PR-170 and 171
84 FR 578

Speiser, Herald

From:	TRUE, Doug <det@nei.org>
Sent:	Wednesday, February 27, 2019 4:27 PM
To:	Vietti-Cook, Annette
Cc:	Wylie, Maureen; King, Mike
Subject:	[External_Sender] Industry Comments on Fiscal Year 2019 Proposed Fee Rule (NRC Docket ID NRC-2017-0032)
Attachments:	02-27-19_NRC_NEI Comments on FY19 Proposed Fee Rule.pdf

THE ATTACHMENT CONTAINS THE COMPLETE CONTENTS OF THE LETTER

February 27, 2019

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

Submitted via Regulations.Gov

Subject: Industry Comments on Fiscal Year 2019 Proposed Fee Rule (NRC Docket ID NRC-2017-0032)
Project Number: 689

Dear Ms. Vietti-Cook:

On behalf of the Nuclear Energy Institute's (NEI) members, we provide the following comments for the U.S. Nuclear Regulatory Commission (NRC) staff's consideration as it finalizes the fiscal year 2019 fee rule.

Our comments highlight an opportunity for transformative change in the NRC budgeting process. This change can only be accomplished through improvements in stakeholder communications that address both the need for early interaction and the desire for an increased level of detail and transparency in all aspects of the budgeting process.

Please contact me if you have any questions regarding these comments.

Sincerely,

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NUCLEAR ENERGY INSTITUTE

February 27, 2019

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Dear Ms. Vietti-Cook:

On behalf of the Nuclear Energy Institute's (NEI)[1] members, we provide the following comments for the U.S. Nuclear Regulatory Commission (NRC) staff's consideration as it finalizes the fiscal year 2019 fee rule.

We appreciate the public meeting held by Ms. Maureen Wylie and other NRC staff on February 13, 2019 to discuss the FY 2019 proposed fee rule and its underlying basis and assumptions. These meetings are informative and we ask that they be continued.

As outlined below, the industry has a number of concerns about this fee rule and what it foreshadows in the future. Specifically,

- The lack of transparency provided on the basis for the budget is problematic. As the industry addresses significant financial pressures, it is untenable for the agency to fail to provide a strong supportable basis for all aspects of the NRC budget, especially in areas where increases in fees are proposed.
- At nearly one-third of the total budget, Corporate Support fees are burden that must be addressed going forward, especially as the number of operating facilities is decreasing.
- Further interaction with the industry may be a means to improve the budget planning process in order to allow the agency more directly to account for change in regulatory needs. The NRC's budgetary process should be a priority as the agency engages on its transformational journey.

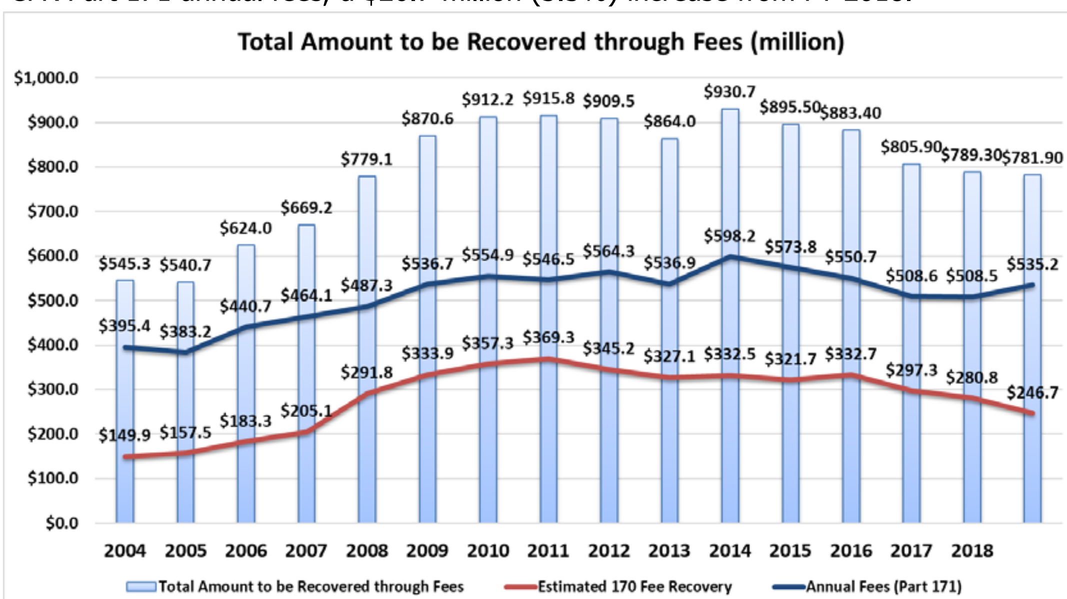
[1] The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial 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.

