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NUCLEAR ENERGY INSTITUTE

April 24, 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 Two Additional Fuel Facility Fee Matrix Options Discussed During March 27, 2018 Public Meeting

Project Number: 689

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 to provide further input regarding the U.S. Nuclear Regulatory Commission (NRC) staff's ongoing effort to address NRC fee fairness and equity issues for fuel cycle facilities. This letter supplements our January 17, 2018 letter to NRC on this topic. As you are aware, each fee matrix option under consideration has advantages and disadvantages for individual fuel facilities; therefore, our comments reflect those subtleties. For completeness, we also reference NEI's September 15, 2017 letter to the Office of the Chief Financial Officer (CFO) entitled "NRC Budget Adjustments to Reflect a Decreasing Workload" and our February 26, 2018 letter on the FY18 proposed fee rule. In today's economically stressed environment, these letters address our most pressing and fundamental concerns regarding NRC's inflated budget as it is a top priority for the industry at large. As such, NRC's highest near term priority should be to right-size the Fuel Cycle business line budget and then make informed decisions on fee distribution within the category.

As NEI and several industry representatives stated during the March public meeting, we appreciate the staff and management time and effort expended to: 1) carefully consider industry's January 2018 letter comments; 2) develop two additional matrix options to respond to the comments; and 3) provide data and an overview of how 10 CFR Part 170 and Part 171 fees are apportioned to program elements, including corporate support, policy development and regulatory initiatives. Industry had not, prior to then, been privy to such detailed information. We look forward to similar levels of transparency during the budget development process and as the fee matrix issues continue to be addressed.

As the staff stated, the public meetings are integral to the broader agency-wide initiative to identify

[1] The Nuclear Energy Institute (NEI) is responsible for establishing unified nuclear industry policy on behalf of its members on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

"transformational changes" to include development of the Office of Nuclear Material Safety and Safeguards' (NMSS) budget and changes to its organizational structure. We encourage efforts to identify further regulatory program efficiencies and necessary resource reductions. We look forward to Commission direction on this matter and further dialogue with the staff in the near term. In the interim, we offer the following comments, most of which were stated during the March public meeting for your consideration as you move forward.

Needed Transformation of NRC's Budget Development Process

We believe the NRC's budget development process, allocation to the fuel cycle business line and the associated regulatory program is ripe for transformational change. For example, we appreciate that NRC increased its stakeholder engagement on development of the annual fee rule and issued it for comment earlier in the process. That being said, the information, data and planning assumptions used by NRC to justify its budget request are not transparent to stakeholders. Rather, the first public visibility of the requested budget is through review of the annual Congressional Budget Justification which, at that point, has been submitted by NRC and is under scrutiny by the Office of Management and Budget, and Congress. This is too late in the process for NRC licensees--who are forced to fund the budget through fee recovery—to have any meaningful impact on it. In particular, the justification for and expenditure of the Part 171 annual fee portion of the budget used to fund generic, non-direct services (~3/4 of FY18 fee recovery amount) are not transparent. As we have stated, we believe that NRC licensees should be afforded an early opportunity to provide input on NRC budget assumptions, and regulatory safety and security program priorities, to include the rate at which NRC resources are expended. In response, the staff has indicated that such early involvement would be "out of process." Perhaps, NRC should transform its process to support more informed budget formulation decisions. Instead, industry is simply left to pay the annual fees NRC has calculated once the final fee rule is implemented.

As you might suspect in current market conditions, most if not all fuel facility companies have gone through painstaking measures to reduce operating budgets, personnel, and eliminate projects, all while supporting the global nuclear industry. In our view, NRC's reliance on voluntary NRC staff attrition is not an efficient means to ensure NRC's reducing budget keeps pace with the shrinking industry trend. Rather, NRC's budget will continue to be misaligned with the size of the fleet—a misalignment that must be corrected in the FY 2020 Congressional Budget Justification in order for the industry to sustain itself, let alone thrive to meet technological advances such as the deployment of Accident Tolerant Fuel and advanced fuel designs.

Needed Reduction of the Fuel Cycle Business Line Budget

The very useful NRC Cumulative Effects of Regulation (CER) spreadsheet highlights the fact that 8 out of 14 currently listed regulatory initiatives are NRC driven and are not based on an NRC-industry mutually identified safety or security concern. This reality justifies our view that NRC staff must judiciously engage industry on new initiatives, at their conception, since each initiative requires expenditure of our respective resources. We also take issue with periodic staff statements that new initiatives are "vetted" with industry, which falsely implies that we support them. Furthermore, a majority of these initiatives have been ongoing for 5 or more years, and in some instances, a decade. Somewhat surprisingly, NRC staff have stated that they are unable, historically or currently, to estimate resource expenditures on individual regulatory initiatives. Also, one could argue that there is clearly no urgent nexus to safety and security if initiatives take a decade to develop and linger on through the turnover of several managers, staff and Commissioners. This high and not transparent resource expenditure is not only inefficient for NRC staff, but for industry as they too dedicate significant time to review, analyze, provide input and estimate impact prior to the final step of implementation. Then, NRC continues to expend resources to evaluate industry implementation of the initiative or requirement.

