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June 9, 1994

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555
ATTN: Docketing & Service Branch



Re: RIN 3150-AF03

Dear Sir:

Enclosed are the comments of AlliedSignal Inc. on the Commission's proposed revision of fee schedules for 100% recovery (FY 1994), published in the Federal Register on May 10, 1994.

Sincerely yours,

John S. Hoff

JSH/cpy
Enclosure

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# COMMENTS OF ALLIEDSIGNAL INC. ON PROPOSED REVISION OF FEE SCHEDULES FOR 100% RECOVERY (FY 1994)

(RIN 3150-AF03)

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June 9, 1994

Comments of AlliedSignal Inc.
on Proposed Revision of Fee Schedules
for 100% Fee Recovery (FY 1994) (RIN 3150-AF03)

AlliedSignal Inc. submits the following comments on the proposal of the Commission to amend for fiscal year 1994 the licensing, inspection, and annual fees charged to its applicants and licensees, published at 59 Fed Reg 24065 (May 10, 1994).

AlliedSignal owns a uranium hexafluoride ($UF_6$) conversion facility in Metropolis, Illinois (the Metropolis plant), which it operates pursuant to NRC Materials License No. SUB-526, issued May 28, 1985. It is currently the only entity in the United States engaging in $UF_6$ conversion operations. Sequoyah Fuels Corporation, which previously was a $UF_6$ converter, has ceased operations and, AlliedSignal understands, is now considered by the Commission to have a possession-only license.

The annual fee that would be imposed on AlliedSignal under the proposed rule would amount to $1,169,770 (including surcharge). When the Part 171 fee was first imposed (for FY 1991), Allied's fee (including surcharge) was $683,500. In FY 1993, it was $680,220. The proposal for FY 1994, therefore, would increase AlliedSignal's annual fee by 72% in one year.

AlliedSignal now markets its $UF_6$ conversion services through ConverDyn, a marketing partnership between an affiliate of General Atomics, parent of Sequoyah Fuels Corporation, and an affiliate of AlliedSignal. AlliedSignal sells and ConverDyn purchases conversion services at AlliedSignal's cost, which includes Commission fees.

As AlliedSignal informed the Commission in its comments on the proposed 1991 fee and in other submissions thereafter, the imposition of the fee has threatened the viability of the Metropolis plant in light of competition from converters in Canada and Europe which are

not subject to the Commission's fees. Although AlliedSignal, and more recently ConverDyn, have attempted to pass the cost of the fee on to their customers, they have not been able to do so on a broad-scale basis. Allied-Signal last year converted 19,000,000 pounds of $UF_6$. The proposed Part 171 fee alone would raise its costs by 6¢ per pound and require ConverDyn to raise its prices by this amount just to recoup the cost of the annual fee.

As AlliedSignal stated in its comments on the 1991 rule, however, even before the fee was imposed, winning bids were decided by as little as 1¢ per pound of $UF_6$. The price increase that would be required in order simply to pay the annual fee, but that the foreign competitors do not have to pay, substantially impairs ConverDyn's competitive position, and thus AlliedSignal's.

A number of utility customers in the United States and in Japan have specifically informed ConverDyn that the Commission's fee is a negative cost factor in comparing ConverDyn's prices with those quoted by its Canadian and European competition. Most recently Ohio Edison advised ConverDyn that it was not competitive against Cameco, the Canadian converter, because of the current cost of the Commission's annual fee. The proposed increase will significantly worsen the adverse competitive effect the fee already has had at lower levels.

The fee is not "fairly and equitably" allocated as required by the statute and does not bear a reasonable relationship to the cost of providing regulatory services to AlliedSignal as also is required by the statute.

1. The costs allocated to the $UF_6$ conversion category should be divided equally between AlliedSignal and Sequoyah Fuels Corporation

In previous years, the costs allocated to the $UF_6$ conversion subcategory were divided equally between the two members of the subcategory, AlliedSignal and Sequoyah Fuels Corporation. Sequoyah is not now conducting operations. As AlliedSignal understands, it has a possession-only license. The proposed rule, without any discussion, would exempt Sequoyah from the annual fee, and impose all of the costs allocated to the $UF_6$ conversion subcategory solely on AlliedSignal. For the fee to be fair and equitable, the costs allocated to the $UF_6$ conversion subcategory should be divided equally between Sequoyah and AlliedSignal.

