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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

Re: Supplemental Comments on Fuel Cycle Facility Fee Matrix and Fee Calculation Methodology

Dear Mr. Erlanger:

As explained in our earlier comments on the NRC's consideration of alternative approaches to the fee matrix, Honeywell supports the existing fee matrix for fuel cycle facilities. For nearly twenty years, the existing fee matrix has served as a fair and equitable tool for allocating annual fees among fuel cycle facilities based on regulatory effort. The NRC Staff has not identified a compelling need, or justification, for changing the status quo. To the contrary, the NRC Staff's two new proposed alternative fee matrices—like those described at the public meeting on August 1, 2018—serve only to shift the burden among fuel cycle facilities, without adequate basis for the changes. These shifts would cause substantial harm to Honeywell and other facilities, without corresponding benefit.

To be sure, Honeywell appreciates the NRC's efforts to address annual fees. However, we believe the NRC Staff's focus should be on identifying ways to decrease the overall costs associated with the fuel cycle facilities business line, rather than merely re-shuffling the allocation of the same level fees among the same group of licensees.

Background

The NRC has allocated annual fees using the current matrix since 1999.[1] The NRC's matrix allocates annual fees for fuel cycle facilities based on regulatory effort by listing the processes

[1] *See* Final Rule, *Revision of Fee Schedules; 100% Fee Recovery, FY 1999*, 64 Fed. Reg. 31,448, 31,448 (June 10, 1999).

conducted at licensed sites and assigning each process "effort factors" for the associated safety and safeguards activities. The matrix ensures that each facility's portion of the total cost of the Fuel Facilities Business Line is commensurate with the NRC's relative regulatory effort expended on the facility.

In December 2017, the NRC Staff held a public meeting to discuss potential changes to the fee matrix as part of its proposed FY18 fee rule. The NRC Staff identified two alternative fee matrices and requested feedback. In its comments dated January 17, 2018, Honeywell opposed any changes to the existing fee matrix, explaining that the NRC Staff had failed to justify changing the status quo. Honeywell observed that "there is no indication that the current fee matrix is inherently flawed or unreasonable."

Thereafter, the NRC Staff held a second public meeting on March 27, 2018. At the March meeting, the NRC Staff introduced two additional alternative fee matrices for consideration: (1) a matrix based on the current matrix, but with altered effort factors, and (2) a new matrix based on regulated areas. Neither of these alternatives was preferable to the current method, and neither was adequately justified.

The NRC Staff held a third public meeting on August 1, 2018. At the August meeting, the NRC Staff introduced one additional alternative fee matrix. As with prior proposals, the proposed matrix continues to lack adequate justification, would not be fair or equitable, and fails to resolve previous comments.

The NRC Should Not Alter its Existing Fee Allocation Matrix

Honeywell continues to support the NRC's continued use of its existing fee matrix for fuel cycle facilities. Honeywell believes that the current fee matrix fairly and equitably distributes the annual costs among fuel cycle facilities based on the NRC's regulatory effort. In particular, the NRC's assignment of particular effort factors (0, 1, 5, 10) to each process conducted at licensed sites enables the NRC to reach a reasonably accurate estimation of regulatory effort (and therefore fees), as evidenced by a reasonably close relationship to overall routine inspection level of effort.

The latest revision continues to omit adequate discussion of how the revised effort factors (0, 1, 2, and 3 in most cases) are fair and equitable, much less *more* fair and *more* equitable than the current method. No effort is made to demonstrate that this method, which has a considerably more narrow band of regulatory effort overall, more closely matches actual regulatory effort than the current approach. For example, this proposal does not take into account that some regulatory activities may be five or ten times more substantial than others, depending on the risks associated with a particular facility type (*e.g.*, special nuclear material compared to source material) or the types of processes employed by the licensee. The few areas where the NRC expanded the range of effort serves only to highlight the arbitrary nature of the decision to narrow the band in other areas. The net effect of this approach is to force lower-effort facilities—such as Metropolis—to subsidize higher effort facilities. No basis is provided for such a dramatic re-ordering of regulatory effort allocations.

The NRC Staff fails to explain how comparing regulated areas in any way captures relative regulatory effort. Nor has the NRC Staff explained how it arrived at the conclusion that the listed activities should be weighed equally (except in a few areas). We recognize that these categories align with areas of the NRC's regulatory reviews, but not all areas of review should be treated equally. Under this proposal, for example, the NRC Staff effectively assumes that it expends equal regulatory effort regulating chemical safety, criticality, and cyber security as it does regulating the management and organization. This is certainly not the case.