- With a number of announced nuclear plant closures in the coming years, the upward trend shown in the FY 2019 annual fee collection for operating plants is simply unsustainable. It is not realistic to expect that a decreasing number of plants can support a budget of traditional size. Failure to address this mismatch could exacerbate an already stressed industry situation.
- The fee reduction for Fuel Cycle Facilities is welcome, but fees on these facilities remain high due to the long escalation of fees that has occurred in preceding years. More needs to be done to right-size the burden on these facilities, especially given that the fees for some fuel cycle facilities exceed those of operating reactors.

The FY 2019 proposed fee rule is based on the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019. The total enacted budget for the NRC in FY 2019 is approximately $911.0 million, a decrease of approximately $11.0 million from FY 2018.

The OBRA-90 (42 U.S.C 2214) requires the NRC to recover approximately 90 percent of its budget authority for the fiscal year through fees. In FY 2019 the NRC must bill approximately $781.9 million in fees, a decrease of $7.4 million from FY 2018. The NRC estimates that $246.7 million will be recovered through 10 CFR Part 170 service fees, a $34.1 million (12.1%) decrease from FY 2018. This leaves $535.2 million to be recovered through 10 CFR Part 171 annual fees, a $26.7 million (5.3%) increase from FY 2018.

A decrease in Part 170 service fee collections is not unexpected. In the last three years, Part 170 service fee collections have decreased an average of 9% per year and this reflects what is expected to be a continuing trend.



The anticipated reduction in Part 170 service fee collections places a strong obligation on the NRC to ensure that staffing levels and budgets are properly aligned to reflect smaller projected workloads. The NRC should take all necessary steps to continue and expedite its efficiency efforts. Given the maturity of the U.S. nuclear fleet, in combination with its high level of operational performance and a demonstrated level of safety, timely reductions in regulatory burden are appropriate. We are happy to engage the NRC in such conversations regarding additional efficiencies and risk-informing the current regulatory program. Resources can be conserved through several means, including but not limited to:

- Process changes that enable the treatment and resolution of issues to be determined based on the safety significance of the issue;
- A performance-based inspection program that supports a consolidation and reduction of inspection activities;
- Making license renewal and amendment processes more timely and efficient by further analyzing recent examples;
- Continuing the transition of certain routine inspection duties to Resident Inspectors;
- Eliminating rulemaking and other regulatory initiatives that add marginal or no safety or security benefits (for example: 10 CFR Part 74 Draft Final Rule–Material Control and Accounting);
- Expediting rulemakings and other regulatory changes that reduce NRC resource requirements; and
- Working with industry to prioritize expenditure of annual fee resources on generic guidance development activities.

Transparency
The NRC budget for FY 2019 represents a 1.2% decrease from FY 2018. In reviewing the proposed fee rule, associated workpapers, and the NRC FY 2019 Congressional Budget Justification, it remains a challenge to identify the basis upon which the NRC justifies an essentially stagnant budget. During a period in which the nuclear industry is performing at unprecedented levels of safety and reliability, while under severe economic stress, with significantly reduced budgets, plant closures, and loss of licensees due to termination of activities or transfer to oversight agreement states, the NRC budget has remained essentially stable. A review of the documents supporting the NRC budget provides little insight into the basis for maintaining a budget at this level, while examination of external measures (e.g., number of licensees, number of licensing submittals) would seem to support a significant reduction in budget. The Congressional Budget Justification for FY 2019 provides only high-level information and its description of activities intended to justify the budget request provides little information upon which a determination of sufficiency can be formed. The workpapers supporting the proposed rule similarly lack a level of descriptive detail necessary to determine what actions, efforts and products are planned. We urge the NRC to supplement the workpapers supporting future fee rules with additional detail on budgeted work activities, including a level of planned effort for each activity and how this plan compares with the prior year. Such detail would enable licensees to better evaluate and understand significant budget changes such as the significant increase in IT contractor expenses for FY 2019.