In commenting on the previous years' fees, AlliedSignal sought to persuade the Commission to allocate a greater proportion of the costs attributed to the $UF_6$ conversion subcategory to Sequoyah than to AlliedSignal because Sequoyah required greater regulatory attention on the part of the Commission. Under the Commission's rationale for rejecting that approach, the annual fee should continue to be assessed against Sequoyah even though it is no longer conducting operations.

The Commission stated that the Commission's regulatory activities on which the annual fee is calculated are independent of the amount of specific regulatory attention devoted to a particular licensee. It said that the costs allocated to the subcategory of $UF_6$ converters were generated by the following activities: safety and environmental regulations, guidance and policies; safety research; inspection procedures and oversight of regional activities; event analysis; and other regulatory activities, including responses to Section 2.206

petitions and to Congressional correspondence. The Commission took the position that these costs were attributable to the fact that a license exists and thus should be divided equally between all licensees in a class, regardless of the amount of regulatory activity related to a particular license.[1/]

Under the Commission's reasoning, Sequoyah should bear at least half the costs allocated to the $UF_6$ converter class, even though Sequoyah has only a possession license. An examination of the Commission's own allocation of costs to fuel facilities fails to show any budgetary category which becomes inapplicable simply because Sequoyah is no longer authorized to operate. Nor is the scope of Commission activities with respect to the Sequoyah site substantially reduced. Safety and environmental policies and regulations must still be applied. If there is an event, it still must be analyzed. Inspections are still required. Congress may still make inquiries about the status of Sequoyah. Section 2.206 petitions may still be brought. The regulatory structure that guides and underpins these activities continues to be relevant to Sequoyah.

The fact that Sequoyah must now decontaminate and decommission its facility does not diminish the scope of regulatory oversight, regulatory research and other activities in which the Commission must engage. Indeed, a host of regulatory and license requirements, and the accompanying regulatory oversight, come into play only after operations terminate and decontamination and decommissioning activity begins. See, for example, Materials

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1/ Letter from James M. Taylor to John S. Hoff, January 9, 1992, pp. 5-7 (denying request of Allied-Signal for exemption).

License No. SUB-1010, par. 14; October 15, 1993, Order, in Sequoyah Fuels Corp., et al. (Gore, Okla., Site Decontamination and Decommissioning Funding), Docket No. 40-8027, at 6, citing regulatory guidelines for decontamination and decommissioning.

The Office of Nuclear Materials Safety and Safeguards is incurring $2.2 million for its decommissioning activities for the fiscal year 1994, an amount which does not include expenditures of $2.4 million for environmental policy and decommissioning by the Office Nuclear Material and Low Level Waste. The Commission has not provided a rational basis for exempting Sequoyah from its fair share of these and other regulatory costs through the annual fee.

In the proposed rule, moreover, the Commission has stated that it is the existence of a license, not operations, that determine allocation of costs for recovery through the annual fee:

> "Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion .... Therefore, the NRC reemphasizes once again that annual fees will be assessed based on whether a licensee holds a valid license with the NRC that authorizes possession and use of radioactive material." 59 Fed Reg 24068.

This rationale applies in equal force to a licensee that has a possession-only license and is decommissioning. A licensee that has a license to operate but does not do so is no different from a licensee that has operated, stops doing so, and holds a possession-only license. In each case, the Commission's regulations are equally applicable, and the licensee benefits from them.

Not only is the Commission monitoring Sequoyah's decontamination work, it also is prosecuting enforcement actions against Sequoyah, even after its license has reverted to possession-only. It would indeed be ironic, and directly violative of the statute, if a licensee which requires commitment of substantial amounts of Commission services for enforcement and monitoring is exempted from bearing a share of the cost of maintaining the regulatory structure which undergirds the Commission's activities. As the Commission has explained, Part 170 fees do not recover the overhead cost of maintaining that regulatory structure.[2/]

The proposed rule creates a Category 14 -- for entities with licenses or other approvals authorizing decommissioning or decontamination. 59 Fed. Reg. at 24089. It imposes no annual fee on licensees in this category on the ground that "they are charged an annual fee in other categories while they are licensed to operate." But if a licensee is exempt from the fee because it has a possession-only license, the fee would not be assessed under that other category. Thus, even though Category 14 contemplates that costs will be allocated to licensees which have authority only to decontaminate or decommission, the proposed rule would in fact not impose a fee on such a licensee. This is contrary to the Commission's own statement of its policy (as expressed in Category 14) and to the Commission's determination to impose the fee on all licensees (except those specifically exempted for expressed policy considerations). It is not fair to AlliedSignal, and is arbitrary and capricious.

