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Meeting Title: Brief on Results of Free Study

Meeting Date: 12/21/93 Open X Closed \_\_\_\_\_

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Title: BRIEFING ON RESULTS OF FEE STUDY

Location: ROCKVILLE, MARYLAND

Date: DECEMBER 21, 1993

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

- - - -

BRIEFING ON RESULTS OF FEE STUDY

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PUBLIC MEETING

Nuclear Regulatory Commission  
One White Flint North  
Rockville, Maryland

Tuesday, December 21, 1993

The Commission met in open session,  
pursuant to notice, at 3:00 p.m., Ivan Selin,  
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission  
KENNETH C. ROGERS, Commissioner  
FORREST J. REMICK, Commissioner  
E. GAIL de PLANQUE, Commissioner

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## STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

JAMES TAYLOR, Executive Director for Operations

JESSE FUNCHES, Deputy Controller

RONALD SCROGGINS, Deputy Chief Financial  
Officer/Controller

JAMES HOLLOWAY, Special Assistant, Office of the  
Controller

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P-R-O-C-E-E-D-I-N-G-S

3:00 p.m.

1  
2  
3 CHAIRMAN SELIN: Good afternoon, ladies  
4 and gentlemen.

5 The Commission is meeting at this time to  
6 receive a briefing from the staff on their review of  
7 the NRC fee policy. This has been of great interest,  
8 which is sort of an understatement, to the Commission  
9 and to its licensee community, but the Energy Policy  
10 Act of 1992 required that we review our policy for  
11 assessing annual fees and that we recommend to the  
12 Congress whatever changes in existing law we may find  
13 are needed to prevent the placement of an unfair  
14 burden on certain NRC licensees. It's a fair  
15 statement to say that we jumped at this opportunity,  
16 since we've been looking for a forum and a  
17 communication path, not to do the analysis but to  
18 express our views, and so this was a really quite  
19 welcome request.

20 We've received the staff report and I have  
21 to say on my own part I've found it very interesting.  
22 I really was quite enlightened. We've all had a  
23 chance to review the report and so we look forward to  
24 the presentation and particularly to the opportunity  
25 to discuss with you some of the

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1 what-ifs -- you know, what would happen if we made  
2 some of these recommended changes.

3 Commissioners?

4 Mr. Taylor?

5 MR. TAYLOR: Good afternoon.

6 With me at the table are Ron Scroggins,  
7 the Controller; Jesse Funches, the Deputy Controller;  
8 and Jim Holloway, who heads the fee collection  
9 activity in the Office of the Controller.

10 Jesse will commence the formal  
11 presentation.

12 MR. FUNCHES: On November the 5th, 1990,  
13 the Omnibus Budget Reconciliation Act of 1990, known  
14 as OBRA-90, was enacted. That Act required that the  
15 NRC recover 100 percent of its budget through fees for  
16 fiscal years 1991 through 1995. This year the Act was  
17 amended to extend the requirement through 1998.

18 To recover 100 percent of the budget, NRC  
19 assesses two types of fees. First, license and  
20 inspection fees are assessed under 10 CFR Part 170 for  
21 specific services to applicants and licensees. In  
22 fiscal '93, we collected approximately \$100 million  
23 through those fees. The second type of fees we  
24 recover are annual fees under 10 CFR Part 171. These  
25 fees recover the remaining part of the budget that is

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1 not recovered under Part 107. The fees, in accordance  
2 with OBRA-90, are assessed only to NRC licensees.

3 Since OBRA was passed, the NRC has issued  
4 four rules to implement OBRA. Three of the rules  
5 established the fees for fiscal year 1991 and '93.  
6 The first rule established the basic policy for the  
7 annual fees. It also established the basic principle  
8 for fairness and equity.

9 To eliminate a concern that was caused by  
10 the fees on small entities, the Commission adjusted  
11 its small entity fee to provide for a lower small  
12 entity fee for a licensee with gross receipts of less  
13 than \$250,000.00 per year. A \$400.00 fee was  
14 established for those licensees.

15 As the Chairman mentioned, the Energy  
16 Policy Act of 1992 required NRC to reassess its fee  
17 policy and recommended legislative change to prevent  
18 placement of an unfair burden on NRC licensee.

19 On April the 19th, 1993, we requested  
20 comments from the public as an input to the evaluation  
21 of NRC fee policy.

22 (Slide) Next chart, please.

23 The scope of the review of the NRC fees,  
24 in scoping that we did not address two broad  
25 questions. The first broad question was the issue of

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1 how to raise revenues to fund NRC's activity, that is  
2 taxes versus fees. We assume the current legislation,  
3 however we did examine whether or not some fees should  
4 be taken off budget to eliminate an unfair burden.

5 The second major area we did not look at  
6 was the size of the budget and the resulting fees.  
7 The budget is addressed annually by the NRC, OMB and  
8 Congress until we assume that budget.

9 There are four fee-related issues that are  
10 under separate review and will be coming to the  
11 Commission separately. The first one is reexamining  
12 the exemption for non-profit education institutions.  
13 As you will recall, we published a proposed rule to  
14 reinstate that exemption. We received comments and we  
15 expect to the come to the Commission in early January  
16 with a proposal final rule. We expect the final  
17 report to Congress to reflect our decision. For  
18 analysis purposes, we have assumed that the exemption  
19 would be reinstated.

20 There are two issues associated with the  
21 small entity size standards that are being addressed  
22 separately. The first issue is whether or not there  
23 should be separate standards for manufacturing and  
24 servicing industry. The second issue relates to  
25 whether the size standard that's set for \$0.5 million

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1 should be changed.

2 We have completed a survey, we have  
3 completed evaluation of the survey and we're in the  
4 process of completing a final recommendation on that  
5 issue. We expect the resolution of those issues to be  
6 accomplished without legislation.

7 We also have two petitions that we're  
8 examining. We have a petition from the American  
9 College of Nuclear Physicians and we also have a  
10 petition from the American Mining Congress. The  
11 issues in those petitions will be addressed as part of  
12 this review and as a part of the final rule on non-  
13 profit educational institutions. However, the final  
14 FRN to issue a decision will be separate.

15 We have an effort underway examining using  
16 cost center concepts within the NRC. We expect a  
17 paper to the Commission shortly. We will indicate  
18 during the briefing how those concepts can be used to  
19 assist us in fees.

20 CHAIRMAN SELIN: I'd like to stop you for  
21 a minute, Mr. Funches. One of the discussions is to  
22 reduce or perhaps even drop our use of the variable  
23 part, the Part 170 fees. When you do the savings, are  
24 you assuming that we're putting in a cost center based  
25 accounting system anyway? The assumption is not that

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1 the cost center accounting is there in order to  
2 support fees, it's to support the proper financial  
3 management.

4 MR. FUNCHES: That's correct.

5 CHAIRMAN SELIN: And so these savings do  
6 not assume that we junk the cost center accounting.

7 MR. FUNCHES: No, no.

8 CHAIRMAN SELIN: Okay.

9 MR. SCROGGINS: It assumes that what we're  
10 going to propose in the cost center paper would be the  
11 process we go through in the restructuring of our  
12 program and our budget.

13 CHAIRMAN SELIN: That I understand, but  
14 when we talk about what the savings would be if we  
15 didn't build for the individual fees, if we just used  
16 the 171, the annual fees, we're assuming that we keep  
17 enough of the cost center system to support a proper  
18 internal --

19 MR. SCROGGINS: Yes, that's correct.

20 CHAIRMAN SELIN: -- financial management.  
21 Okay. Thank you.

22 MR. FUNCHES: (Slide) Next chart, please.

23 We had three primary input to the fee  
24 policy review. The first was the experience that we  
25 have gained over the past three years implementing

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1 OBRA. We have collected during that time each year 98  
2 to 99 percent of the budget. However, there have been  
3 significant comments and concerns about the fees from  
4 NRC licensees. We have received over 1,000 comments  
5 on the four rules that we published. We receive  
6 approximately 5,000 phone calls and letters per year.  
7 As I mentioned earlier, we have had two petitions and  
8 we have had one court case. In that court case, the  
9 basic method that we were using for annual fees was  
10 upheld. However, two issues were remanded. One issue  
11 dealt with non-profit education, which we have a  
12 separate rulemaking on, and the other issue dealt with  
13 low-level waste. We addressed that issue as part of  
14 the '93 rule.

15 COMMISSIONER ROGERS: Excuse me. Just  
16 before you leave that, you don't list here any  
17 statistics on, for example, the number of licensees  
18 which have dropped their licenses since implementation  
19 of OBRA-90. Now, I know that that may be in some  
20 cases an entirely good thing to do because the license  
21 may not have been very active anyhow and so on and so  
22 forth. But it would seem to me that that's another  
23 impact of that that ought to be part of the record.

24 MR. FUNCHES: Yes, sir. During the first  
25 year we lost approximately 2,000 licenses. The number

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1 of licenses decreased. Some of those obviously was  
2 combining licenses or the license that people were not  
3 using. The second year we lost about 300 licenses.  
4 Going into this year, we expect another 300. However,  
5 about 130 of the 300 are licenses that was transferred  
6 to Maine as an agreement state. So, it's about 200  
7 licenses that we have lost in the last year or so.

8 On the Energy Policy Act Federal Register  
9 notice that we issued to solicit a comment on NRC fee  
10 policy, we received 566 comments. Those comments were  
11 received from all groups of licensees. We also had  
12 the benefit of an OIG review which was submitted to  
13 the Commission on October the 26th and briefed to the  
14 Commission on December 10th.

15 (Slide) Next chart, please.

16 Based on our three years of experience,  
17 the comments we receive on the Energy Policy Act and  
18 the input from the OIG review, we conclude that there  
19 are two major fairness and equity concerns. One  
20 concern related to streamlining the fee process and we  
21 also had several individual concerns that didn't fit  
22 within these three major concerns.

23 What I'd like to do is summarize these  
24 major concerns and then we'll discuss each of the  
25 concerns and recommended solutions.

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1           The two major fairness and equity concerns  
2 both relate to annual fees. The first major concern  
3 is that licensees are charged fees for activities that  
4 do not directly benefit the licensee that paid a fee.  
5 We must do this in order to recover 100 percent of the  
6 budget as required by law.

7           The second concern is more difficult to  
8 assess. It relates to a licensee's belief that the  
9 fees they are paying are not commensurate with the  
10 benefit that they receive.

11           Another concern that we in the staff have  
12 and was identified by the IG was that there may be  
13 opportunity to streamline the fee process. We  
14 identified this concern in a Federal Register notice  
15 and solicited comments on it.

16           There are six individual concerns that  
17 relate to individual licensee or individual activity  
18 that do not fall in the major concerns above and we  
19 will discuss those individually.

20           (Slide) Next chart, please.

21           What I'd like to do now is address the  
22 first fairness and equity concern. This concern  
23 relates primarily to power reactors and the concern is  
24 that fees are being assessed for activities that do  
25 not directly benefit the NRC licensee. There are two

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1 groups of activities that are being assessed -- for  
2 which fees are being assessed. The first group is  
3 activities not associated with existing licensees.  
4 This involves our international activities. For  
5 example, support of international safeguards concerned  
6 with nonproliferation. This involved our oversight of  
7 agreement state programs and technical assistants of  
8 agreement states.

9 Two types of activity we perform there.  
10 One of the activities is specific support to an  
11 individual agreement state or a review of an agreement  
12 state. The second type is the generic guidance or  
13 evaluation criteria that we might develop that apply  
14 to all agreement states.

15 The other concern is that we don't have a  
16 low-level waste licensee at this time. However, NRC  
17 performs generic regulatory activity for low-level  
18 waste.

