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(58 FR 21116)

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Docket Number 50-346

License Number NPF-3

Serial Number 2162

July 19, 1993

Mr. Samuel J. Chilk  
Secretary  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Comments Regarding NRC User Fee Policy

Dear Mr. Chilk:

These comments are being submitted by the Toledo Edison Company in response to the request for public comment on the need for changes to the existing Nuclear Regulatory Commission (NRC) user fee policy as identified in the Federal Register, Volume 58, No. 73, pages 21116 through 21121, dated Monday, April 19, 1993. Toledo Edison is an owner and operator of the Davis-Besse Nuclear Power Station and has a vested interest in regulations and policies regarding nuclear power and, in particular, fees which are assessed.

Since the implementation of the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) and the implementing changes to 10CFR Parts 170 and 171, the NRC, according to the Federal Register Notice, has been inundated with public comments, letters from licensees and thousands of telephone calls regarding the assessment of annual fees. This level of interest is a clear indicator that the requirement to collect 100% of the NRC's budget through user fees should be revisited. Below are Toledo Edison's comments to some of the specific questions raised, proposed changes in NRC policy, and proposed legislative changes identified in the Federal Register notice.

As requested in the Federal Register notice, these comments do not address the appropriateness of the policy issue of whether the Federal government should selectively fund some of its activities through user fees instead of assessing taxes on the general population. Rather,

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these comments address given that user fees will be assessed to NRC licensees, what specific legislative or NRC policy changes are needed to eliminate an unfair burden.

RECOMMENDED CHANGES TO OBRA-90

1. Should OBRA-90 be modified to remove from the fee base the cost of activities on licensees who neither requested nor derive direct benefit from those activities?

RESPONSE: To bring this funding policy closer to a true user fee system, OBRA-90 should be modified to eliminate from the fee base costs associated with the following activities:

-Those activities unrelated to an existing licensee or class of licensees (e.g., international, Agreement State, and generic uranium enrichment activities).

-Those activities associated with the NRC nuclear materials and uranium recovery regulatory program.

-Those activities in support of applicants or licensees currently identified as exempt from billing by the NRC under the Independent Offices Appropriation Act (e.g., Army irradiators, NASA radiographers, etc.).

-Those activities which support licensees exempt from fees (e.g., non-profit educational institutions).

If the costs associated with these activities were eliminated from the fee base, approximately \$61 million would be removed from the fee base and this unfair burden that currently is placed on power reactor licensees would be reduced.

2. Should the increase in annual fees be limited to the increase as reflected by the Consumer Price Index (CPI) or some other fixed percentage?

RESPONSE: The increase in annual fees for each class of licensee should be limited to the increase in the CPI.

3. Should OBRA-90 be modified so fee schedules can be published without soliciting public comment, provided the basic methodology and policies remain unchanged from previous years?

RESPONSE: This modification should not be implemented. When consideration is given to the industry's efforts to reduce operating expenditures and given the impact of annual fees on those expenditures, it is only appropriate that a public comment period be provided to the impacted licensees.

RECOMMENDED CHANGES TO THE ATOMIC ENERGY ACT:

Modify 10CFR Part 170 to recover the costs incurred for specific actions from the identifiable recipients.

RESPONSE: Implementation of this modification would in fact assist in ensuring that charges be fair and equitable. The Independent Offices Appropriations Act currently prohibits the NRC from assessing Part 170 fees to Federal agencies for identifiable services such as reviews, approvals and inspections. This should be modified to allow the NRC to recover these costs directly from the Federal agencies which benefit from their activities.

RECOMMENDED POLICY CHANGES:

1. Policy Changes to include the elimination of exemptions currently contained in 10CFR Parts 170 and 171.

RESPONSE: Elimination of the exemption for nonprofit educational institutions is recommended. The Commission initially decided to exempt these licensees from both fees because of their inability to recoup these costs and the broad societal benefits of nuclear-related education. However, these costs should not be allocated specifically to the 50 utility licensees, but should be spread among all licensees since all NRC licensees benefit from nuclear-related education.

2. Policy changes to modify 10CFR Part 171 to assess one uniform annual fee for all operating power reactors and one uniform annual fee for all fuel facilities.

RESPONSE: Since OBRA-90 directs that fees be related to regulatory services provided, and the annual fee is based on amounts of NRC resources spent on generic research and regulatory activities unique to a specific design, it is recommended that this change not be implemented.

RECOMMENDED EXPANDED SCOPE FOR 10CFR PART 170

Broadening scope of 10CFR Part 170 to recover costs incurred for specific actions for identifiable recipients.

RESPONSE: Under current NRC policy, 10CFR Part 170 fees are not assessed for orders or license amendments resulting from orders, because the NRC, on its own initiative, issues an order. Amendments resulting from orders are not assessed 10CFR Part 170 fees because such amendments are not filed voluntarily by the licensee, but are filed as a requirement of the order. Therefore, should a licensee not request an amendment recommended by an NRC Generic Letter and the NRC later impose it through an order, the licensee would not be charged a Part 170 fee. However, amendments voluntarily submitted to the NRC from licensees as a result of NRC recommendations in Generic

Letters (which could be more restrictive than the present licensees' license requirements) are subject to 10CFR Part 170 fees. This relationship does not appear to be an incentive for voluntarily requesting amendments in lieu of an order.

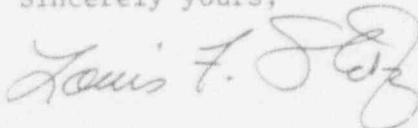
Comments were also requested on the American Mining Congress Petition (PRM-170-4). After reviewing the Petitioner's concerns in the Federal Register, the following comments are submitted.

The petitioner suggests that the NRC provide a more complete and detailed accounting of the services it provides. Currently the NRC lists only the subject of review, the hours spent and the hourly rate on bills sent to licensees. This is deficient in providing licensees with sufficient information to know what was accomplished for specific costs. Due to the increasing efforts to control operating costs at nuclear power facilities, this item of improvement is highly recommended. It would be beneficial to the licensees to have included a more complete description of the work performed, the name(s) of the individual(s) who performed the work, and the dates on which the work was performed. In particular, work performed by contractors to the NRC should be described in detail and the NRC staff member identified who is responsible for providing oversight of the contractor's work and ensuring proper cost control, accountability, and a quality product delivered on time.

The petitioner also recommends a licensee review board be established to review the NRC fee system annually. An alternative could be that the NRC establish a cost control and accountability committee made up of not only NRC staff members, but individuals from other governmental agencies and the nuclear industry with proven expertise in budget and cost control oversight. This committee could not only periodically review the fee system, but also review areas to further control costs and ensure the maximum benefit and effectiveness is achieved from fees collected from licensees. This would, in turn, assist in ensuring the interests of the power reactor rate payers are protected.

If you have any questions regarding these comments, please contact Mr. Robert W. Schrauder, Manager - Nuclear Licensing, at (419) 249-2366.

Sincerely yours,



NJS/dlc

cc: J. B. Hopkins, NRC Senior Project Manager  
J. B. Martin, Regional Administrator, NRC Region III  
S. Stasek, DB-1 NRC Senior Resident Inspector  
Utility Radiological Safety Board