Corporate Support
The Corporate Support Business Line, which represents overhead costs such as administrative services, financial management, human resources, IT, outreach, policy support, training, and acquisitions, continues to be inflated. The FY 2019 enacted budget shows $293M for this business line, a reduction in budget of only 1% from FY 2018. This corporate support budget represents nearly one third of the NRC's total budget authority of $911M. Since FY 2016 the NRC's enacted budget has decreased by approximately 9% while the budget for corporate support has decreased less than 4%. NRC should provide additional information to

support the absence of more significant reductions in the corporate support budget and identify the actions being taken to reduce this business line.

Furthermore, the work papers highlight that the cost per person for corporate support functions has climbed since FY 2017 by nearly 20%. This increase is significantly more than the rise in per person cost of other business lines listed in NRC's work papers and this should be expounded upon in the final rule and subsequent work papers. While we understand that certain costs increase over time, a 20% increase over such a short period is difficult to comprehend without explanation.

Budget Planning Process

The NRC's budget development process and the associated regulatory program are overdue for transformational change. For instance, the FY 2020 proposed budget has already been formulated and licensees, at this critical juncture for the industry, have had little opportunity to provide input on NRC's planning assumptions. NRC should transform its process to support early budget formulation discussions with industry directly. From the industry perspective, public meetings and discussions thus far have been reactive in nature. Leaving stakeholder discussions on the budget until after appropriation decisions have already been made by Congress leaves little room for substantive input from industry. With the repeal of OBRA-90 effective October 1, 2020, and the new fee process established by the Nuclear Energy Innovation and Modernization Act (NEIMA) (Public Law No. 115-439), now is the time for the NRC to initiate changes to avoid a "reactive" fee rule process.

Operating Plants

The Operating Reactor budget for FY 2017 and FY 2018 was $670 million. In FY 2019, the Operating Reactor budget remains at $670 million. During this period, fee for service collections for Operating Reactors (Part 170) have decreased by 26%. The unchanged Operating Reactor budget, combined with the rapid loss of service fees, has apparently required NRC to increase annual fee collections for operating plants by 7.3% in FY 2019. With the closure of Oyster Creek in 2018, the annual fee collection is distributed among fewer plants and results in an 8.4% increase in the per reactor annual fee.

The percentage of the Operating Plant budget that is derived from annual fees (currently at 68.7%) continues to increase and is up from 64.0% in FY 2018. Without additional information on the indirect services covered under Part 171 fees (see Transparency comment above) we are unable to determine if the increase in annual fees is a reflection of an increase in required generic services, the consequence of overstaffing, or something else.

Twelve plants have announced closures between now and 2025: Pilgrim (May 2019), Three Mile Island 1 (September 2019), Davis-Besse (May 2020), Duane Arnold (2020), Indian Point 2 (2020), Perry (May 2021), Indian Point 3 (2021), Beaver Valley 1&2 (May and October 2021), Palisades (May 2022), and Diablo Canyon 1&2 (August 2025). The loss of these licensees and the expected continued decrease in Part 170 service fees require NRC to take action to reduce the operating plant budget and stop the trend of increasing annual fees for the remaining operating plants. Given that the cap on annual fees for operating reactors under NEIMA goes into effect in FY 2021, it is important that the NRC begin establishing a means to more quickly adjust to anticipated reductions in reactor licensees and the associated workload.

Fuel Cycle Facilities

The FY 2019 proposed fee rule highlights a 14.8% decrease in total budgeted resources for a proposed FY 2019 budget of $30 Million for the fuel cycle business line. Furthermore, the annual fee recovery decreased by 10.5% (more specifically -9.1% for Category I (HEU) Fuel Fabrication Facilities, -15% for Category III (LEU) Fuel Fabrication Facilities, and -6.5% for Conversion and Deconversion Facilities). We appreciate the NRC taking into consideration that FY 2019 will fund a smaller projected workload, based on several factors, leading to a top line budget reduction. This top line reduction rightfully allowed for further reduction at the annual fee level and hence, progress for all fuel cycle licensees. Such reductions in annual fees allow licensees to focus resources on items of true safety and security significance, and individual operational needs. This includes critical work on technological advances such as the deployment of Accident Tolerant Fuel, which is of utmost importance to industry.

At this juncture, we trust that NRC fully recognizes that this fleet has seen a growing annual fee trajectory for nearly two decades, despite a shrinking licensee base. As such, the industry sincerely welcomes the above FY 2019 decreases. We trust that the 14.8% decrease represents the initiating decrease to even further budget cuts in FY 2020 and beyond, to match the reduction of resources needed to regulate this small and unique fleet. Additionally, the non-trivial 21.7% decrease in billable work from the FY 2018 final fee rule to the FY 2019 proposed fee rule represents, in part, the safe and secure operations of the fleet and the corresponding significant reduction in NRC work.