19 A total amount of these fees for these  
20 activities is \$21.4 million, of which \$18.2 million is  
21 currently being assessed to power reactors, or about  
22 \$170,000.00 per reactor.

23 CHAIRMAN SELIN: Is that the total  
24 international program or just the international safety  
25 and safeguards program? We do some research on the

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1 international basis which is clearly in support of our  
2 domestic safety program.

3 MR. FUNCHES: Right. The research that is  
4 in support of our regulatory program is not included  
5 in these numbers.

6 CHAIRMAN SELIN: So that --

7 MR. FUNCHES: It would be international  
8 safeguards, consultation with the State Department on  
9 issues, that type of support. Obviously the aid money  
10 is not here because that's reimbursable.

11 (Slide) Next chart, please.

12 The next group of activities that are  
13 being assessed to licensees that are not the direct  
14 beneficiary of the activity result from some licensees  
15 not paying fees because of legislative or policy  
16 constraints. I would note that in the cases of the  
17 policy constraints, the policy decisions were made to  
18 eliminate other concerns.

19 The first group of -- currently we are not  
20 able to assess federal agencies except for TVA and the  
21 Uranium Enrichment Corporation which we were given  
22 special legislation to do. We do not assess fees to  
23 federal agencies. This includes a substantial amount  
24 of activities in support of DOE, such as review of  
25 mills under the Uranium Mill Tailing and Radiation

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1 Control Act. About 90 percent of these reviews or the  
2 cost associated with the reviews would be associated  
3 with DOE.

4 As I mentioned earlier, we are assuming  
5 that the proposed rule would be continued and the  
6 exemption for non-profit education institution would  
7 be reinstated.

8 We also have a small entity fee that we  
9 establish in response to the Regulatory Flexibility  
10 Act. As a result of this small entity fee, the  
11 reduced fees must be -- the difference between a full  
12 fee and a reduced fee must be recovered from other NRC  
13 licensees. These three categories of activities  
14 equate to about \$18.2 million of fees. Again, the  
15 reactor pays the bulk of those fees.

16 (Slide) Next chart, please.

17 We looked at three alternatives to deal  
18 with the fairness and equity concern raised by  
19 licensees paying fees for activities that do not  
20 directly benefit them. The first alternative would be  
21 to seek legislation to relax the requirement to  
22 collect the 100 percent of the budget. The second  
23 alternative would be to identify, if we can, and  
24 charge the direct beneficiary of NRC activities. In  
25 many cases, this would also require legislation. The

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1 third alternative would be to continue the current  
2 policy of assessing NRC licensees as we do now, or  
3 look at some combination of these three.

4 In deciding between the three  
5 alternatives, we considered three primary factors.  
6 The first one was we wanted to minimize the impact on  
7 the 100 percent reduction where possible. That is if  
8 we could eliminate the concern. The second one was we  
9 did not want to undo the resolution of concerns based  
10 on previous policy decisions. I guess lastly, we did  
11 not want to create new significant concern. That is,  
12 eliminate a concern and create another one.

13 (Slide) Next chart, please.

14 After looking carefully at the issues  
15 involved and considering factors that I noted earlier,  
16 the staff concluded a combination of the three  
17 alternatives is desirable. We do not believe it's  
18 necessary to remove all \$40 million of the costs that  
19 we discussed from the fee base. However, there are  
20 certain areas where we believe we cannot resolve a  
21 concern without creating another concern if we don't  
22 remove it from the fee base. These activities are  
23 international activities. It becomes difficult, if  
24 not impractical, to identify the direct beneficiary of  
25 those services that NRC provides.

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1 Agreement states -- although we could have  
2 charged agreement states under 10 CFR Part 170 for a  
3 specific service to an individual agreement state, we  
4 believe if we charged those fees we would create  
5 additional concerns that may be even larger than the  
6 ones that we have now. This would involve potentially  
7 agreement states turning the agreement back to NRC.

8 The last two items, non-profit education  
9 institution and small entities, the decision in the  
10 policy decision that's been made eliminated some  
11 significant concern. If we attempted to charge them  
12 fees now, we'd just recreate those concerns.

13 So, we would propose that OBRA would be  
14 modified to remove about \$25 million of this \$40  
15 million from the fee base.

16 Secondly, we would propose modifying the  
17 Atomic Energy Act to charge all federal agencies  
18 similar to what we're doing for TVA and the Uranium  
19 Enrichment Corporation today for activities that we  
20 perform for them. We do not believe this would be a  
21 significant concern in that we're already charging  
22 federal agency annual fees.

23 Lastly, we would continue the current  
24 policy of assessing low-level waste fees to those NRC  
25 licensees that generate low-level waste. Our reason

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1 for doing this is that there is an indirect benefit to  
2 those licensees that generate waste and therefore the  
3 fee would be fair and equitable.

4 (Slide) Next chart, please.

5 The second major concern about fairness  
6 and equity relate primarily to materials licenses.  
7 Many material licensees believe that the fees that  
8 they are paying are not equal to the benefit they are  
9 receiving. There are several unrelated reasons for  
10 this belief and I will discuss each and possibly  
11 responses to each.

12 The first area relates to the NRC's  
13 regulatory program which is available to be used by  
14 both agreement state licenses and NRC licensees. We  
15 recognize that the NRC regulatory program is necessary  
16 to support NRC licensees, but it also supports the  
17 agreement states to a significant degree. Currently  
18 there are about 7,000 NRC material licensees, about  
19 16,000 agreement state licensees. We examined the  
20 cost that NRC incurred and looked at those activities  
21 that could support both or would be likely to support  
22 both or could be adopted by both NRC licensees or  
23 agreement states. Based on that estimate and  
24 prorating it based on the number of licensees, we  
25 estimate about \$15 million of the annual fees paid by

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1 material licensees could be considered support to  
2 agreement states.

3 The issues raised by this particular area  
4 could become worse in the future as additional  
5 agreement states are issued. There are four states  
6 with an interest in becoming agreement states. If  
7 these states were to become agreement states, we would  
8 lose approximately 2,000 licensees. Recognizing that  
9 the direct cost would decrease as a result, however  
10 the discretionary fix cost that we incur, such as  
11 research rulemaking or examining certain safety issues  
12 will stay the cost for -- the annual fee for material  
13 license would increase by 30 percent.

14 In addressing these issues there are two  
15 possible alternatives. One is to remove the cost from  
16 the fee base and the second one is to charge to  
17 agreement states. As I mentioned earlier, assessing  
18 fees to the agreement state could create significant  
19 concerns on the other side. This leads the  
20 alternative route, moving the cost from the fee base.  
21 That's the best solution to this issue.

22 CHAIRMAN SELIN: That's an interesting  
23 point. Moving the cost from the fee base is  
24 equivalent to saying that the benefits are shared  
25 by -- you know, on the statistical basis by all

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1 citizens, not by any particular set of citizens.  
2 Clearly that's true of the international activities.  
3 Those are for the security of the United States. If  
4 they make sense at all, they make sense. Do you  
5 believe that that's true also for the agreement  
6 states, that the citizens of the agreement states and  
7 of the non-agreement states should both share the cost  
8 of the agreement state program?

9 MR. FUNCHES: I think if you look, all  
10 states have material licensees within their states and  
11 we're regulating across each of those states. So,  
12 it's definitely not as clear as the international one,  
13 but I think an argument could be made that all states  
14 share in the safety benefits that are being achieved  
15 from the agreement state and NRC license.

16 CHAIRMAN SELIN: Yes. The trouble is the  
17 licensees in the non-agreement states are paying  
18 twice, or at least the citizens of non-agreement  
19 states are paying twice. Their licensees are paying  
20 and then they share in it. You'd have to argue it's  
21 de minimis, it's such a small amount of money per  
22 citizen or some such.

23 MR. FUNCHES: I think even though they  
24 might be paying twice, we looked at the amount of fees  
25 that are being paid by the agreement state licensees.

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1 I think the highest one was like about 75 percent of  
2 what the NRC charges. But typically they are lower  
3 than NRC fees.

4 CHAIRMAN SELIN: And that's okay. I think  
5 it's time to go on to the next question.

6 MR. FUNCHES: (Slide) Next chart, please.

7 Another reason that licensees believe that  
8 fees are not equal to the benefit they receive I think  
9 is really a perception of how the fees came in. Prior  
10 to 100 percent recovery, the material licensees did  
11 not pay an annual fee. The power reactor did, but the  
12 materials didn't. So, in one year that fee went --  
13 essential increase in the amount of fees the material  
14 licensee was paying. Basically they had a new annual  
15 fee. Even though we attempted to explain that this  
16 was a new fee, they perceived it as a new NRC cost  
17 without any additional benefit.

18 The second year we had a reduction in the  
19 number of licensees, again resulting in an increase in  
20 fees, licensees perceiving again that more costs from  
21 NRC as opposed to -- without any additional benefit.

22 We believe these types of issues are  
23 behind us to a large degree, as I mentioned earlier.  
24 The reduction in licensees seem to have stabilized  
25 fairly much. We believe that we won't have large

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1 increases except for where there are programmatic  
2 changes. For the material licensees, small  
3 programmatic changes could cause relatively large  
4 percentage increases in the fees. However, with the  
5 availability of cost center concepts, we believe we'll  
6 be able to improve the explanation in tracing those  
7 increases.

8 CHAIRMAN SELIN: You know, one thing I'm  
9 sort of fuzzy about is there seem to be people who  
10 benefit from specific programs that we don't charge  
11 fees for. In our research program, for instance, we  
12 have some research that is tied to a very small number  
13 of vendors, not specifically to the licensees. There  
14 are fees in the research and in some of the  
15 development programs that are not tied to the people  
16 who come in with them. Do you have some sense of how  
17 much money we're talking about? For instance, in the  
18 research program, just as an example, we have a little  
19 bit of research on heavy water reactors and there's  
20 only one potential beneficiary of that. I'm sure  
21 there are other programs like that.

22 Now, I realize it's sort of arbitrary to  
23 say that if there's one vendor then that's vendor-  
24 specific and if there are two vendors it's general  
25 interest. I'm not so much talking policy as saying if

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1 we try to be finer in our research program and some of  
2 our advanced licensing programs, are we talking about  
3 a lot of money or are we talking about relatively  
4 small amounts?

5 MR. FUNCHES: I don't know, for example,  
6 like on the advanced reactor, what the research -- I  
7 could provide it.

8 MR. SCROGGINS: I think it's relatively  
9 small on the major scale. In our annual fees right  
10 now where there are, in fact, licensees that we can  
11 associate it with, for example that we have in the  
12 past, if we were doing some research that was unique,  
13 let's say, to a B&W design, TMI 2 or some of the BWRs  
14 because of some of the containment issues that arose  
15 in the past, yes, those were uniquely laid out and  
16 really charged to the operating reactors of that  
17 vendor type.

18 As far as the advanced reactors that we're  
19 talking about right now, at this stage of the game, if  
20 it's a direct review, then we would try to charge the  
21 applicant under the Part 170. If it's something that  
22 falls into -- which might be defined as research as  
23 partially a little bit more generic, then at least at  
24 this point in time it is obviously spread across all  
25 the operating reactors. But the intent is that under

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1 what we'll call the advanced reactor program or the  
2 standardized plant reviews is that most of these costs  
3 would be involved with director Part 170 charges to  
4 the applicant. That's the intent at this stage of the  
5 game.

6 MR. TAYLOR: That's where we have an  
7 applicant.

8 MR. SCROGGINS: Where we have an  
9 applicant, that's correct. The actual numbers I'd  
10 have to go back and look at again.

