



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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June 21, 1979

The Honorable Bruce F. Vento
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Vento:

I am pleased to respond to your inquiry of May 14, 1979, requesting the Nuclear Regulatory Commission's views on a proposed amendment to H.R. 2608 which would affect the Commission's authority to charge fees for licenses, permits and inspections.

The Commission's present cost recovery program is based on the Independent Offices Appropriation Act of 1952, 31 U.S.C. 483(a) (IOAA), and judicial decisions interpreting that Act. The United States Supreme Court has held that the IOAA permits an agency to charge fees for special benefits rendered to identifiable recipients measured by the "value to the recipient" of the agency service. Subsequent decisions of the United States Court of Appeals for the District of Columbia Circuit have held that an agency is authorized under the IOAA to charge a fee recovering agency costs incurred in providing services mandated by agency regulations. The Commission revised its schedule of fees effective March 23, 1978, to conform to the Supreme Court and the D.C. Circuit opinions. A copy of this fee schedule is enclosed.

In developing the revised schedule the Commission reviewed all of its activities and determined that approximately 80 percent of the Commission's budgeted regulatory costs in Fiscal Year 1977 were associated with services which would be excluded from consideration for cost recovery. These excluded costs covered agency activities which in the Commission's view did not provide special benefit to identifiable recipients, ^{1/} or were programs providing an independent public benefit.

The following is a summary of the costs of activities excluded from cost recovery when the schedule was developed in 1977.

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NRC services for which no fees are charged include research, development of standards and codes and licensing guides and all generic licensing activities. These activities were excluded from cost recovery because the benefits cannot be attributed specifically to identifiable recipients. Costs associated with non-routine inspections including incidents, investigations, and enforcement were also excluded from recovery since it was concluded they were primarily an independent public benefit.

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	<u>\$ In Millions</u>
Research	\$127.5
Generic studies and generic licensing activities	30.6
Standards codes, and licensing guides development	16.2
Generic safeguards activities	7.1
Costs of contested hearings	5.6
International & State Programs	2.9
Non-routine inspections	1.6
Offices of General Counsel, Inspector and Auditor, Policy Evaluation, Plans and Analysis, Congressional Affairs, Public Affairs, Equal Employment, Indemnity, and Office of Commissioners	7.9
	<u>\$199.4</u>

The fees for specific services all have upper limits which were based on actual costs of performing these services in Fiscal Year 1976. Revenue collected in any fiscal year depends upon the number and type of licensing actions and inspections performed. In Fiscal Year 1978, the Commission collected \$13 million in fees. The NRC expects to evaluate the fee program and associated costs in the near future and where appropriate make adjustments.

Several utilities and other licensees have challenged the legality of our present fee schedule in the United States Court of Appeals for the Fifth Circuit (Mississippi Power and Light Co., et al. v. NRC; Nuclear Engineering Co. v. NRC; and Chem Nuclear Systems, Inc. v. NRC). Oral argument in these consolidated cases was held on February 5, 1979. The court's decision is pending.

In these cases, the petitioners argue that the IOAA does not permit the Commission to recover in fees the full cost of providing a special benefit to an identifiable recipient. The petitioners assert that the IOAA requires the Commission to determine what portion of the benefit of a service provided by the NRC accrues to the public and to exclude a proportional amount of the cost from the fee base. For example, they argue environmental reviews and inspections benefit the public rather than the licensees, and therefore the Commission cannot assess fees for these services. The Commission has rejected this argument and has included in its fees the costs of these services, which we are legally required to provide as part of the procedure for granting and maintaining a license.

The Commission has analyzed your proposed amendment and believes it could have the effect of reducing the Commission's ability to recover costs of agency services. Under the Commission's interpretation of the IOAA, the NRC's present authority to collect fees for agency services is broader than the authority which the proposed amendment would grant. For example, services not covered by the proposed IOAA amendment for which the NRC presently charges fees include early site reviews, review of standard reference designs, license amendments,

and review of topical reports. In addition, the legislation appears to limit fees for inspections to production and utilization facilities. Presently we also charge fees for inspections of materials licensees, such as hospitals, radiographers, and waste disposal sites. As noted above, the Commission has already promulgated a fee schedule which generally imposes fees to the full extent permissible under the IOAA. Passage of the proposed amendment could be construed as superseding the IOAA grant of authority, thereby narrowing the Commission's ability to recover costs for services rendered.

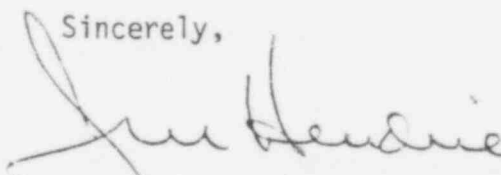
In one respect, however, the amendment would broaden the scope of services for which fees would be charged. Presently, we do not charge fees for all inspections. We charge for routine inspections, but do not charge for emergency inspections, management audits, and enforcement inspections. A limit is placed on the number of routine inspections for which we will charge a licensee each year. We believe that it is desirable that the Commission should have flexibility in determining whether to charge for inspections, rather than be obliged to charge for all inspections, as your amendment would provide.

The amendment would also authorize Agreement States to charge fees. We do not believe that this provision is necessary. States with licensing authority already may assess fees under appropriate state legislation. Some States already charge fees. In any event, the proposed amendment seems to provide that State fees will be comparable in amount to those assessed by the NRC. We believe that any fees assessed by States should be based on State costs, not NRC costs. We also wish to note that States do not license production or utilization facilities.

Finally, we note that under the proposed amendment, an individual aggrieved by a Commission decision to assess a fee would seek review in a United States district court. Judicial review of final orders of the Commission is normally exclusively vested in the United States courts of appeals where review is based on the administrative record. We see no reason to depart from that procedure.

In sum, we do not believe that this legislation is needed at this time. However, should the United States Court of Appeals reject the Commission's interpretations of the IOAA, legislation along the lines you have proposed may be necessary. We will advise you of the court's decision when it is rendered. If you have further questions, please do not hesitate to contact me.

Sincerely,



Joseph M. Hendrie

Enclosure:
Fee Schedule

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