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PROPOSED RULE PR 170-171
(59 FR 24065)

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Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
ATTN: Docketing and Service Branch

Subject: Comments on "Revision of Fee Schedules; 100% Fee Recovery, FY 1994"

Reference: 59 Fed. Reg. 24,065 (1994)

Dear Mr. Chilk:

The Seismic Qualification Utility Group (SQUG) is submitting these comments in response to the above-referenced notice and invitation to comment on the Commission's proposed changes to 10 C.F.R. Parts 170 & 171. SQUG's comments focus on the conditions under which Part 170 fees will be charged to licensees for special projects and reports submitted to the NRC by licensees or other organizations in support of NRC's development of regulatory guidance. SQUG believes the proposed rule is needed and will serve to clarify the applicable requirements. However, some of the conditions are not clear on the face of the proposed changes, nor does the background information clarify the matter. To reduce the potential for misinterpretation, SQUG requests that some terms be defined in the rule itself or explained in the background discussion of the rule in the Federal Register.

The proposed change to 10 C.F.R. § 170.3 defines special projects to be:

those requests submitted to the Commission for review for which fees are not otherwise specified in this chapter.

59 Fed. Reg. at 24,079.

In the "Schedule of Facility Fees" and "Schedule of Materials Fees," special projects will not be assessed fees under Part 170 if the requests or reports are submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue

59 Fed. Reg. at 24,080 n.4, 24,085 n.6. Similar statements appear at 59 Fed. Reg. 24,067, 24,069 and 24,079.

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SQUG believes the terms "alternate method," "reanalysis" and "unreviewed safety issue," if left undefined, are imprecise and could be used to support an argument that any request or report involved an alternate method, reanalysis or unreviewed safety issue. Thus, the rule could be applied inconsistently and without regard to the Commission's intent. Therefore, SQUG believes that these terms should be defined or explained.

SQUG recommends that an "alternate method" be explained or defined as a method that deviates significantly (i.e., more than necessary for plant-specific or generic program development) from the method proposed in the Generic Letter or NRC Bulletin. As the proposed rule stands, any plant-specific variation needed to implement the NRC's proposed method could be called an "alternate method."

SQUG recommends that "reanalysis" be explained or defined as analysis of an alternate method, but not a review of changes to a method which is consistent with that proposed by the Generic Letter or Bulletin. Such "consistent" changes could be revisions submitted pursuant to an NRC staff request for additional information or modification, or changes necessary for plant-specific or generic implementation.

SQUG finds the term "unreviewed safety issue," without definition, to be somewhat confusing. If an "unreviewed safety issue" is neither an "unreviewed safety question" (as used in 10 C.F.R. § 50.59) nor an "unresolved safety issue" (e.g., USI A-46), it should be given specific meaning to support consistent application of the rule. SQUG recommends that an "unreviewed safety issue," within the context of the rule, be explained or defined as a safety issue, unrelated to the safety issue identified in the generic communication, which arises from proposal of an alternate method, and which will require reanalysis by the NRC staff.

Without such a definition, a response to a Generic Letter proposing, for example, a USI resolution, could be billed under Part 170 as involving an unreviewed safety issue (for the sake of discussion, equating "unreviewed safety issue" to a USI). This does not appear to be the intent of the proposed rule and would not be consistent with the Commission's existing Fee Policy at 58 Fed. Reg. 21,116 (1993). (Under this policy, reviews which do not result in formal approvals or license amendments, for example, review of Individual Plant Examination submittals requested by a generic letter, and which in the example result in the generation of a Safety Evaluation Report ("SER"), are not billed under Part 170. *Id.* at 21,120.)

Further, an SER could be considered evidence of the NRC staff's review of one or more safety issues which, up until the time of NRC staff review, were unreviewed, i.e., they were "unreviewed safety issues." Thus, billing under Part 170 could be justified for all special projects resulting in an SER, thereby subverting the Commission's intent. For these reasons, SQUG's definitions should be adopted.

Alternatively, renaming the term "unreviewed safety issue" to "unreviewed safety question" ("USQ") as defined in 10 C.F.R. § 50.59, would clarify the intent of the proposed rule and would be internally consistent. As noted in the proposed rule, billing under Part 171 is not appropriate if a licensee receives a license amendment, which follows the process in 10 C.F.R. § 50.91. This process also is used for NRC staff review of a USQ. Thus, with the recommended change, if the NRC staff engaged in the § 50.91 process either for a license amendment or a USQ review, billing would be under Part 170.

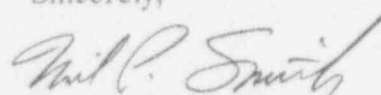
Based on the above definitions, SQUG interprets the Commission's proposed change to Part 170 to require fees to be assessed under Part 171 for requests or reports submitted to the NRC in response to a request in a Generic Letter or NRC Bulletin unless the request or report involves:

1. a license amendment, i.e., action under 10 C.F.R. § 50.90;
2. review of an alternate method which deviates significantly from the method proposed in the Generic Letter or Bulletin, e.g., SQUG's Generic Implementation Procedure ("GIP"), which is a generic procedure to implement the method proposed in Generic Letter 87-02 is not an alternate method;
3. a reanalysis of the issue to accommodate the alternate method, e.g., changes to the GIP such as those resulting from new information or NRC staff requests for modifications do not constitute reanalysis, or
4. an unreviewed safety issue not related to resolution of the issue in the Generic Letter or Bulletin, most likely as a result of proposing an alternate method, but not because the Generic Letter or Bulletin itself involved the resolution of a USI or raised a safety issue as yet unreviewed on a plant-specific or generic basis by the NRC. Thus, the GIP, which is a program to resolve USI A-46, does not involve an unreviewed safety issue because it resolves a USI, nor does it involve an unreviewed safety issue because a number of safety issues arose during the resolution process which required review by the NRC staff.

SQUG believes that this interpretation is consistent with the rule as proposed and also is consistent with the Commission's existing Fee Policy at 58 Fed. Reg. 21,116. If this interpretation is not correct, and the Commission adopts a different definition of the key terms noted above, SQUG respectfully requests an opportunity for notice and comment prior to promulgation of the final rule. A final rule should not present the first opportunity for the public to read a definition of these critical terms.

The Seismic Qualification Utility Group appreciates this opportunity to provide its comments.

Sincerely,



Neil P. Smith, Chairman
Seismic Qualification
Utility Group

cc: SQUG Member Representatives and Alternates
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