11 CHAIRMAN SELIN: I'd like you to take a  
12 look at --

13 MR. TAYLOR: We will.

14 CHAIRMAN SELIN: -- how much money we're  
15 talking about. You know, you can think of things like  
16 the heavy water work, the confirmatory research on one  
17 or another, the specific reactor designs that are up,  
18 et cetera.

19 MR. SCROGGINS: Right.

20 COMMISSIONER de PLANQUE: Before you go  
21 on, in the SECY document, I understood the  
22 explanations for the increases in fees through the  
23 materials licensees up through '92. But if my  
24 arithmetic is right, I get about a 50 percent increase  
25 from '92 to '93 and there was a lot fewer materials

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1 licensees left the database between those two years.  
2 I found it hard understanding that large an increase.  
3 Could you talk a little more about that?

4 MR. SCROGGINS: I think that's the fourth  
5 bullet.

6 MR. FUNCHES: Yes. I think they're a  
7 combination of things that happened in '93. As you  
8 mentioned, the number of licensees that decreased was  
9 not one of the big drivers. If you will notice, some  
10 of the fees went up considerably whereas other fees  
11 actually went down slightly.

12 COMMISSIONER de PLANQUE: One category  
13 went down.

14 MR. FUNCHES: Right, and those are  
15 samples. What we do on annual fees, we use the Part  
16 170 licensing fees as a process to estimate how much -  
17 - how to distribute certain of the generic costs that  
18 we incur, those generic costs where we can't track to  
19 a gauge use or a medical organization or a specific  
20 class of licensees. What happened in fiscal year  
21 1993, we reevaluated the Part 170 fees as a result of  
22 the CFO Act. As a result of that evaluation, certain  
23 areas had large increases in Part 170 and inspection  
24 fees. Part of the reason for that was we hadn't  
25 evaluated the fees since the early '80s and there had

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1           been significant changes in the inspection program  
2           during that time.

3                   COMMISSIONER de PLANQUE: Is that due to  
4           more inspections?

5                   MR. FUNCHES: Not more inspections, but  
6           more of a change in inspection program because we're  
7           looking at the average cost per inspection.

8                   COMMISSIONER de PLANQUE: Does this mean  
9           that some of those fees went down? Was it just a  
10          reapportionment?

11                   MR. FUNCHES: I think mostly the small  
12          gauge user, those fees essentially stay roughly the  
13          same. It was basically a reallocation of the total  
14          amount of money that we had to recover through annual  
15          fees.

16                   COMMISSIONER de PLANQUE: Okay. I still  
17          wonder who made out good in this formula because --

18                   MR. FUNCHES: I think the small gauge user  
19          fees stay roughly the same, the 3-P category.

20                   MR. TAYLOR: Most of the others went up.

21                   COMMISSIONER de PLANQUE: Some of them  
22          went up by a factor of two.

23                   MR. FUNCHES: Right. If you look at what  
24          happened is the large organizations such as the broad  
25          scope manufacturing, broad scope hospital had the

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1 largest increases and we believe that's reasonable.

2 COMMISSIONER de PLANQUE: So, this really  
3 is the reapportionment that did this?

4 MR. FUNCHES: Yes. Yes, to reflect the  
5 allocation based on the inspection and licensing fees  
6 that we charge.

7 MR. SCROGGINS: Under the CFO Act we were  
8 required now to biannually go back and assess any fee  
9 charges we charged. That's to try to tie them to  
10 exact costs. As Jesse indicated, it was like 1984 or  
11 something like that was the last time the agency had  
12 actually laid out what is the average hours for  
13 different kinds of inspections, different kinds of  
14 activities, et cetera. So, they went back over the  
15 data from the past two to three years and came up with  
16 what they considered to be the average hourly burden  
17 for different kinds of inspections, different kinds of  
18 reviews, et cetera. So, it really does reflect  
19 everything that's changed since almost the last ten  
20 years.

21 COMMISSIONER de PLANQUE: So, a change in  
22 the true cost for the inspections.

23 MR. SCROGGINS: And then how it gets  
24 allocated on the 171, right.

25 COMMISSIONER de PLANQUE: Okay.

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1                   CHAIRMAN SELIN: There's a problem in  
2 that, but your overall solution may solve this  
3 problem. We have to find a way to avoid large changes  
4 from year to year which are not predictable from the  
5 licensee's point of view, just based on a new analysis  
6 that we do. Even if the new figures are fairer than  
7 the old figures, people have to be able to have some  
8 assurances that when they budget that the budget just  
9 won't be swamped because a federal agency did a new  
10 calculation. Maybe your recommendations will make the  
11 license fees much less sensitive to no large changes  
12 on a small basis on recalculation, but one way or  
13 another we've got to damp these swings, so to speak.

14                   MR. SCROGGINS: No. I think too the fact  
15 that we have to do this review now every two years,  
16 we're not going to get into a situation where our  
17 detailed look at it is going to be that long a time  
18 frame. So, we'll be looking at it every couple of  
19 years. It will help some in that regard.

20                   MR. FUNCHES: The other areas in the  
21 earlier rules that we continue to get comments from  
22 licensees that the fees should be based on some  
23 economic factors such as number of hospital beds or  
24 how often they use the gauge, the number of hours they  
25 use the gauge. We continue to believe that basing it

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1 on the license or the NRC's regulatory costs is an  
2 appropriate way to assess the annual fee.

3 I guess in terms of solutions, as you  
4 mentioned, Mr. Chairman, we will continue to look for  
5 ways to prevent large increases. We also believe that  
6 the use of the costing concept will have a payoff in  
7 the fee area also.

8 (Slide) Next chart, please.

9 In summary, to deal with the concerns  
10 about fairness and equity as it relates to fees not  
11 being commensurate with the benefit received, we're  
12 proposing that OBRA be modified to remove  
13 approximately \$15 million from the fee base. This  
14 would recognize the utilization of the NRC regulatory  
15 program by both the NRC licensees and agreement state  
16 licensees. It would also recognize the inherent  
17 difficulties in establishing a fee for agreement  
18 states. Overall, this would reduce the amount of fee  
19 that a material licensee would pay on the average of  
20 about 40 percent.

21 CHAIRMAN SELIN: Is this 15 additive to  
22 the 25 that you had earlier?

23 MR. FUNCHES: Yes.

24 CHAIRMAN SELIN: Is it a total of 40?

25 MR. FUNCHES: Yes.

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1                   We will continue to base our fees on the  
2 budgeted regulatory cost and improve assignment of  
3 such costs and explanation of changes resulting from  
4 year to year using costing concepts.

5                   CHAIRMAN SELIN: One thing I would like  
6 you to do when we're all done is to take a look at  
7 this \$40 million and try to figure out how much is  
8 fairness and how much is subsidy. By that I mean, you  
9 know, the international program, we're basically  
10 saying that that just shouldn't be in the license  
11 base, whereas the agreement state program, there is a  
12 set of licensees, whether they're our licensees or the  
13 agreement state licensees, who would be subsidized by  
14 putting that in out of tax revenues rather than -- and  
15 when you look at detail, there may be other pieces  
16 that our universal licensees ought to be paying, but  
17 since we can't get them to the right set of people, we  
18 just say it's too hard to change too many pieces. So,  
19 you're recommending that they be put in the non-  
20 reimbursed base, which is essentially putting it in  
21 the tax base.

22                   MR. TAYLOR: These are the generic  
23 activities across both our states and the agreement  
24 states, as close as you can estimate.

25                   CHAIRMAN SELIN: They are activities that

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1 if you look at the universe of licensees they benefit  
2 only the universe.

3 MR. TAYLOR: That's right.

4 CHAIRMAN SELIN: But it's too hard to get  
5 them to the right set of people. It's more unfair to  
6 get them who's left over, so we just say, "Well, it's  
7 just too hard, so let's just not be reimbursed," as  
8 opposed to say the international safeguards and the  
9 international safety issues which are not -- the  
10 benefits go as much to people who are not licensees as  
11 to people who are.

12 MR. TAYLOR: Yes, sir.

13 MR. FUNCHES: (Slide) Okay. Next chart,  
14 please.

15 Concern number 3 addresses the question of  
16 whether there are ways to streamline our fee effort  
17 and still maintain a reasonable degree of fairness and  
18 equity. In the Energy Policy Act, Federal Register  
19 notice, we requested ways and we identify several  
20 alternative ways of streamlining the fee process. The  
21 IG review also addressed this concern and concluded  
22 that an NRC fee process is relatively labor intensive  
23 and they recommended that we combine Part 170 and 171  
24 fees into one annual fees, similar to what FERC did  
25 last year.

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1 In terms of total resources, we currently  
2 spend about 25 FTEs and \$725,000.00 for Part 170 and  
3 171 fees.

4 CHAIRMAN SELIN: Was that \$725 --

5 MR. SCROGGINS: Purely contract support.

6 CHAIRMAN SELIN: Contract. So, it's the -

7 -

8 MR. FUNCHES: It's the equivalent of about

9 3.2 --

10 CHAIRMAN SELIN: So, if you take the 25  
11 FTE, it's \$75,000.00.

12 MR. SCROGGINS: No. In cost center terms,  
13 it now looks like the -- when you took the added  
14 factor, it's very close to \$100,000.00 in FTE. So,  
15 you could --

16 CHAIRMAN SELIN: That's \$2.5 million for  
17 our own people, plus \$725.

18 MR. SCROGGINS: Right. So, \$3.5 million  
19 is a way to look at it.

20 CHAIRMAN SELIN: Just a half of one  
21 percent of our --

22 MR. SCROGGINS: Yes, a little over.

23 COMMISSIONER de PLANQUE: You done?

24 CHAIRMAN SELIN: I just thought a  
25 controller's budget should have at least one number --

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1                   COMMISSIONER de PLANQUE: The 25, does the  
2 25 include the FTEs that are involved in keeping the  
3 databases that are needed anyway, but are also used  
4 for the fees?

5                   MR. FUNCHES: No, this does not include  
6 the FTE that are necessary to maintain the regulatory  
7 information practices and which tracks the staff  
8 hours.

9                   COMMISSIONER de PLANQUE: This is just the  
10 incremental difference needed for fees.

11                   MR. FUNCHES: For fees, right. Right.  
12 There are efforts, as we mentioned earlier, and we  
13 will want to continue those efforts, some of them for  
14 cost center purposes and for other management  
15 information purposes also.

16                   CHAIRMAN SELIN: I wanted to ask you --  
17 it's sort of on the next chart, but I wanted to ask  
18 you. One approach says that the differences are so  
19 small it's not worth collecting them. Let's move  
20 effectively to just the 171 program.

21                   Another approach would say that the reason  
22 they're so small is that such a small share is in the  
23 170 and furthermore our actual regulatory program  
24 doesn't distinguish enough among different licensees.  
25 One could argue that what we should do is collect,

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1 say, half of our fees out of the 170 program, have a  
2 very big difference in the inspection effort for the  
3 stronger licensees compared to the weaker licensees,  
4 and that argument would be based on the difference in  
5 fees, giving the incentive for the behavior that we  
6 would like to see.

7 In other words, that by having the costs  
8 more nearly distributed according to the degree in  
9 which compensatory regulatory activity were required,  
10 that the licensees would react in such a way as to  
11 reduce our cost.

12 So, there really are two questions. One  
13 is outside of this, but with the changes that you see  
14 coming, Mr. Taylor, would you see a significantly  
15 wider variation given the current cost structure  
16 between say the stronger and the weaker reactor  
17 licensees? And the second, is there any reason to  
18 believe that if the fees more closely tied the amount  
19 of work that we are caused to produce for the  
20 licensees, that their behavior would be any different  
21 or is their cost so much greater than the difference  
22 in fees that the marginal incentives would be small?