Over the course of FY 2017 and FY 2018, there have been several public meetings regarding the fuel cycle facility fee matrix, options for its revision, and the overall budgeted resources to the fuel cycle business line. We appreciate the NRC's efforts to hold such first-of-a-kind budget discussions. They were timely, informative, and we recognize that a substantial amount of energy was expended (by both NRC and industry alike) in order to effectively conduct those discussions. As a result of past budget meetings and discussions, over 20 unique comment letters[2] from the fuel cycle community were submitted to the NRC. This extraordinary volume of correspondence to the NRC has highlighted one resounding message, consistent throughout the entire fuel cycle fleet: the fuel cycle business line budget must be reduced to reflect the NRC's projected workload.

We note that the proportion of annual fees to the overall budget increased from 79% in FY 2018 to 83% in the FY 2019 proposed fee rule. Given this increase and overwhelming proportion, we emphasize the need to work with the NRC in an open and transparent fashion – to prioritize the expenditure of significant NRC annual fee resources for non-direct generic activities. Recently, NEI and industry have been informed of new

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[2] For reference, NEI's letters are dated September 15, 2017, January 17, 2018, February 26, 2018, April 24, 2018, and August 8, 2018. Licensee letters were submitted during similar timeframes.

regulatory initiatives; not by the NRC staff, but from documents posted to the public ADAMS. We continue to stress that such initiatives should be carefully considered both by the NRC and industry, to ensure that the proposed activity is important to safety and security. Industry should be provided an early opportunity to provide input on any new initiatives that project an increased regulatory burden and/or cost.

The FY 2019 proposed fee rule highlights several inequities that must be rectified. HEU fuel facilities (Category I) still pay an exorbitantly higher annual fee amount ($6.7 Million[3]) than a commercial power reactor ($4.9 Million), despite having a significantly smaller risk profile, and even considering the FY 2019 annual fee increase for power reactors (+7.3%). This fee imbalance has been ongoing for several years and NRC has not addressed or justified this fact. Addressing this fact must not result in the other fuel facilities simply having to absorb the remaining budgeted program. Also, the HEU annual fee applied to the two Category I facilities represents nearly half of the entire budgeted resources and over 50% of annual fees for the business line. Finally, the FY 2019 proposed fee rule budget, as in previous years, reveals an NRC staff to operating facility ratio of 16:1 for fuel cycle facilities. The power reactor ratio is 15.6:1. The NRC has yet to justify why fuel cycle facilities are regulated to a higher degree than power reactors when the risk profile is significantly lower.

We also note that the NRC's slides[4] presented on February 13 highlight that the "Generic HLS" line item is $2,332K for FY 2019 (slide 28). This is significantly higher than the funding for Generic HLS allocated for operating power reactors ($1,622K, slide 17). While we recognize this item is excluded from the fee base, clarification on the basis for this line item would be appreciated.

The "low level waste surcharge" increased from $0.5 Million to $0.8 Million, representing an increase of 60%. We believe the staff should provide additional information on the data used to validate this significant increase. Since NRC fees are based in part on the LLW surcharge, NRC should continue to work with the Department of Energy to ensure the accuracy, completeness and timeliness of data entered into DOE's Manifest Information Management System (MIMS).

While the FY 2019 budget and annual fee decreases represent the appropriate trajectory, further reductions are needed in the fuel cycle business line budget for FY 2019 and beyond.

Research and Test Reactors (Non-Power Reactors)

Page 587 of the proposed fee rule states that the anticipated decrease in Part 170 billings will be offset by "an increase in activity for Aerotest's startup inspection and license renewal application." A December 6, 2018 letter from Aerotest Operations, Inc.[5] appears to contradict this statement. This letter indicates that the licensee has requested withdrawal of the renewal application and a subsequent termination of related regulatory and licensing activities. NRC's response to this request is dated January 25, 2019.

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[3] Based on FY 2019 Proposed Fee Rule
[4] ML19044A386
[5] ML18344A049

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Please contact me if you have any questions regarding these comments.

Sincerely,

Doug True

c: Ms. Maureen Wylie, NRC/CFO
Mr. Michael King, NRC/NMSS/FCSE