to close to \$30M, while the licensee base has shrunk over 30%. The small yet diverse fleet of 7 currently operating fuel cycle licensees carries an enormous budgetary load given their relative low risk profile. Furthermore, this fleet has already taken a direct hit due to the growing annual fee trajectory that has been imposed for nearly two decades. For example, in just the last ten years, annual fees for the fuel cycle facilities have increased at a rate nearly seven times that of operating reactors.

In addition, it is noteworthy that fuel cycle facilities currently experience an NRC staff to operating facility ratio² of approximately 16: 1. Conversely, commercial nuclear reactors have a ratio of approximately 15: 1, yet the risk profile is significantly lower for a fuel cycle facility vs. a reactor when one considers a variety of safety and security factors. This historical disproportionality, which is not risk-informed, should be promptly addressed by further reducing the Fuel Facilities Business Line budget (e.g., staff and contractor support). To further compare, current annual fees for a commercial nuclear power plant are approximately \$4.7M. Category I fuel fabrication facilities’ annual fees are nearly double that of reactors (over \$7M per facility). As such, the currently operating Category I fuel fabrication facilities pay a combined approximate \$14.5M in annual fees (approximately half of the annual fees for the entire business line). To that effect, NEI reinforces its earlier offer of assistance and proposition that resources can be conserved through: 1) making its license renewal and amendments processes more timely and efficient by further analyzing recent examples; 2) transitioning certain routine inspection duties to Resident Inspectors at HEU (Category I) fuel cycle facilities; 3) evaluating historical inspection findings and data across the fleet to more effectively focus limited NRC inspection resources and reduce the burden on licensees (e.g., reducing frequency of fire protection (IP 88055), radioactive waste processing (IP 88035) and environmental protection (IP 88045); and 4) eliminating rulemaking and other regulatory initiatives that add marginal or no safety or security benefits (e.g., the dermal-ocular Draft Interim Staff Guidance, 10 CFR Part 73 rulemaking– Enhanced Security for Special Nuclear Material, 10 CFR Part 74 rulemaking– Material Control and Accounting, and the ANS 57.11 Integrated Safety Analysis (ISA) Standard to name a few).

While informative, it was also alarming to learn during the December 2017 public meeting that the estimated collected Part 170 fees account for less than one-third of the total fuel cycle business line budget. In response to industry inquiries regarding this ratio, NRC staff stated that two-thirds of the budget is allocated to non-direct generic activities such as maintaining the NRC website, guidance updates, general administration, etc. and other activities that may or may not have any impact on the safe and secure operations of the fuel cycle facilities. In fact, one could argue that perhaps such resource expenditures detract from our collective efforts to ensure continued safe and secure operations at this diverse fleet of facilities. As such, industry offers its assistance in prioritizing the expenditure of relatively significant NRC resources for non-direct generic activities, e.g., the approximate 250 guidance documents identified by the staff and briefly discussed during the meeting.

In light of Project Aim’s objective of identifying efficiencies and reducing low priority work, new regulatory initiatives should be carefully considered both by the NRC at all levels and industry, in which the increase to safety and

² ML17137A246, “Congressional Budget Justification Fiscal Year 2018”

security must be clearly realized. As such, industry should be provided an early opportunity to provide input on any new initiatives that project any increased regulatory burden and/or cost. In turn, this feedback would also aid the NRC in prioritizing work and refining the scope of activities given limited staff resources. It is important to note that even as new initiatives are under development, industry still expends a large amount of resources towards each activity in terms of preparation, analysis, and estimation of impact even prior to implementation. For this reason, all new activities should be judiciously vetted.

Congressional Alternatives to the Fee Matrix

The nuclear industry does not stand alone in its belief that the NRC should seriously reconsider the structure by which it charges fees to licensees. Currently, there is bipartisan legislation in both Houses of Congress seeking to reconfigure the NRC's overall fee structure in an effort to ensure regulatory efficiency and increased transparency across all fee categories. Members of Congress have correctly recognized the timely need for the NRC to identify additional efficiencies and to regulate in a more risk-informed manner.

Fundamental changes by Congress to the Omnibus Budget Reconciliation Act (OBRA) of 1990, to enact changes to the 90/10 fee-recovery mandate might address industry's fundamental budget concerns. NEI stands ready to further explore the viability of this option, should the opportunity arise, and we encourage continued dialogue on it. However, this option should supplement the overall reduction in the fuel facilities business line. The nuclear industry stands in full support of ongoing Congressional efforts to increase the efficiency and transparency in the NRC's licensing, inspection and oversight programs. We welcome the opportunity to continue this dialogue in an effort to find a solution that will help ensure adequate regulation of fuel cycle facility licensees while keeping unnecessary financial burden to a minimum.