23 MR. TAYLOR: The answer would be  
24 speculative because I don't think we've had that type  
25 of condition. It's shown to be different.

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1 Do you have any view on that?

2 MR. SCROGGINS: Jesse? We've looked at  
3 some of the differences. I talk about some of that  
4 between different types of performers. Again, I think  
5 I agree with Jim, as far as whether it would have any  
6 impact like an enforcement action or what have you by  
7 paying the higher fees, at this point in time I have  
8 no feel whatsoever as to what the reaction on that  
9 would be.

10 MR. TAYLOR: I can't say we have a  
11 correlation.

12 MR. SCROGGINS: We have looked at what  
13 some of the variations are given, let's say, the  
14 operating reactors as a good example.

15 Jesse?

16 MR. FUNCHES: We've looked at historical  
17 data as it relates to Part 170 fees and you do get  
18 some difference in fees. Some of them just are the  
19 function of the number of units you have a site, for  
20 example. If you would go to an annual fee, you could  
21 eliminate those differences by having a different  
22 annual fee for, say, a multiple unit site compared to  
23 a single unit site.

24 CHAIRMAN SELIN: How do we do the annual  
25 fee today?

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1 MR. FUNCHES: The costs that we're looking  
2 at today are generic costs. It's based on one reactor  
3 design primarily driven by the types of research. We  
4 also at one point had a --

5 CHAIRMAN SELIN: You're talking about the  
6 171 fee, not the research.

7 MR. FUNCHES: Yes. The 171 fee currently  
8 is based on -- it's distinguished between reactor  
9 design and it's also distinguished between some  
10 location of the reactor because of the research at one  
11 point we had on seismic issues.

12 MR. SCROGGINS: It is one fee per reactor  
13 or per license, is what it is. What Jesse is  
14 indicating, if you look at some of the variations in  
15 the 170 fees which are based upon inspections and  
16 other reviews, you see a skew in the data between the  
17 multiple unit plants and the single unit, as you might  
18 expect. You go out and do an inspection, you have  
19 multiple unit but --

20 CHAIRMAN SELIN: Go back --

21 MR. SCROGGINS: -- reduce the cost per  
22 unit.

23 MR. TAYLOR: 170 fees?

24 MR. SCROGGINS: 171.

25 CHAIRMAN SELIN: The 171, a single unit

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1 and what are the classes that --

2 MR. SCROGGINS: Currently the classes we  
3 have now are BWR and PWR, I guess.

4 MR. HOLLOWAY: There's four vendors. We  
5 have four vendor classes.

6 CHAIRMAN SELIN: Do we adjust for the  
7 power output?

8 MR. HOLLOWAY: No.

9 CHAIRMAN SELIN: Or for the number of  
10 reactors per site?

11 MR. HOLLOWAY: No.

12 MR. FUNCHES: No. Because the types of  
13 costs we're doing there we don't believe vary that  
14 much by reactor site.

15 MR. SCROGGINS: I think what Jesse was  
16 indicating is that if we were to drop 170 where we do  
17 see the variation, one thing that you might consider,  
18 because we have seen the skew as to the amount of  
19 effort, is that you might -- if you went to a straight  
20 annual fee, one thing you might consider or one  
21 category might be multiple unit versus single unit to  
22 just reflect the fact that there is more effort per  
23 unit on a single unit plant than there is on a plant  
24 unit.

25 MR. FUNCHES: Direct cost to that unit,

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1 for example.

2 MR. SCROGGINS: That just might be a  
3 consideration if you went that direction. We haven't  
4 looked at it in detail.

5 MR. TAYLOR: On the Part 170 plants that  
6 have trouble, I think our costs that may show up in  
7 the Part 170 are dwarfed by the other costs as they  
8 try to recover in areas which have caused them to get  
9 into operational problems. There's no question that  
10 we've seen plants that have had difficulty. Their O&M  
11 costs go up dramatically as they try to recover from  
12 areas that have not been kept up, such as maintenance  
13 or other problems in the plant. So, I think that's  
14 our experience. The differences in the fees are  
15 dwarfed by that type of cost to the utilities.

16 That was part of your question, wasn't it?

17 CHAIRMAN SELIN: Yes, way back when.

18 MR. TAYLOR: Right.

19 COMMISSIONER ROGERS: Before we just move  
20 off this, I think that there's many, many reasons why  
21 this basis of assigning fees is our cost basis has  
22 some real problems with it. I can think of lots of  
23 them, but you just put your finger on another one,  
24 namely that it costs us less to inspect a multi-unit  
25 site than a single unit site.

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1 CHAIRMAN SELIN: Per unit.

2 COMMISSIONER ROGERS: Per unit, right.

3 But if we assess fees on a per unit basis, and that  
4 really makes no sense at all from the licensee's point  
5 of view. If a licensee has a single unit and runs it  
6 very, very well and does a fine job, there's  
7 absolutely no reason why from their point of view we  
8 should be charging them a larger fee because it costs  
9 us more to inspect them than it does per unit on a  
10 multi-unit site. There's a real fallacy in that  
11 argument with respect to fairness. In my view, that's  
12 not a fair way of looking at it, but it's a realistic  
13 way in some ways. But it really does come back to  
14 this whole cost basis being -- our cost being the  
15 basis for a fee assignment. I know this is a very,  
16 very difficult area to deal with, but I really have a  
17 lot of trouble with that as a philosophy.

18 MR. TAYLOR: We haven't figured out --

19 COMMISSIONER ROGERS: Another way around  
20 it. I know.

21 MR. SCROGGINS: No. We recognize the more  
22 you go to an averaging type of an approach, for  
23 example a 171 annual fee, you are going to have --  
24 you're going to show these disparities more. The  
25 question is, okay, what is the range and can you

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1 rationalize all the other factors such as the  
2 efficiencies and what have you to override that? It  
3 is very non-quantitative in that sense.

4 CHAIRMAN SELIN: Why don't you go on?

5 MR. FUNCHES: (Slide) Next chart, please.

6 In terms of streamlining alternatives, we  
7 examined three alternatives, but we are not  
8 recommending those to the Commission at this time.  
9 Two of the alternatives we had solicited public  
10 comments on. Each year we issue a proposed rule, we  
11 get comments and we issue a final rule. We have to  
12 try to do that in a fairly short period of time so  
13 that we can get the rule out and collect 100 percent  
14 of the budget. We had indicated in the request for  
15 comments alternatives along the lines of only issue a  
16 rule for comment if we change the basic fee  
17 methodology or policies. Overwhelming sentiment from  
18 the comment was they would like us to continue the  
19 proposed rule, primarily from the perspective of  
20 giving them opportunity to see the fees earlier and  
21 also provide an opportunity to voice any concerns they  
22 might have.

23 We also looked at alternatives of reducing  
24 the number of subclasses for some of the groups of  
25 licensees, reactors being one. Again, even though

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1 there are differences in fees say for reactors between  
2 BWRs, PWRs, in the classes, the subclasses we had was  
3 only on the order of \$100,000.00 out of \$3 million.  
4 The commenters recommend against it and we believe at  
5 this time we would adopt the commenters' suggestion.

6 The last alternative which would result in  
7 maximum resource saving would be to assess fees only  
8 to a very small number of the licensees, basically the  
9 power reactors and fuel facilities. This alternative  
10 will result in significant savings on the order of 20  
11 FTEs and 75 K in order of about \$3 million. However,  
12 it would create significant concerns about fairness  
13 and equity and we do not recommend we pursue that  
14 alternative further.

15 MR. TAYLOR: We had talked about this  
16 early on when we even began talking about the various  
17 fee structure and we just felt it was not a good idea.  
18 I think the comments pretty well substantiate that.

19 MR. FUNCHES: Yes.

20 (Slide) Next chart, please.

21 The alternative which we've discussed  
22 somewhat already would be -- that we do recommend  
23 would be that the Commission pursue a fee structure  
24 which would allow us to not -- would not require us to  
25 chart Part 170 fees. What we would do is use an

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1 annual fee, use the current annual fee. We would  
2 discontinue the Part 170 fees for amendments to  
3 licenses, renewals of materials license and inspection  
4 fees and these costs would be included in the annual  
5 fee. This would add about 700 K per reactor on the  
6 average and about 13 percent to the various materials  
7 fees.

8 We would continue an application fee for  
9 new licenses, such as new OLs or advanced reactors and  
10 topical reports. There are now about 300 bills per  
11 year in this category and we would also have about 700  
12 payments for new applications for the materials  
13 licensees. The amount of money we'll be billing for  
14 these application reviews would be on the order of \$20  
15 million.

16 Adoption of this proposal would allow us  
17 to avoid spending about \$1.2 million, which is  
18 equivalent to 10 FTEs and \$200,000.00 in contract  
19 support. It would also give us a simpler fee  
20 structure and with the added benefit that the licensee  
21 would not have to understand a Part 170 inspection  
22 fee, an amendment fee, a renewal fee and see an annual  
23 fee each year. A licensee would have one fee to deal  
24 with. An applicant would have one fee to deal with.  
25 When they become a licensee they'll have one fee to

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1 deal with.

2 CHAIRMAN SELIN: Mr. Parler, do we have  
3 the authority without further statute to say that the  
4 differences in 170 fees over large numbers of  
5 licensees is de minimis and therefore to have what  
6 amounts to a flat 170 fee rather than -- I mean we  
7 wouldn't have to abolish it, but we could make it a  
8 flat fee rather than tied to manpower, et cetera.  
9 Could we do that if we chose?

10 MR. PARLER: We always try to find the  
11 authority to do what the staff and the Commission  
12 reasonably would like to have done. But the specific  
13 answer to the question that you raise with me, at  
14 least as I understand the question, is no. Unlike the  
15 FERC legislation which was enacted in the Omnibus  
16 Budget Reconciliation Act of 1986, which just talks  
17 about the annual fee and furthermore gives FERC the  
18 authority to waive already part of any fee or annual  
19 charge addressed under this section for good cause  
20 without anything else being said and without nothing  
21 being mentioned in the FERC authority about the  
22 Independent Office Appropriations Act. That is the  
23 basis for the Section 170.

24 The Independent Office Appropriations Act  
25 itself does not limit our authority or our discretion

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1 at least in the context that you're talking about.  
2 However, the Omnibus Budget Reconciliation Act of  
3 1990, which applies to us, the subtitle would be NRC  
4 user fees and annual charges, enacts the Independent  
5 Office Appropriations Act and the language there is  
6 mandatory. Citing that act, it says that, "The  
7 Commission shall" -- it says, "Any person who receives  
8 a service or thing of value from the Commission shall  
9 pay fees to cover the Commission's cost in providing  
10 any such service or thing of value." That's fairly  
11 unambiguous, at least for legislation, any sort of  
12 legislation.

13 The certainty in regard to the language is  
14 also reflected with the same certainty in the  
15 conference report that was associated with the  
16 legislation. The legislation goes on to say, the same  
17 section, in the same part of the Omnibus Budget  
18 Reconciliation Act, for annual charges, that's the  
19 foundation for the 171. This is the section that  
20 established the 100 percent of the budget requirement.  
21 It says that, "Any licensee of the Commission may be  
22 required, in addition to the fees set forth in  
23 Subsection B," that's the Independent Office  
24 Appropriations Act, "an annual charge." Then it goes  
25 ahead to give the language that really is the

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1 statutory underpinning for Part 171. "A schedule of  
2 charges fairly and equitably allocating the aggregate  
3 amount of charges that's needed to satisfy the 100  
4 percent of the budget objective that's established by  
5 the statute."

