



B&W FUEL COMPANY

An American Company with Worldwide Resources

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President

July 16, 1993 '93 JUL 16 P12:46

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Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attn: Docketing and Service Branch

Re: NRC Fee Policy; Request for Public Comment pursuant to
the Energy Policy Act of 1992 and the Petition for Rulemaking
Submitted by the American Mining Congress

Dear Sir:

The B&W Fuel Company (BWFC), as a fabricator of nuclear fuel assemblies and the owner and operator of the Commercial Nuclear Fuel Plant (CNFP) in Lynchburg, Virginia, respectfully submits the following in response to the invitation of the U. S. Nuclear Regulatory Commission published in the Federal Register, Vol. 58., No. 73, April 19, 1993, for public commentary on the NRC fee policy in keeping with the Energy Policy Act of 1992 and the petition for rulemaking submitted by the American Mining Congress.

ENERGY POLICY ACT OF 1992

Section 2903 of the Energy Policy Act authorizes the NRC to conduct a study of its user fee policy and to make recommendations to Congress aimed at preventing "the placement of an unfair burden" on NRC licensees. In its request for public comment, the Commission has asked commenters to assume that NRC activities will continue to be funded through user fees rather than through the tax base, has stipulated that any request for a reduction of fees for a particular licensee or class of licensees should also recommend how the resulting fee differential could be recovered, and has identified four major areas of concern so as to assist in focusing comment.

I. Annual Fee Surcharge and Regulatory Support of Agreement States

Because the NRC must recover approximately 100% of its costs and has some expenditures which, for a variety of reasons, cannot be charged to a specific user, it assesses a surcharge against certain licensees to cover:

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Activities not associated with an existing NRC licensee or class of licensees, including international activities, Agreement State activities, generic low-level waste activities, and generic uranium enrichment activities. (\$14 million assessed against power reactors, \$4 million assessed against nonreactor licensees that generate low-level waste, and \$3 million assessed against all licensees through NRC hourly rates.)

Specific applicants and licensees or classes of licensees that are not subject to fee assessment under IOAA or other law, primarily Federal agencies. (\$4 million assessed against power reactors.)

Activities relating to applicants, licensees that are exempt from fees (such as nonprofit educational institutions), and small entities which are charged reduced fees. (\$7 million assessed against power reactors and \$6 million assessed against all licensees that are not small entities.)

However, if the nuclear industry is to be required to pay for the total cost of its own regulation, then fundamental fairness dictates that those costs must be spread across all actual users and, to the greatest extent possible, should be based upon actual benefit received. We believe, therefore, that the cost of international activities should be assessed against the governmental body (be it foreign or domestic) ordering or requesting such services, that Agreement State licensees should pay their fair share of NRC costs in return for NRC benefits received, and that the cost of the NRC's efforts expended in support of Federal facilities should be Federally-funded.

With respect to this particular issue, I recognize that in the R&W Fuel Company's previous response to the rulemaking that resulted from the Allied-Signal case we supported the Commission's proposal to continue to exempt nonprofit educational institutions. We still do. However, we also agree that educational research provides benefits to the public at large and, accordingly, we recommend that the cost of the NRC's activities in support of such undertakings be funded by the U.S. Government rather than by the nuclear industry.

II. Fluctuating Annual Fees

We concur whole-heartedly with the suggestion that there be limits on the increases in annual fees for each class of licensees, and we recommend that these limits be based upon some form of commercially realistic index rather than be fixed at an arbitrary percentage. As support for this proposition, we have only to reflect upon our own recent experience as a category 1.A.(1) licensee (the LEU fuel fabricator class). Our annual fee has grown from an already excessive \$683,000 in FY 1992 to \$1,219,000 for FY 1993 - an increase of almost 79 percent. Since this same period

has seen decreases in the number of materials licensees in general and in 1.A.(1) licensees in particular, one would think that there would be a corresponding decrease in the Commission's regulatory expenditures and, therefore, a decrease in annual fees. Accordingly, we find it rather remarkable that our annual fee can increase so drastically under these circumstances and we strongly urge some form of control.

III. Simplifying the Development of Annual Fees

While we would endorse efforts aimed at simplifying the development of annual fees, we cannot support a departure from the rulemaking process (even when the fee-assessment policies are the same as in prior years) and we would vehemently oppose any attempts at setting one uniform annual fee for all fuel facilities. With respect to the first issue, we believe that the imposition of generic fees upon the nuclear industry to pay for its regulatory costs off-sets what would otherwise be a governmental expense and, therefore, is tantamount to a form of taxation. Accordingly, we believe that the Commission's policies and procedures relative to the assessment of these fees must be aired in a public forum with ample opportunity for consideration and comment. The fact that those policies and procedures might be the same as before should not be used to foreclose the opportunity for new commentary or renewed dissent. With respect to the second issue, as we pointed out in our comments to the Allied-Signal rulemaking, the B&W Fuel Company believes that the present standardization of fees among the LEU fuel facilities already constitutes a disproportionate allocation of costs within the meaning of 10 CFR 171.11(d). To impose one uniform annual fee upon all fuel facilities (HEU fuel fabricators, LEU fuel fabricators, UF_6 conversion facilities and others) would not only be clearly disproportionate but would seem to be contradictory to the NRC's reason for soliciting these comments in the first place; i.e., the elimination of unfair burdens.

IV. Expanded Scope for 10 CFR Part 170

Consistent with our comments regarding the costs for activities not associated with existing licensees, it is our position that, to the extent the NRC continues to recover its operating costs from fees imposed upon its users, then all identifiable recipients of NRC services should be required to reimburse the NRC for the cost of those services. The B&W Fuel Company would be in favor of modifying 10 CFR part 170 to permit the recovery of costs from all recipients of specific actions.

AMERICAN MINING CONGRESS PETITION FOR RULEMAKING

We have reviewed the petitioner's proposals and feel that they have merit, as follows:

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I. Implementation of a System that Allows NRC Licensees to Review Assessments

We would support the establishment of a licensee review board and suggest that the formation of such a group could actually be beneficial to the operations of the NRC. For example, the NRC contracts with a government laboratory to perform isotopic analysis for verification samples and we understand that this results in its licensees being charged for analysis costs which are significantly higher than those of a commercial laboratory. This type of cost discrepancy needs to be justified to the affected licensees or rectified within the NRC. We believe that a continuing review of the NRC fee structure by those who pay the fees would not only help dispel the fears of regulatory abuse but would also serve to make the Commission more aware of current technical practices and business trends within the industry that it regulates.

II. Development of a Consistent Method for Applying Charges

We would be receptive to the development of a cost sheet that might describe charges for (or even fix the price of) various types of NRC services, as well as a schedule of response intervals for NRC regulatory services.

III. Detailed Accounting of the Services Provided

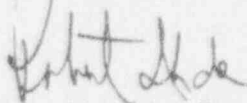
We would support the development of a system to provide a more complete and detailed accounting of the charges for NRC services.

IV. Elimination of Factors that Contribute to Inequitable Treatment

We sympathize with the petitioner and agree that it has cited examples of specific instances which do not appear to be equitable. However, recognizing that some inequities are bound to occur in a regulatory universe as broad and varied as that in which the Commission operates and that they can't all be anticipated, we would propose taking the idea a step further and suggest that there should be a readily available means for licensees to seek redress from such inequities, perhaps in the form of a dispute resolution system or an appeal procedure within the Commission itself.

Thank you for providing us with the opportunity to express our thoughts on these matters. If you have any questions regarding these comments, please contact Mr. Thomas D. Corkran of our Legal Department at 804-385-2749.

Very truly yours,



Robert H. Ihde, President