Industry Feedback on Staff Proposed Alternatives to the Fee Matrix

We appreciate the NRC resources expended in an attempt to identify and discuss possible viable alternatives to the current fuel facility fee matrix and methodology. As an industry, we have spent considerable time and effort analyzing this issue as well. That being said, the approach to evaluating the fee matrix and potential re-allocation of annual fees merely shifts costs among the same dwindling set of licensees and does not address the root cause of industry's long articulated budget concerns. Industry does not believe - in the absence of additional information or data - that the proposed fee matrix alternatives discussed during the December 2017 public meeting (i.e. the uniform, proportional percentage or combination approach) support a fair and equitable fee structure sufficient to drive a departure from the current methodology. If, however, changes were to be implemented in FY19 and beyond, it is industry's position that any and all changes should be implemented through a phased approach over several years. This is particularly important if the new approach results in an increase in fees to any particular licensee. The absence of a one-size-fits-all solution further highlights the diversity of the fuel cycle facility fleet, the unique nature of this business line, and the careful considerations that must be fully vetted with any new approach. Therefore, industry maintains its position that NRC's primary focus should be directed towards the appropriate reduction in overall agency budget (including the Fuel Facilities Business Line), with resulting changes to the fee matrix serving as a secondary, ancillary focus.

We appreciate any future engagements with industry, should additional alternatives be considered or changes to the fee matrix in FY19 and beyond move forward. More detailed feedback on the NRC staff

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slides used during the December 13th public meeting is provided in the attachment. We request that NRC consider conducting a follow up meeting for February or March 2018, such that, in part, the content of this letter and related issues can be fully discussed to ensure a mutual understanding of the issues and concerns at hand.

If you have any questions about the content of this letter, please contact me or Hilary Lane of my staff, hml@nei.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet R. Schlueter".

Janet R. Schlueter

Attachment

c: Ms. Maureen Wylie, NRC/CFO
Mr. Marc Dapas, NRC/NMSS
Mr. Kevin Ramsey, NRC/NMSS
Mr. Mark Lesser, NRC/RII/DFFI

Comments on NRC Slides titled “Public Meeting on Fuel Facilities Fee Matrix” – dated December 2017

Slide #	Industry Comments
4	<ul style="list-style-type: none"> • The number of FTEs in both the Fuel Facilities Business Line and in the Division of Fuel Cycle Safety, Safeguards, and Environment Review has stayed relatively stagnant over the past several years (approximately 113 FTEs and 60 FTEs, respectively) yet the number of operating facilities has decreased from 11 to 7. As such, the FTE value should be reduced in future fiscal years to reflect the low risk-profile that fuel cycle facilities represent, as well as the reduced number of licensees. • For example, the FCSE Environmental Review Branch is allocated 13 FTEs. While we recognize that this Branch also services other Business Lines, only 2 of the 7 operating fuel cycle facilities are involved in or planning significant licensing efforts that may require environmental impact statements or assessments. Most of the remaining facilities were issued 40 year licenses, there are no planned new facilities, and since there are no known environmental rulemaking activities it is difficult to understand why 13 FTEs are needed in this Branch. This Branch, as well as others, also utilizes substantial contractor support. It is not clear how contractor funding factors in to the business line funding and more transparency is requested on this matter.
7	<ul style="list-style-type: none"> • 2/3 (or 67%) of the Fuel Facilities Business Line “licensing and oversight” line items are related to non-direct services. Industry believes there are substantial efficiencies that can be gained to reduce this large fraction of non-direct activities. NRC should clarify how funding to contractors is factored into the licensing and oversight budget lines, and the associated dollar amount. • NRC should clarify how the funding for licensing and oversight non-direct services is allocated, i.e. project cost breakdown
8	<ul style="list-style-type: none"> • The “effort factors” used to calculate the total level of effort are, admittedly by staff, subjective and qualitative in nature, though the “processes” are not. Staff also noted that different business lines or program areas use different matrices, e.g., operating or research reactors, uranium recovery. The fuel facilities business line matrix should be informed by others and we suspect that a consistent approach across the NRC should be used. It would be helpful to have a more quantitative analysis and more data points as to how the totals were re-evaluated. However, in general, there should be few to no changes year-to-year in the absence of changes in processes or new or reduced regulatory programs/requirements. Given this fact, it would be helpful for the NRC to identify any process efficiencies when calculating level of effort.
12	<ul style="list-style-type: none"> • The methodology used to identify the relevant guidance documents and procedures is misleading. First, the provided attachment includes documents that also apply to other business lines. For instance, Regulatory Guide 1.8 – Qualification and Training of Personnel for Nuclear Power Plants (page 12) is listed and accounted for four times. • Furthermore, during the public meeting on 12/13/17, NRC staff explained that a single document may have been accounted for up to 4 times, if that document

	<p>applied to more than one fuel cycle facility type. Therefore, the totals in Slide 12 are artificially inflated given this flawed method. Documents should only be accounted for once, regardless of how many facilities it applies to.</p> <ul style="list-style-type: none">• NRC should clarify how the total number of documents correlates to the non-direct licensing and oversight budget. For instance, ADM-101, NMSS Delegation of Authority (page 18), was counted four times. It would be helpful to understand the level of effort that is attributed to documents such as this, in terms of non-direct activities.• Industry would also like to highlight that, given the diverse nature of the fuel cycle facility fleet, the maintenance of guidance documents and procedures does not apply equally to each type of fuel cycle facility. It would be an informative exercise for NRC staff to review the exhaustive list and identify only those documents that the operating fuel facilities rely on for their licensing basis or regulated activities. We suspect that number is quite low.
14	<ul style="list-style-type: none">• The 85/15 split in the “combination” alternative is a subjective recommendation that has not necessarily been analyzed from a quantitative perspective.