6 The statute goes on to say, "To the  
7 maximum extent practicable, the charges shall have a  
8 reasonable relationship to the cost of providing  
9 regulatory services and may be based on the allocation  
10 of the Commission's resources among licensees or  
11 classes of licensees." So, it seems to me that a lot  
12 of policy choices that the Commission could have  
13 otherwise have been free to make have been made by the  
14 Congress enacting legislation such as this which  
15 should be contrasted with the FERC legislation which  
16 does give FERC considerable discretion as to what  
17 their annual charges could be without the constraints  
18 of having to satisfy the Independent Offices  
19 Appropriations Act.

20 CHAIRMAN SELIN: So, to go to this type of  
21 a structure, all annual fee, you would basically have  
22 to argue that the individual services that we provide  
23 to the licensees do not have individual value, but  
24 have value really in the context of the annual  
25 license. We would do that by statute. In other

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1 words --

2 MR. PARLER: I would think that it would  
3 certainly be desirable, highly desirable in view of  
4 the time that I just spent, to go the statutory route,  
5 right.

6 CHAIRMAN SELIN: Not only would we ask for  
7 a statutory change, but we would probably want to  
8 change the theory behind it to say individual  
9 inspection is not in itself a service of value. What  
10 is the value is the annual regulation which includes  
11 inspections and changes, et cetera. Therefore, it's  
12 not just administrative convenience, but it's truly  
13 consistent with the spirit of the previous act that  
14 says the service we're providing the licensee is that  
15 we're regulating the licensee, not that we're doing an  
16 inspection on Tuesday or a change of address on Friday  
17 and therefore we should charge by a unit of service,  
18 which is in effect the annual -- the whole of the  
19 annual regulatory activity.

20 MR. PARLER: I certainly would think that  
21 if a statutory change is sought, that the statutory  
22 change should include provisions which would give us  
23 the flexibility to proceed in a manner which would  
24 seem to make the best sense from a regulatory  
25 standpoint and also would be basically fair and

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1 equitable.

2 CHAIRMAN SELIN: We probably would want to  
3 go to the next point, given Commissioner Rogers' view,  
4 that says the cost for us to provide the service is  
5 important, but secondary. Regulating a reactor of a  
6 particular type is the service and the service that  
7 the licensee is getting is really driven by the fact  
8 that we're regulating them, not that -- because you go  
9 to the extreme case and say we would charge less to  
10 Comanche Peak because they have a regional office  
11 within 25 miles of the site and we charge a lot more  
12 to Hanford -- I mean to a WHIPP site because it's so  
13 far away. We would probably just try to equalize that  
14 to some degree.

15 I'm sorry. Thank you very much, Mr.  
16 Parler.

17 COMMISSIONER REMICK: I would guess that  
18 our licensees would probably agree that our  
19 inspections are not individual services to them.

20 CHAIRMAN SELIN: If we charge by value,  
21 they would bill us each year. I don't think we can go  
22 that far.

23 MR. PARLER: If the statute provided that,  
24 we might have some difficulty. The statute says a  
25 reasonable cost of -- the cost providing regulatory

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1 services, good, bad or indifferent.

2 MR. FUNCHES: I think that concludes our  
3 discussion of the three --

4 CHAIRMAN SELIN: You know what I'm not  
5 clear about? We talk a lot about reactors, but how  
6 would this -- as Commissioner de Planque and  
7 Commissioner Rogers pointed out, we haven't come up  
8 with an algorithm, we've just talked in general terms.  
9 But even at those terms, I don't understand what we  
10 would do with the materials licensees. Is it true  
11 that the 170 part is also a very small part of that?

12 MR. FUNCHES: Yes.

13 CHAIRMAN SELIN: Equally small?

14 MR. FUNCHES: Yes, about \$5 million out of  
15 \$30 million roughly. It's about 13 percent we're  
16 talking about. So, it actually is a smaller  
17 percentage of the total cost in the reactor Part 170,  
18 yes.

19 CHAIRMAN SELIN: That's interesting. And  
20 how many classes of materials licensees would you  
21 foresee the same -- what do we have today in the way  
22 of --

23 MR. FUNCHES: I think it's like about 26  
24 if you call the small materials, transportation, and  
25 large fuel facilities.

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1                   CHAIRMAN SELIN:       Do you see any  
2 significant difference in the number of classes?

3                   MR. FUNCHES:       Not a significant  
4 difference. You know, if you went away from a Part  
5 170 fee, if there are things that Part 170 captured  
6 that you might want to distinguish, you might create  
7 a class here and maybe eliminate one there but not a  
8 substantial change.

9                   CHAIRMAN SELIN:   Basically you're arguing  
10 that within what the de facto theory is that we do our  
11 fees today, we could do them cheaper without being  
12 significantly less or more fair, that the differences  
13 are very small. It's not a zero based review of  
14 what's the right number of licensee classes for  
15 material licensees, but evaluation of where we stand,  
16 you know a small variation that would make it a lot --  
17 somewhat cheaper and not more unfair and a lot easier  
18 to explain.

19                  MR. SCROGGINS:   We think more stable in  
20 the sense that Jesse indicated. Sort of very similar  
21 if you have a license with the NRC, this is what it's  
22 going to cost you this year. It's like getting a car  
23 registration or something like that.

24                  COMMISSIONER de PLANQUE:   Would you have  
25 to do more rearranging to address the equity issue?

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1 MR. FUNCHES: I think you might would have  
2 to do some rearranging. For example, if you have some  
3 gauges that might have three or four sites and you  
4 might inspect each site, you might have to rearrange  
5 that category to have, say, a multiple site and a  
6 single site to reflect that difference. There could  
7 be some rearrangement. I wouldn't think significantly  
8 different in the classes, but some minor rearrangement  
9 probably would be necessary to recognize that.

10 MR. TAYLOR: It's like the small medical  
11 and the broad scope. If we had such a broad scope  
12 gauge, we'd have to look at that.

13 MR. FUNCHES: Right.

14 This concludes the discussion of the three  
15 major concerns. What I'd like to do next would be --

16 (Slide) Go to the next chart, please.

17 What I'd like to do next is talk about  
18 some specific concerns that didn't fall within the  
19 concerns we discussed earlier. These are -- what I  
20 will do with each is talk about what we do today and  
21 the issues that have been raised and how we propose to  
22 resolve it.

23 The first area involved proportion of  
24 annual fees. Currently we assess any licensee a fee,  
25 a full fee if they essentially have a license at the

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1 beginning of the fiscal year or have not filed for a  
2 termination. That means that if a person terminates  
3 in March before the annual fee is issued, they still  
4 get an annual fee. We have a significant amount of  
5 correspondence from the material licensees and from  
6 the reactors when they go into decommissioning if they  
7 terminate in the middle of the fiscal year that this  
8 is unfair. We plan to implement a type of proration  
9 during the year and I think it would be even more  
10 important if we go one fee because obviously they  
11 couldn't get an inspection once they terminate their  
12 license.

13 The second specific --

14 COMMISSIONER REMICK: Excuse me, Jesse.  
15 Would you propose prorating on the basis of the number  
16 of days of the year or number of months or quarter or  
17 half year? Have you thought it out?

18 MR. FUNCHES: It probably would be either  
19 quarter or half year initially. We'll probably never  
20 go down to days because, you know, cutting it really  
21 fine, but probably no more than quarterly.

22 CHAIRMAN SELIN: We have this authority  
23 today. We don't need a statute.

24 MR. FUNCHES: No, we could implement  
25 that, yes.

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1 MR. TAYLOR: Then we'd have to adjust the  
2 amounts collected in later months.

3 MR. FUNCHES: We will have to estimate how  
4 many terminations and whatever.

5 The annual fee for non-operating  
6 facilities. One the facility receives a POL, they  
7 don't pay an annual fee. They continue to pay for  
8 inspections or amendments to their license. Basically  
9 the fee is not charged once you are not able to  
10 operate. You request that your operating status be  
11 removed. Some licensees have requested that the fee  
12 not be paid once they decided they are not operating,  
13 but would like to put their facility in standby but  
14 hold the operating license.

15 Another question that has come up is that  
16 once a licensee goes in the POL, they still benefit  
17 from some of the NRC's regulatory activities, such as  
18 decommissioning or reclamation or research or  
19 rulemaking.

20 The premise on which we have charged fees  
21 and that we recommend we continue to charge fees is  
22 that if you request the ability to operate you should  
23 pay the annual fee whether you operate -- whether you  
24 make a decision to operate or not. We recommend we  
25 continue that.

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1           If we go to a one fee or one annual fee  
2 for licensees, we would probably create an annual fee  
3 to cover some POLs. It wouldn't be the same as the  
4 annual fee for the operating facility or for a  
5 facility that's undergoing reclamation in the mining  
6 area.

7           The third specific issue is a sliding  
8 scale for small entities. Currently we charge a  
9 \$400.00 maximum annual fee for small entities with  
10 gross receipts of \$250,000.00 or less. For between  
11 \$250,000.00 and \$3.5 million, we charge \$1800.00.  
12 Licensees that are about \$500,000.00 in gross  
13 receipts, "You gave a big break to my competitor on  
14 one end and I can't compete with the \$3.5 million,"  
15 and therefore they request that maybe some  
16 intermediate step.

17           We don't have a recommendation in this  
18 paper on that particular issue. We plan to look at  
19 the issue as part of reexamining whether the size  
20 standards are correct. The SBA has come out with new  
21 size standards, proposed size standards. If we adopt  
22 those standards, the standard would be like a half  
23 million dollars. As part of examining whether or not  
24 we've changed the size standard, we'll also look at  
25 whether or not there are good reasons to have maybe

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1 intermediate points between the maximum and the low  
2 fee.

3 Prior to 100 percent recovery, advanced  
4 reactor application fees would defer for 15 years or  
5 until an application was received to reference that  
6 design. In implementing 100 percent recovery, the  
7 Commission decided to delete that and charge the  
8 advanced reactors fees as the costs were incurred for  
9 application review. But the application review does  
10 not include the research that we mentioned earlier and  
11 we'll get some information back to you on that.

12 The fees for advanced reactors varies  
13 from -- individual advanced reactor for '93 varies  
14 from about \$300,000.00 to about \$4.6 million for  
15 fiscal '93 for the application review. The total  
16 effort there was about \$11 million. We have no reason  
17 to recommend deferral of those fees, the cost that's  
18 incurred, especially on 100 percent recovery. So,  
19 therefore, we have proposed that the current approach  
20 of charging as the costs are incurred be continued.

21 COMMISSIONER REMICK: Would that be a 170  
22 fee or --

23 MR. FUNCHES: Well, it would be an  
24 application fee. We will continue to charge fees for  
25 the first time you're in, for reviews.

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1                   CHAIRMAN SELIN:   What about -- I mean  
2 there's some other intermediate activities.   For  
3 instance, the B&W Owners Group comes in and says,  
4 "Here's our license renewal work. We would like you  
5 to review that."

6                   MR. FUNCHES:   Are you talking about under  
7 the proposed one annual fee?

8                   CHAIRMAN SELIN:   Yes.

9                   MR. FUNCHES:   They would still pay an  
10 application fee. The initial application type fee  
11 would continue.

12                  CHAIRMAN SELIN:   It's a fixed fee or is it  
13 proportionate to the amount of work we do?

14                  MR. FUNCHES:   We would do it on -- you  
15 could do it either way. You could do it fixed fee or  
16 proportion to the amount of work you do. If you had  
17 groupings that were pretty uniform --

18                  CHAIRMAN SELIN:   Then the Westinghouse  
19 fellows come in and they get a terrific benefit that  
20 they didn't pay for in the B&W work. Do they just get  
21 a free ride or how does that work?