More specifically, the effort factors for MTW fail to acknowledge the difference in regulatory effort for it. For example, there is no ISA guidance specific to Part 40 facilities (and no criticality risks) and also no requirement for it to have an ISA, yet MTW is still classified as a "2" for ISA. It should be classified as a "0" or, at most, a "1". As a facility with no special nuclear material, the radiological protection category fails to reflect fundamental differences with Part 70 facilities. The effort factor for Part 70 facilities should be increased to either "2" or "3" or else MTW moved to "0" in order to reflect the differences in regulatory effort associated with the higher radiological risks at Part 70 facilities. For chemical safety, MTW should also be a "1" given that it involves only one type of hazardous chemical subject to NRC jurisdiction (UF6), while other plants (other than Urenco) have NRC-regulated materials in multiple chemical forms. MTW also should be scored lower than other facilities in Emergency Management (again, no critical risks; only source material), environmental protection (same), decommissioning (same), management measures (no criticality risks), and physical protection (no special nuclear material; only source material). There also must be differences in level of effort in the physical and cyber security contexts given the types of materials and process activities that must be protected against. All in all, the regulated effort categories must be reallocated to better reflect the fundamental different materials, processes, and hazards at Part 40 source material facilities relative to Part 70 materials with special nuclear material.

As Honeywell explained in its prior comments, perhaps the best argument against changing the status quo is that the NRC Staff has yet to put forth any rationale to demonstrate that the status quo is flawed. The NRC Staff has not concluded that the fee matrix unfairly distributes costs among fuel cycle facilities. Nor has the Commission. And notably, the NRC Staff has yet to claim that any of its proposed alternatives more fairly allocate costs than the existing fee matrix.

But beyond the fact that the proposed matrices would not improve the status quo, the proposals in fact threaten substantial harm to Honeywell. As the NRC is aware, the nuclear fuel industry is facing tremendous challenges. Critically, as a result of these market conditions, Honeywell has been forced to idle its Metropolis Works Facility. Doubling Honeywell's annual fee to more than $3 million, as would occur under the latest proposal put forth for consideration, would saddle the business with significant new and essentially unrecoverable costs at a critical juncture. Honeywell cannot reasonably make up the difference by selling an additional $15 million in product (assuming a 10% rate of return) given the size of its business and its pre-existing contracts. In contrast, other fuel facilities—particularly those serving non-commercial markets with very limited alternative suppliers, like the Category 1 facilities—are better situated to shoulder a higher burden

given the inelastic nature of their customers' demand and the prevalent use of rate-of-return contracts.

In sum, the Commission's long-standing fee matrix is a fair and equitable mechanism for allocating fees among fuel cycle facilities based on regulatory effort. It should be retained.

The NRC Should Continue and Expand its Cost Containment Efforts Relating to the Fuel Facility Business Line

As Honeywell explained in its initial comments, the best way for the NRC to provide necessary fee relief to the fuel cycle industry is for it to continue its efforts to reduce the costs associated with the Fuel Facilities Business Line.

Although Honeywell appreciates the efforts that the NRC took in FY17 to reduce FTEs, the NRC must continue and intensify these cost containment efforts to ensure that staffing levels are consistent with the actual needs. As it stands, despite the comparatively higher risk profile of the reactor line of business, the seven operating fuel cycle facilities support a higher NRC staff to licensee ratio than the reactor line. Moreover, over the past decade, annual fees for fuel cycle facilities have increased at a rate nearly seven times that of reactors. As the NRC prepares for the next budget cycle, it should consider *precisely* how many FTEs are *needed* to regulate the Fuel Facilities Business Line.

Consistent with this effort, the Commission should increase transparency so that the public can identify additional opportunities for improvement. As a number of industry members have pointed out, the work papers generated by the Commission lack sufficient detail for the public to ascertain the specific costs that are being recovered through fees, and how these costs are being allocated.

Conclusion

Honeywell thanks the NRC Staff for the opportunity to offer supplemental comments. For the reasons stated herein, the Commission should continue to allocate annual fees for fuel cycle facilities using its long-standing fee-matrix.

Respectfully submitted,

Jeff Fulks
Plant Manager

Cc: Maureen Wylie, Chief Financial officer

Marc Dapas, Director, Office of Nuclear Material Safety and Safeguards