We would also note that it is somewhat disingenuous for staff to continue to display the "Fuel Facilities Business Line – FTE Levels FY2008-2018" (Slide 9, RJohnson[2]) in isolation, as they plan to do during the Fuel Cycle business line Commission briefing on April 26, 2018. As discussed during the March meeting, the more complete story is told by combining this FTE data with the FY2014-2018 budgeting, billing and recovery amounts (Slide 8, BHarris) to demonstrate that while the total business line FTE has decreased since FY2014, the annual fee recovery amounts stayed essentially the same (~$30M) while the number of licensees responsible for paying these fees decreased from 10 to 7 (-30%) during this period. As a result, industry is forced to continue financing an over-funded fuel cycle business line budget. As we have stated on numerous occasions, the current NRC FTE/operating fuel facility ratio of ~16:1 is disproportionately large when considering the relative low risk of the facilities and historically safe and secure operations. The question remains, how many—or will any—fuel facility licensees still be operating when NRC reduces its budget to a level that truly reflects this small fleet of facilities. Further, while we recognize that a "minimum" Federal regulatory program might need to be maintained even with zero NRC fuel cycle licensees, that program would still be unjustifiably large if you simply extrapolate downward from the current fee recovery budget. Industry cannot continue to endure the current fee levels nor escalating ones, particularly if one or more current facilities also decide to transition to an idle state or worse, discontinues domestic operations. On a related note, there are no new license renewals, major amendments, or new applications on the horizon for this class of licensees. This well-known fact, in addition to the clear reduction in direct billable licensing and inspection work hours from ~50% to ~26% of the fee recovery amount during 2008-2018 should serve as critical input when formulating the NRC's FY 2020 budget request.

During the June 2015 Fuel Cycle Information Exchange, industry offered suggestions—many of which remain valid and can be built upon through further dialogue--to support transformation of the regulatory program and thus a reduced budget for fuel cycle facilities. For example, licensing and inspection program modifications and efficiencies could be realized if built on: 1) our collective operational experience; 2) lessons-learned from licensing actions such as renewals; 3) inspection findings, trends and data; and 4) risk insights from updated Integrated Safety Analyses but to name a few. While we commend NRC's "Project Aim" initiative which identified several actions geared towards a more efficient NRC, such efforts, regrettably, did not result in significant NRC budget reductions or cost savings to the small, diverse and relatively low risk fleet of operating fuel cycle facilities. We stand ready to assist in this regard.

Increased Granularity of FTE Expenditures on Generic, Non-Direct Services

We recognize that NRC eliminated several TAC/CAC codes in response to direction from OCFO for simplicity

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[2] ML18082A599

and efficiency gains. This action unfortunately had unintended consequences as it limits the transparency of where and at what level recovered fees are expended. On the contrary, private companies track resource expenditures down to the project level and can compare allocated versus expended resources to address discrepancies in a timely manner. While the OCFO continues its much needed and commended Fee Transformation Initiatives and seeks additional efficiencies, we encourage NRC to consider the negative consequence of tracking activities at a higher level and to recognize that it hinders NRC-industry or other stakeholder engagement on accountability and transparency. This is of particular concern to facilities in a business line that has yet to see significant budgetary transformation that reflects its size and risk profile. Additional FTE data on specific programmatic, generic non-direct activities is requested of NRC, as discussed with NMSS management on April 11, 2018. We appreciate management's willingness to provide additional granularity on FTE breakdown to supplement staff's informative pie charts provided during the March meeting.

The 3-2-1 New Matrix Options Discussed During March 2018 Public Meeting

While the staff earnestly attempted to address industry concerns with the current 10-5-1 approach to fee allocation within this category, the 3-2-1 option is perceived by some as still arbitrary, not data driven, and it also results in disparities and inequality across the fleet. As we stated and staff acknowledged, this methodology is not based on actual resource expenditures, data, or an underlying analysis that would document NRC resource expenditures and estimates facility-by-facility. If such an outcome were supported by such data, it would likely gain support since it would have a documented basis. So, while the March meeting pie charts are insightful and informative, it is not possible to decipher what is actually expended regulating these sites, collectively or individually, versus what is budgeted. And without that data, it is nearly impossible for the majority of industry to support any of the fee matrix options presented by NRC and discussed during the two public meetings.

In closing, NRC's primary focus should be directed towards the appropriate reduction in overall agency budget (including the Fuel Cycle Business Line) and developing a fee distribution scheme within the category that reflects actual NRC expenditures. We appreciate future engagements with industry as NRC considers appropriate budget reductions and the fee matrix options discussed over the past months. If you have any questions about the content of this letter, please contact me or Hilary Lane of my staff, hml@nei.org.

Sincerely,

Janet R. Schlueter

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