22                  MR. FUNCHES:   I'm not sure I understand  
23 the question.

24                  CHAIRMAN SELIN:   Baltimore Gas & Electric  
25 comes in and does a bunch of these things on a one

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1           tire basis. They pay full charge and then a second,  
2           third, fourth plant gets a free ride. How would we do  
3           these -- would we have some flexibility in deciding  
4           whether there would be a series beyond the licensing?

5                   MR. FUNCHES: Yes, I think you would have  
6           some flexibility to do that if we go to the one annual  
7           fee. You'll have some flexibility to do some  
8           smoothing rather than as you go up the learning curve.  
9           I assume that flexibility would be there under that  
10          type of legislation.

11                   MR. FUNCHES: Jesse, as I understood the  
12          Chairman's question, it was not an application. I  
13          don't think it would fit an application fee. It would  
14          be more like a topical report, I assume, or something.  
15          It's where our staff is spending time working with  
16          them in the license renewal area. They haven't  
17          actually made a formal application. Am I correct?

18                   MR. FUNCHES: We would continue to charge  
19          for those topical report approvals, initial approval  
20          for a specific topical report. Say if, as you say,  
21          B&W came in for a joint, we would charge them an  
22          application fee for that approval.

23                   COMMISSIONER REMICK: Okay. And suppose  
24          the case is not a formal topical report but we are  
25          working together to try to get an understanding of a

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1 problem and the staff and, let's say, B&W Owners Group  
2 are working with the staff, but there's not a formal  
3 application or a formal topical point to review.

4 MR. FUNCHES: One concept would be to use  
5 what we call pre-application review and we do that now  
6 where the licensee would come in and want to have a  
7 docket and to have subsequent discussion about the  
8 application. So, you could do some pre-charges there.

9 CHAIRMAN SELIN: There are actually two  
10 separate problems. Commissioner Remick has put his  
11 finger on it. The first is whether it's an  
12 application or not and the second is the free rider  
13 problem, is a pilot plant or an owners group of what  
14 have you and they come in and we spend a lot of time  
15 with them and we and they both know it wouldn't be  
16 justified if it were only going to be done for them,  
17 but it's going to be done across the board. And yet  
18 the other people haven't voluntarily said, "We will be  
19 part of the program." We get this all the time. We  
20 get this in tech specs, we get this in license renewal  
21 where we make a command decision that we think this is  
22 of interest and we find somebody to work with, but we  
23 haven't asked the other licensees to sign up and say,  
24 "If the results are successful, will you share in  
25 these?"

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1 I don't think you can come up with all the  
2 answers at this point, but that is a generic problem  
3 of significant concern.

4 MR. TAYLOR: There is a question that the  
5 paper addresses in topical reports, but we're saying  
6 if it's applicable generically and you can so identify  
7 it, then those costs would be applied over the full  
8 span.

9 COMMISSIONER REMICK: It would be in the  
10 annual.

11 MR. SCROGGINS: Which we do quite often  
12 now. We do have the authority to --

13 CHAIRMAN SELIN: Let's take a specific  
14 case. It's not B&W, it's the B&W Owners Group. There  
15 are what, seven, nine reactors? I forget. It's a  
16 small number. It's an odd number. I remember B&W  
17 equals odd. So, we decide on our own that this work  
18 is really of general interest because it's at least  
19 going to address all the PWR people. So, according to  
20 your scheme, we would take the charge for this  
21 preapplication work and figure it into the annual  
22 amount for all PWRs, if you made the decision that it  
23 was not B&W specific, right?

24 MR. TAYLOR: You could do that.

25 CHAIRMAN SELIN: Even if the other folks

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1 said, "Hey, we don't even know if we're going to apply  
2 or not," we still would have that flexibility.

3 MR. TAYLOR: You could say it was generic.

4 CHAIRMAN SELIN: Fine.

5 Commissioner Remick, any follow-up?

6 COMMISSIONER REMICK: No.

7 CHAIRMAN SELIN: Mr. Funches?

8 MR. FUNCHES: The last area we mentioned  
9 topical. We had a ceiling on topical for a couple  
10 reasons. One was immediately encouraging submittal of  
11 topical. Second was so that people could plan how  
12 much topical would be, how much cost they'd need to  
13 budget for a topical because sometimes they're owners  
14 groups or they have limited budgets.

15 The topical report fees can vary from  
16 \$1,000.00 up to hundreds of thousands of dollars for  
17 review, depending on what the report is, the issues  
18 involved. We removed that ceiling in 1991 as part of  
19 the 100 percent recovery. Again, recovery from those,  
20 the cost of providing the service. That issue has  
21 been raised. We recommend that we don't -- we  
22 continue to maintain -- I mean charge full cost for  
23 the topical.

24 Another issue that has been raised is one  
25 along the lines we were talking about earlier, and

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1 that's the issue of some topical we receive from  
2 groups have a benefit to NRC and the question of  
3 whether there are specific groups that we should  
4 eliminate. We look at exempt at the beginning and  
5 generically. We're looking at those and the types of  
6 topics that are coming in. In the past, we have  
7 granted specific exemption when they were in support  
8 of activities that we were accomplishing.

9 CHAIRMAN SELIN: But what Mr. Taylor said  
10 is that you have an alternative actually.

11 MR. FUNCHES: Right.

12 CHAIRMAN SELIN: We have an alternative,  
13 which is not to give an exemption, but to say this is  
14 a generic cost. Then that would encourage people to  
15 come in and be prototypes because they would get a  
16 plant-specific application of a generic principle for  
17 no more than the other folks did. That's probably  
18 behavior we would want to encourage.

19 MR. SCROGGINS: Yes, we do that even now.

20 CHAIRMAN SELIN: We do?

21 MR. SCROGGINS: Yes.

22 CHAIRMAN SELIN: I see. What's this about  
23 expanding scope?

24 MR. FUNCHES: Early on, one extreme was as  
25 you mentioned. You mentioned alternatives, say, of

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1 charging 50 percent of 170 as part of the budget to  
2 170. One of the areas we were looking at was whether  
3 or not it was feasible to increase the amount we were  
4 recovering through Part 170. It was a question that  
5 we had early on. Obviously with the recommendation  
6 that we have here, that that recommendation go  
7 forward --

8 CHAIRMAN SELIN: It says it's either/or.

9 MR. FUNCHES: Yes. Okay.

10 (Slide) Next chart, please.

11 In summary, we are recommending that OBRA  
12 be modified to require that NRC --

13 CHAIRMAN SELIN: You're recommending that  
14 OBRA be modified in a way which would incidentally  
15 have the effect of collecting 90 percent of the  
16 budget. I mean you would still do it by category.,

17 MR. FUNCHES: Yes.

18 CHAIRMAN SELIN: I assume that you would  
19 also put in a bottom line that says, "This can amount  
20 to no more than ten percent of the budget in a year."

21 MR. FUNCHES: Yes.

22 CHAIRMAN SELIN: Well, estimate or not,  
23 because I think the appropriations will make a huge  
24 difference if they had what could be an open ended  
25 situation.

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MR. FUNCHES: Right.

CHAIRMAN SELIN: But specifically you're saying modifying OBRA '92, exempt X, Y and Z, and the effect we estimate would about ten percent.

MR. FUNCHES: Right. Actually when we add these numbers up that you've seen in the papers there, it's about 80 percent.

We would also recommend that we modify the Atomic Energy Act to allow us to assess fees to all federal agencies. Again, even though we'll go to one fee, we will want the flexibility to charge the application fee. For example, currently we're doing work on advanced reactor for DOE and those fees we can't assess for those review fees.

COMMISSIONER REMICK: That was when it seemed like -- it seemed to me that satellite 170 fees, but we're proposing to eliminate 170 fees. We'd handle them different with 170, is that it?

MR. FUNCHES: Okay. We'll continue to charge new applicants a fee for the review.

COMMISSIONER REMICK: This says inspection fees, licensing and inspection fees.

MR. FUNCHES: Right.

COMMISSIONER REMICK: Licensing I can see similar to application, but inspection is different.

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1 MR. FUNCHES: You would drop the  
2 inspection under the new approach, yes, that's  
3 correct. It would just be licensing fees.

4 COMMISSIONER REMICK: So, we should strike  
5 inspection fees?

6 MR. FUNCHES: Yes. This recommendation --

7 CHAIRMAN SELIN: Well, actually, I think  
8 what we would do is we would ask for authority to deal  
9 with other federal agencies as we deal with private  
10 sector licensees.

11 MR. FUNCHES: Right.

12 COMMISSIONER REMICK: That would be  
13 better, yes.

14 CHAIRMAN SELIN: Then if we got to the  
15 third point, it would be just licensing. But if the  
16 second passed and the third one didn't, it would be  
17 licensing and inspection.

18 MR. PARLER: I think the second bullet,  
19 Mr. Chairman, would simply give us the additional  
20 authority under Section 161(w) to charge other federal  
21 agencies who do not produce power or heat  
22 commercially, to charge them the fees. How we would  
23 go about doing that would be left up to what  
24 happens --

25 COMMISSIONER REMICK: I agree, but the

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1 words don't say that.

2 MR. PARLER: No, they don't.

3 COMMISSIONER REMICK: Another question I  
4 have there, in my mind I certainly don't know. There  
5 are certainly people who might not like that idea.  
6 They're saying you're just shuffling federal money  
7 from one agency to another. Have you thought as a  
8 fall back position if that didn't go then to eliminate  
9 that from our -- or get relief from that as a  
10 requirement? In other words, how do I want to say  
11 that? To remove it from the fee recovery is what I  
12 want to say. Have you thought about that as an  
13 alternative if it doesn't fly?

14 MR. FUNCHES: We've thought about that as  
15 an alternative and one of the guidelines we were using  
16 was trying to minimize the amount you take off the fee  
17 base and yet eliminate the concerns about fairness and  
18 equity. If we treat federal licensees like we treat  
19 private licensees, you would not have to take that  
20 off. We already charge some federal licensees and I  
21 think that had been recognized by giving us the  
22 authority to charge the Uranium Enrichment  
23 Corporation. We have the authority to charge TVA.

24 COMMISSIONER REMICK: We've also got the  
25 authority not to charge some federal facilities at the

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1 same time.

2 MR. FUNCHES: Yes. You would take it out,  
3 but it would increase the amount of the --

4 CHAIRMAN SELIN: Mr. Funches, I think you  
5 have to take Commissioner Remick's point -- I don't  
6 want to say into consideration because of course  
7 you'll do that. But it goes beyond that because what  
8 we're basically saying is one way or another we should  
9 not charge the commercial licensees for the licensing  
10 of federal agencies. But whether that's done by  
11 reducing the reimbursement which has the effect of  
12 making us look worse to our appropriators, or whether  
13 it's done by rebilling the agencies, in which case  
14 we're shifting that problem to them, you sort of have  
15 to be guided a little bit by advice as to which would  
16 be easier legislation to get through.

17 In other words, it depends on more than  
18 just the clean point. The key point is it's not fair  
19 to our licensees that they have to pay for the federal  
20 agencies, but the people to whom we do charge today  
21 are on a private sector accounting basis. They have  
22 a balance sheet. They have profit and they have loss.  
23 So, it's a real charge for the U.S. Enrichment  
24 Corporation or the case of high-level waste, there's  
25 a specific fund that it should come at and TVA also is

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1 an organization that is supposed to balance its  
2 profits and costs and its revenues. When you start  
3 getting to non-enterprise accounts, then it is a  
4 legitimate question, should money be appropriated in  
5 the Department of Defense or some research institute  
6 in the Department of Defense and they repaid to us, or  
7 should it just come directly out of --

8 Obviously we have a preference, but the  
9 main thing is make sure it happens. If there are  
10 congressional folks who would advise us that one way  
11 is better than another way, from that point of view I  
12 think we should be --

13 MR. TAYLOR: Either way.

14 CHAIRMAN SELIN: -- driven by that  
15 consideration. You're right, it would be nice to not  
16 reduce our fee base anymore than necessary. But if  
17 that's what we had to do in order to get a fairer  
18 situation for our licensees, we should at least  
19 consider it.

