JANET R. SCHLUETER
Sr. Director, Radiation and Materials Safety

1201 F Street, NW, Suite 1100
Washington, DC 20004
P: 202.739.8098
jrs@nei.org
nei.org

NUCLEAR ENERGY INSTITUTE

August 8, 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: Overall Process Concerns Regarding Fuel Facility Fee Matrix Options Discussed During August 1, 2018 Public Meeting

Project Number: 689

Dear Mr. Erlanger:

On behalf of the Nuclear Energy Institute (NEI)[1], 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 relevant NEI letters[2] and those from individual fuel cycle facilities to NRC since the fall of 2017 on this very important topic. The bottom line is that in order for the fuel cycle industry to sustain itself, *let alone thrive to meet technological advances such as the deployment of Accident Tolerant Fuel and advanced fuel designs*, the annual fees applicable to this small, low risk fleet of operating fuel cycle facilities must be significantly reduced (e.g., by 35%) and stabilized in the near term.

As I stated during the August 1, 2018 public meeting, we sincerely appreciate NRC's effort over the last 9 months to engage with licensees through several public meetings on fee-related topics of significant importance to industry. Specifically, NRC's budget, fee rule formulation and the fuel facility matrix which determines how fees are recovered from individual licensees in the fee category. These meetings were unprecedented, and have been both productive and insightful to industry and I suspect NRC staff as well. We also acknowledge that NRC has worked earnestly to incorporate licensee feedback into development of 5 fee matrix options for consideration.

That being said, 5 of 7 fuel cycle licensees do not support a revised fee matrix in FY19 and have expressed significant concern by letter and during the public meetings. The reality is, regardless of when the final FY19 fee rule is published in 2019, a revised fee matrix would go into effect on October 1, 2018—less than two

[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.

[2] JPollock to MWylie dated September 15, 2017; JSchlueter to CErlanger dated January 17, 2018; PCowan to AVietti-Cook dated February 26, 2018; JPollock to MWylie dated April 24, 2018

months from now—since NRC must recover the fees in FY19. The position of those 5 facilities in opposition, at this time, is supported by the following facts:

1. Industry representatives have repeatedly stressed the need for NRC to "right size" its Fuel Cycle Business Line budget before modifications to the matrix are imposed. The NRC has not explained in sufficient detail why the size of the fuel cycle business line is appropriate given the reduction in the number of licensees, overall workload and maturity of the industry. Experience including a large reduction in direct billable hours over the past few years clearly demonstrates that the fuel cycle program could be reduced significantly without negatively impacting safety or security. This simple truth has essentially been ignored by the staff. In that regard—at the risk of sounding like a broken record since 2015—we request that NRC work with industry to prioritize the expenditure of annual fees used to support generic, non-direct activities, e.g., development of new or revised licensing guidance. To our frustration, this request has gone unheeded.
2. This small, relatively low risk set of 6 operating facilities and 1 idle facility pay a disproportionate percentage of the overall NRC fee recovery budget. For example: 1) the Category I fuel facility annual fee has exceeded that of operating reactors for several years and, even applying the revised matrix option 5, a Category I facility fee would still exceed an operating reactor fee; 2) the ratio of staff to operating fuel facility continues to exceed that of operating reactors; and 3) the FY18 annual fees paid for non-direct, generic staff activities represent almost 75% of the total fuel cycle fee recovery budget. That fact is alarming in and of itself but particularly so when one considers that the annual fees have essentially doubled since 2008, yet the number of facilities has dropped 36% from 11 to 7 (with one idle at present). These nonsensical and blatant inequities, fee rule perturbations, and misalignments with NRC's oversight program need to be rectified immediately. Yet, we observe that NRC's FY19 Congressional Budget Justification continues to be seriously overinflated with minimal change to the fee recoverable amount.
3. The current fee matrix has been used for decades and is not broken. There is no evidence to suggest that it needs to be replaced in less than 2 months from now. If NRC is aware of a strong regulatory basis or driver, please explain it to licensees. Yes, we all agree with NRC that it can be improved, e.g., an increased reliance on actual resource expenditure data. We also believe that the staff has worked diligently to identify necessary and desirable modifications to the matrix. We applaud that effort. And it is conceivable that with a reduced NRC budget, one or more of the matrix options would be palatable. But any revisions to the matrix should be finalized after the NRC fuel cycle facility business line budget is significantly reduced. Then, and only then, should it be implemented in a disciplined manner and on a timeline that can be accommodated by the licensees that will pay the bill.
4. Imposing a potentially significant fee increase of 32-100%[3] for 5 of 7 facilities is untenable and will have unintended consequences for the industry at large. While the staff used the FY18 fee rule for illustrative purposes in the meeting slides, the reality is that based on the FY19 Congressional Budget Justification, the FY19 annual fees would be comparable to the estimated revised FY18 fees.

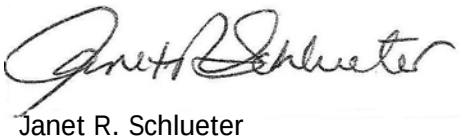
[3] NRC August 1, 2018 meeting slide number 13

Further, the revised annual fee for the currently-idled Honeywell conversion facility would equate to 70% of the FY18 annual fee for an operating reactor. Again, nonsensical from a risk perspective. For your information, facility-specific operating budgets for CY19 have been finalized and cannot simply be adjusted to accommodate such potentially significant fee increases beginning October 1, 2018—again, less than two months from now. Rather, should NRC decide to modify the fee matrix, the staff should work with industry to identify the most appropriate planning horizon for implementing it.

5. Finally, the staff's timeline[4], which proposes that fuel facilities wait patiently to read of a revised matrix in a January 2019 Federal Register Notice for the proposed FY19 fee rule is, quite frankly, disrespectful of the licensees whom you have earnestly solicited input from to inform this issue. We reiterate our request that, at minimum, any Commission decision on the staff's proposed revised fee matrix be communicated well in advance of licensees reading about it in the proposed FY19 fee rule Notice. While stating the obvious, such NRC budget and fee decisions will significantly impact facility-specific business decisions and operations, and this fact should not be readily dismissed by the regulator.

In closing, NRC's primary focus should be directed towards the appropriate reduction in overall agency budget (including the Fuel Cycle Business Line) and then consider modifications to the fuel facility fee matrix that are based on actual NRC expenditures. 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

c: Ms. Annette Vietti-Cook, SECY
Ms. Maureen Wylie, NRC/CFO
Mr. Marc Dapas, NRC/NMSS
Mr. Robert Johnson, NRC/NMSS
Mr. Mark Lesser, NRC/RII/DFFI
NRC Document Control Desk

[4] NRC August 1, 2018 meeting slide number 14