20 Jim, can I just go ahead and think  
21 about -- we have to submit a report to the Congress,  
22 right?

23 MR. TAYLOR: Yes.

24 CHAIRMAN SELIN: And it's clearly going to  
25 be this report. The Commission is not going to

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1 rewrite the report. We may comment on it or so, but  
2 this is the study that the Agency has done.

3 MR. TAYLOR: What we would like is the  
4 Commission's comments and --

5 CHAIRMAN SELIN: Let me retract before we  
6 get to that. I'm sorry, I cut Commissioner de Planque  
7 off.

8 COMMISSIONER de PLANQUE: Well, a question  
9 that bears on that and it has to do with the petition  
10 for the medical licensees. If that petition were to  
11 be granted, what dollar value are we talking about in  
12 terms of fees, ballpark?

13 MR. TAYLOR: Are you prepared to answer  
14 that?

15 MR. FUNCHES: No. I could provide that to  
16 you within the day.

17 COMMISSIONER de PLANQUE: Fine. Did you  
18 consider, if that were to occur, how you would recover  
19 that amount? Which route would you go? The reason I  
20 ask this question is does that or should that be  
21 resolved before we go ahead and seek legislation?  
22 What is the impact of that in the total package that  
23 we might want to go with? The petition on the medical  
24 licensees. If that petition were granted, to exempt  
25 them.

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1 CHAIRMAN SELIN: All medical?

2 COMMISSIONER de PLANQUE: Well, I don't  
3 know the details of the petition right now.

4 MR. TAYLOR: It's a broad request.

5 COMMISSIONER de PLANQUE: It's a broad  
6 request.

7 MR. TAYLOR: It is a broad request because  
8 of the health benefits.

9 CHAIRMAN SELIN: I don't think you want to  
10 be in the position. I think you want to go forward  
11 with today's situation and change it as petitions come  
12 up.

13 COMMISSIONER de PLANQUE: Well, I don't  
14 know if that should be considered because if it were  
15 to have a large impact or a small impact and what you  
16 would do to recover that, should it occur. You want  
17 to be in the position to go twice. How soon might  
18 that be resolved? Maybe that's the best way to --

19 MR. FUNCHES: I think part of the issue  
20 will be alluded to in the paper on the non-profit  
21 indication as we come forward with that paper. It's  
22 on the concept of the exemption. If I recall the  
23 petition right, but they have requested was that they  
24 be considered similar to non-profit education  
25 institutions and be exempted from fees. Part of the

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1 issue will be dealt with as part of the paper on non-  
2 profit education.

3 MR. TAYLOR: We can look at that and give  
4 you that amount reasonably. If you were to include  
5 that, that would then probably be treated the same  
6 way, is what you're saying.

7 MR. FUNCHES: Yes.

8 MR. TAYLOR: It would not be recommended  
9 to come out of the fee base.

10 COMMISSIONER de PLANQUE: And then maybe  
11 the outcome and the amount involved may dictate what  
12 you want to do in terms of seeking legislative  
13 changes.

14 CHAIRMAN SELIN: What I believe we have to  
15 do with the legislative changes is absolutely it will  
16 be necessary to say not withstanding any of the  
17 conditions, but in this first piece that no case would  
18 the total amount exempted from the fee be more than --  
19 we would have to cap it. We couldn't -- you know, the  
20 Congress isn't going to give us something that would  
21 lead to 20 to 30 percent of the fees. We'd have to  
22 put a limit on that. Therefore, any particular  
23 action, the impact it would have on our overall fee  
24 base would be limited by the cap.

25 MR. TAYLOR: May I mention, our plan was

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1 to try to get this report, based upon everything we've  
2 done after comments from the Commission and the form  
3 by which we could provide that report without  
4 necessarily legislative language. That would be on a  
5 separate track.

6 COMMISSIONER de PLANQUE: Do we have to  
7 follow a certain time line for that, if you're looking  
8 for legislating changes?

9 MR. TAYLOR: The time line for submission  
10 of legislation and we try to adhere to that, to meet  
11 that.

12 COMMISSIONER de PLANQUE: Yes.

13 MR. TAYLOR: But the first thing we wanted  
14 to do was to submit the report.

15 CHAIRMAN SELIN: I think you need a cover  
16 letter. First of all, the Commission, of course, will  
17 want to quote its comments on their cover letter. But  
18 it's clear that we're doing a study. The study should  
19 be submitted to the Congress. The Commission  
20 shouldn't change the study. We should have the  
21 benefit of the study.

22 But I think also in your own cover letter  
23 you ought to say, if the steps that are taken in the  
24 report were implemented -- those steps that do not  
25 require statutory changes are X, Y, and Z, then here

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1 would be the implication of implementing those. Then  
2 say, further changes from statute would have these  
3 effects, so that the status quo ante for the statutory  
4 changes is that we would make the non-statutory  
5 changes on our own so you get phase 1 non-statutory  
6 changes, phase 2 statutory changes. There might even  
7 be a phase 2 prime which says, if we have the statute  
8 changes, we would undo some of these other changes.  
9 I don't know what you would do on that. That's got to  
10 be an impersonal language. It's got to be not the  
11 recommendation of the Commission, but the implication  
12 of the report. Consistent -- steps that would be  
13 consistent with the report. We've got to decide what  
14 we want to actually do as a Commission.

15 MR. TAYLOR: Yes, sir.

16 CHAIRMAN SELIN: Commissioner de Planque?

17 COMMISSIONER de PLANQUE: I have one more  
18 question in a different area.

19 CHAIRMAN SELIN: Sure.

20 COMMISSIONER de PLANQUE: Just a general  
21 question. Maybe I should use that term.

22 Did you at all address the issue of  
23 general licensees and whether or not anything should  
24 change with the policy with respect to general  
25 licensees? I understand there are about 38,000

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1 general licensees.

2 MR. FUNCHES: Yes, between 30,000 and  
3 40,000 general licensees. We are working closely with  
4 NMSS on their effort to relook at the general  
5 licensing program. The current structure of that  
6 program does not cause us significant resources. We  
7 maintain a database and it would create a significant  
8 amount of work to try to assess some small fee to that  
9 large a population. We are working closely with NMSS  
10 and if, as a result of their look at the general  
11 licensing, they change that program and it changes it  
12 such that it appears that an annual fee would be  
13 appropriate for certain groups of that, we would be  
14 willing to establish an annual fee similar to what we  
15 have for a specific licensee.

16 I would note that a general license that  
17 is issued under reciprocity, we do charge a fee for it  
18 at the beginning when we issue that. In terms of  
19 inspection, I understand that the number of  
20 inspections is probably less than 100 a year.

21 COMMISSIONER de PLANQUE: Are you  
22 suggesting that the cost for handling the general  
23 licensees would be far less than the cost of any of  
24 the one categories that are discussed in the report?

25 MR. FUNCHES: Yes, the amount of effort

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1 expended by the NRC would be --

2 MR. TAYLOR: Is less.

3 MR. FUNCHES: Is less, based on my  
4 understanding of how much we spend.

5 COMMISSIONER de PLANQUE: Okay.

6 CHAIRMAN SELIN: Just a last point on  
7 structure and then go to other comments. I think what  
8 you should do is your report should say, the efforts  
9 that would actually reduce NRC costs we estimate would  
10 save so many FTE and so many dollars and further steps  
11 to redistribute those costs, some to the taxpayers as  
12 opposed to the licensees, we estimate would make the  
13 following changes. But the first -- you've got a  
14 bunch of partial differentials. The first one should  
15 be reduce the actual cost that we cost to operate and  
16 then the second should be how we will distribute  
17 what's left, not the other way.

18 Commissioner?

19 COMMISSIONER ROGERS: Well, I've had a lot  
20 of discomfort over this whole question of fees ever  
21 since we were directed to get 100 percent of our  
22 budget. First I want to commend you on the report  
23 because I think it's a very tough job to deal with and  
24 I think that you've put some bounds on how to deal  
25 with it and you've approached it in a rational way but

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1 I'm not sure that the distinctions that you've drawn  
2 are as hard and fast and one would like, but they're  
3 the best you can do.

4 You know, the very beginning of activities  
5 not directly benefiting licensees. Commissioner  
6 Remick, you know, somewhat jocularly said, "I'm not  
7 sure that licensees see us benefiting them," and to  
8 some extent that's absolutely correct and to some  
9 extent we do benefit them. But sorting what  
10 activities that we carry out do not really benefit  
11 them, but benefit the general public and what  
12 activities do we carry out that really are a benefit  
13 to them is a difficult sort to make. I'm not sure  
14 that it's worth trying to do it because it would be  
15 somewhat arbitrary. But to me there is a clear  
16 distinction between the activities that we carry out  
17 that really are benefit to the entire public in terms  
18 of maintaining their safety and those activities which  
19 in carrying out our regulatory functions actually do  
20 benefit the licensees themselves. I feel that they  
21 have benefitted from regulatory attention, but not  
22 from all regulatory attention, that the benefits  
23 extend more broadly.

24 But the problem that I have is to what  
25 extent we are able to address some broader questions

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1 in any statutory changes. I come back to the point  
2 that the quality of what we do is extremely important  
3 and how we do it is extremely important and that  
4 there's certain basic activities that have to be  
5 carried on within an agency to maintain its technical  
6 and professional strength. I'm not sure that you can  
7 make a one to one connection between all of those and  
8 benefits to licensees. It's very clear that our  
9 international programs don't have a direct benefit to  
10 our licensees, not a direct connection. That's pretty  
11 clear. That's pretty easy to see. But I would say  
12 that while we have to throw it into the base, I  
13 suppose, maintaining the professional standing of our  
14 staff is fundamental to the quality of what we do and  
15 benefits the entire -- everybody who could possibly be  
16 affected by use of nuclear materials in the country  
17 and not just all licensees.

18 Now, we're forced to direct it to  
19 licensees, or we have been, but if we're talking about  
20 some changes, it's my personal taste to try to  
21 indicate that some of these costs cannot be directly  
22 attributable to license benefits and should not be in  
23 the base, fee base. My own estimate is that something  
24 like two percent of our budget probably ought to go to  
25 maintain the professional standing of our staff, and

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1 something of the order of perhaps \$10 million or so if  
2 you try to count it up. I know that may be difficult  
3 for us to put forward in some kind of request for  
4 legislative changes, but somehow one of the very  
5 fundamental bases of the quality of what we do is  
6 something that we don't seem to be able to deal with  
7 when we feel that we have to pass everything  
8 directly -- connect what we do directly to our  
9 licensee benefits.

10 It troubles me. It troubles me very much.  
11 It may be that's just the cost of living in the real  
12 world, but I must say that I think the way you've  
13 sorted it out here is very good, but I'm troubled that  
14 we don't seem to be moving at all in the direction of  
15 somehow calling the Congress' attention to the fact  
16 that everything is not so directly connected to  
17 licensee benefits beyond these activities which you've  
18 clearly sorted out here and which we all would agree  
19 on.

20 So, this is an area that I have a great  
21 deal of personal discomfort with and I don't know how  
22 it's going to get resolved. But I think that if  
23 there's any way in which we can indicate in not only  
24 these direct, very direct activities that you've  
25 sorted out here, would not be in the fee base, that

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1 there is also a provision for somehow the general  
2 maintenance of the quality of the efforts here would  
3 be very desirable.

4 COMMISSIONER REMICK: I certainly share  
5 that same discomfort. I have just one question of  
6 clarification. My impression was several years ago  
7 that the NRC had about 8,000 licensees in agreement  
8 states, about 16, for a total of about 24,000. Then  
9 I heard that we'd lost about 2,000 and I assume those  
10 were primarily NRC licensees because of the fee. So,  
11 that brought it down in my mind to 16,000 for 22,000.  
12 I don't know if those figures were right, but in your  
13 figures today you had 7,000 NRC licensees. Now,  
14 either my assumptions that we'd gone down to 6 are  
15 wrong or it means we maybe have increased in the  
16 number of licensees and I'm not sure which.

17 MR. FUNCHES: I think we started with  
18 9,000 and I think maybe the difference was we also  
19 count the sealed source and device registration.  
20 That's probably a 1,000. So, you have 8,000 plus that  
21 thousand. That's the 9,000 that we started with. So,  
22 I think typically the 8,000 that you might have been  
23 looking at in the past probably included the sealed  
24 source and device registrations.

25 COMMISSIONER REMICK: Fine. I would like

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1 to say also I think you've done an excellent job in  
2 the report. It's extremely well written. It's  
3 concise. I think you've picked out the very important  
4 points and I certainly am in general agreement with  
5 what you've recommended. Thank you very much.

6 CHAIRMAN SELIN: Commissioner de Planque?

7 COMMISSIONER de PLANQUE: You've asked all  
8 my specific questions, but I too would say the report  
9 was extremely well done, very clear and very easy to  
10 understand for a difficult subject. Thanks.

11 CHAIRMAN SELIN: I think this is a  
12 terrific job.

13 I would like to demur a little bit from  
14 Commissioner Rogers' statement, not in principle but  
15 in practice. I agree certainly that the activities  
16 that we undertake, and they go beyond just the staff  
17 development, are of benefit to the entire public and  
18 not just to the licensees. But as far as the study  
19 goes, and I'm not talking about broader things, I  
20 think the Congress' policy is pretty clear. They want  
21 us to do 100 percent recovery. So, I read that as  
22 saying when there are joint costs which go to our  
23 licensees and to the general public, they want us to  
24 attribute that to the licensees. Now, at some point,  
25 we may or may not wish to contest the broader policy

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1 question. But I think the function of this study is  
2 within that general context what's fair. We're sort  
3 of getting at the edge of the reservation to say even  
4 within that context, gentlemen and ladies, we demur.  
5 We think that eight or ten percent should be taken out  
6 of the license base because it's so unfair to the  
7 licensee.

8 So, as far as the general comments, I do  
9 agree with Commissioner Rogers and Commissioner Remick  
10 on these. But as far as the study goes, I think we do  
11 have to stick within this overall congressional  
12 guidance, unless we're prepared to go back and say,  
13 "We so strongly disagree with the fee guide that we  
14 want to recommend a different fee." I'd rather take  
15 them in two steps. One is what we think we can do  
16 within the OBRA-92 guidance and then a second is in a  
17 fairer world what we would like to see happen  
18 thereafter.

19 But in any event, I think it's a really  
20 good study. I think we're all -- listening to the  
21 comments, we're all pretty comfortable that although  
22 we wouldn't edit your report at this time, the  
23 Congress asked for a report and you've done a study,  
24 we're not unhappy with the way it's turned out, but  
25 the cover letter does have to be careful to say,

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1 "Here's the study." If the EDO cares to put his views  
2 in, that's fine, and the Commission will add its  
3 comments.

4 As far as the legislation, the General  
5 Counsel has pointed out that this would be authorizing  
6 legislation, not appropriation legislation. If we do  
7 get authorization, we'll be asked about the middle of  
8 '94 for our comments on authorization. But there is  
9 a '93, '94 piece of authorizing legislation that's up  
10 there. So, we would have to decide if we would like  
11 to get that into the draft bill or --

12 MR. SCROGGINS: There is one that we've  
13 been hearing from OCA that is a possibility of the  
14 Senate Authorization Committee of having a specific  
15 fee hearing maybe in the February time frame. The  
16 intent would be that this report would be the focus of  
17 that hearing.

18 CHAIRMAN SELIN: It's not always the  
19 case --

20 MR. SCROGGINS: We don't know if that's  
21 the case, that's correct.

22 CHAIRMAN SELIN: Well done. Thank you  
23 very much.

24 (Whereupon, at 4:44 p.m., the above-  
25 entitled matter was concluded.)

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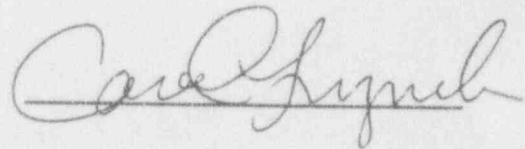
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**COMMISSION BRIEFING ON  
THE FEE POLICY REVIEW  
REQUIRED BY ENERGY POLICY ACT**

**DECEMBER 21, 1993**

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# BACKGROUND

- **Omnibus Budget Reconciliation Act of 1990, (OBRA-90).**
  - **100 Percent Recovery of Budget Through Fees.**
  - **License and Inspection Fees Under Part 170.**
  - **Annual Fees Under Part 171.**
- **Four Rules Promulgated to Implement OBRA-90.**
- **Energy Policy Act of 1992 (EPA-92).**
  - **Solicit Public Comments on Need For Fee Policy Changes.**
  - **Recommend Legislative Changes to Prevent Unfair Burden.**
- **Public Comments Requested on 4/19/93.**

## **SCOPE OF REVIEW**

- **Questions Beyond Scope of Review.**
  - **How to Raise Revenues (Taxes Versus Fees).**
  - **Appropriate Size of Budget and Resulting Magnitude of Fees.**
- **Fee-Related Issues Under Separate Review.**
  - **Exemption for Nonprofit Educational Institutions.**
  - **Small Entity Size Standards.**
  - **Final Decision on Two Petitions for Rulemaking.**
  - **Cost-Center Concepts.**

## **INPUT TO FEE POLICY REVIEW**

- **Experience in Implementing OBRA-90.**
  - **About 98-99 Percent Collected for FY 1991-1993.**
  - **1,000+ Comments on Four Fee Rules.**
  - **5,000+ Telephone Calls and Letters on Fees.**
  - **Two Petitions for Rulemaking.**
  - **Court Case.**
- **566 Comments on EPA-92 Notice.**
- **OIG Review.**



# CONCERNS

- **Two Major Fairness and Equity Concerns.**
  1. **Fees for Activities Not Directly Benefitting NRC Licensees.**
  2. **Fees Are Not Commensurate With Perceived Benefits.**
- **Streamlining of Fee Process.**
- **Other Specific Concerns Raised by Comments.**

# **CONCERN #1: ACTIVITIES NOT DIRECTLY BENEFITTING LICENSEE**

- **Activities Not Associated With Existing Licensees.**
  - **International**
  - **Oversight of Agreement State Program**
  - **Low-Level Waste**
  - **\$21.4 Million in Total Fees**

## **CONCERN #1 (CONTINUED)**

- **Fees Not Paid by Direct Beneficiary Because of Legislative or Policy Constraints.**
  - **Licensing and Inspection of Federal Agencies.**
  - **Exemption for Nonprofit Educational Institutions.**
  - **Reduced Fees for Small Entities.**
  - **\$18.2 Million in Total Fees.**

# **ALTERNATIVES FOR RESOLVING CONCERN #1**

- **Alternatives:**
  1. **Relax Requirement to Collect 100 Percent of Budget;**
  2. **Charge Beneficiary of NRC Activities;**
  3. **Continue Current Policy of Assessing NRC Licensees.**
- **Factors Considered:**
  - **Minimize Impact on 100 Percent Recovery.**
  - **Do Not Recreate Resolved Concerns.**

# **RECOMMENDED RESOLUTIONS OF CONCERN #1**

- **Modify OBRA-90 to Remove About \$25 Million From the Fee Base for:**
  - **International Activities,**
  - **Agreement State Oversight,**
  - **Nonprofit Educational Institutions, and**
  - **Small Entities.**
- **Modify Atomic Energy Act (AEA) to Assess Licensing and Inspection Fees to Federal Agencies.**
- **Continue Current Policy of Assessing Fees to Licensees for LLW.**

## **CONCERN #2: FEES NOT COMMENSURATE WITH PERCEIVED BENEFITS**

- **Licensees Pay for Regulatory Program for Both NRC and Agreement State Licensees.**
  - 7,000 NRC Licenses
  - 16,000 Agreement State Licenses
  - \$15 Million Considered Support To Agreement States
  - Additional Agreement States Possible
- **Possible Solutions:**
  - Remove Costs from Fee Base.
  - Charge Agreement States.

## **CONCERN #2: (CONTINUED)**

- **Large Fee Increases With No Added Value Caused By:**
  - **New Annual Fee**
  - **Reduced Number of Licensees**
  - **Increased Budget**
  - **Increased Licensing and Inspection Fees**
- **License Value Measured in Economic Terms.**
- **Solution:**
  - **Use Cost Center Concepts**

## **SUMMARY RESOLUTION OF CONCERN #2**

- **Modify OBRA-90 To Remove \$15 Million From Fee Base.**
  - **Recognize Utilization of NRC Regulatory Program by Agreement States.**
  - **Recognize Inherent Difficulties in Charging Agreement States.**
- **Continue to Base Fees on Budgeted Regulatory Cost.**
  - **Improve Assignment of Costs and Explanation of Changes Using Cost Center Concepts.**



## **CONCERN #3: STREAMLINE FEE EFFORT**

- EPA-92 Federal Register Requested Comments.
- IG Review.
  - Fee Process is Very Labor Intensive
  - Combine Part 170 and 171 Fees
- About 25 FTE and \$725,000 expended for Part 170 and Part 171 Fees.

# **STREAMLINING ALTERNATIVES**

- **Alternatives Considered But Not Recommended:**
  1. **Eliminate Notice and Comment Rulemaking.**
  2. **Reduce the Number of Subclasses for Part 171.**
  3. **Assess Fees Only to Power Reactors and Fuel Facilities.**
- **Licensees Did Not Support Alternatives 1 and 2.**
- **Alternative 3 Creates Fairness and Equity Concerns.**

# **STREAMLINING ALTERNATIVES (CONTINUED)**

- **Alternatives Considered and Recommended:**
  - **Modify OBRA-90 to Eliminate Requirement to Assess Part 170 Fees.**
  - **Discontinue Amendment, Renewal (materials only) and Inspection fees.**
  - **Continue Application Fees for New Licenses, Including Renewal of Reactor Licenses.**
- **Avoid Expending about 10 FTEs and \$200,000.**
- **Simpler Fee Structure**

## **OTHER SPECIFIC CONCERNS**

- **Proration of Annual Fees.**
- **Annual Fees for Nonoperating Facilities.**
- **Sliding Scale For Small Entities Fees.**
- **Advanced Reactor Review Fee.**
- **Topical Reports.**
- **Expand The Scope of Part 170.**

# **SUMMARY OF RECOMMENDATIONS**

- **Modify OBRA-90 to Collect Approximately 90 Percent of Budget.**
- **Modify AEA to Assess Licensing and Inspection Fees to Federal Agencies.**
- **Streamline Fee Effort by Modifying OBRA-90 to Eliminate Requirement to Assess Part 170 Fees.**