The costs allocated to the $UF_6$ converter subcategory, therefore, should be divided equally between AlliedSignal and Sequoyah.

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2/ Letter from James M. Taylor, cited in n.1, p.5.

2. AlliedSignal should be included in the uranium recovery class

The Commission has included $UF_6$ converters as a subcategory in the fuel facility class, and would continue this categorization. If Sequoyah is not included in this subcategory, AlliedSignal would be the only licensee in it. A subcategory of one does not accurately reflect the relevant amount of Commission's resources devoted to AlliedSignal and is not appropriate.

To rectify this, AlliedSignal should be removed from the fuel facility class and included in the uranium recovery class. The operations of a $UF_6$ converter are more similar to those of a uranium mill than to a fuel facility. The nature of the Commission's regulation of $UF_6$ converters is similar to that involved in its activities in regulating uranium mills; a $UF_6$ converter does not require the scope and amount of regulatory resources that are devoted to fuel facilities.

The $UF_6$ converter takes the output of uranium concentrate manufactured by the millers, converts it by chemical process from a solid to a gas, and purifies it. Nothing is changed other than the chemical form. The quantity of uranium and the isotopic ratio of the product created by the $UF_6$ converter are identical to the uranium concentrates delivered to it for conversion by the mills. The high enriched and low enriched fuel facilities, on the other hand, handle an enriched and consequently more dangerous product. They are fuel fabricators.

Because a $UF_6$ converter deals with the same source material as the mills, the nature of regulation by the Commission is similar. Reflecting the similarity in the hazard of their

operations, the mills and the $UF_6$ converters are both regulated under Part 40, whereas the fuel fabricators are regulated in Part 70. Numerous provisions of Part 40 apply equally to $UF_6$ converters and uranium mills. They are treated in the same way by the regulatory structure.[3/] The cost of the regulatory scheme embodied in Part 40, therefore, should be divided among those who benefit from it. The sole $UF_6$ converter, therefore, properly belongs in the class of uranium recovery.

In connection with Allied-Signal's earlier request for exemption, the Commission disclosed that the $UF_6$ conversion facilities had been included as a subcategory in the fuel facility category rather than in the uranium recovery class because this was what the Commission did for budget development purposes. The Commission said it followed its "established budget structure" in determining allocation of the annual fee, "for practical reasons."[4/]

This is an arbitrary way in which to determine allocation of the annual fee. The lumping of programs for budget development purposes should not determine how the annual fee is allocated. Congress did not intend, or authorize, the Commission to allocate its costs on the basis of its historical administrative practices, for its internal convenience. The fee must be allocated so that licensees who require the greatest expenditures of the agency's resources pay the greatest annual fee and the fee is fairly and equitably allocated.

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[3/] If anything, the Commission has more regulatory requirements for uranium mills than for $UF_6$ converters. See Appendix A to Part 40.

[4/] Letter from James M. Taylor, cited in note 1, p.2.

AlliedSignal's product has the same radioactivity and hazard as that of the uranium mills. It is regulated in the same Part of the Commission's regulations, the cost of which is to be recovered through the Part 171 fees. It should, therefore, also be included in the same class as they are for purposes of the annual fee.

3. The result of the Commission's allocation is not fair

Another way to assess the validity of the Commission's proposal is to focus on the effect of its proposal, rather than the methodology used by the Commission. It does not matter how the Commission reaches a result if the result itself is not appropriate.

The Commission would impose a fee on AlliedSignal of $1,169,770, while a uranium mill would pay $36,370 to $94,470. Does the Commission devote more than 10 times as much of its resources to AlliedSignal as it does to a uranium mill? In the absence of justification of such a differential, the proposed fee cannot stand.

The fee that would be charged to AlliedSignal appears equally arbitrary if viewed from the opposite perspective. While AlliedSignal would pay $1,169,770, an operating reactor would pay approximately $3,000,000. Does the Commission devote to the Metropolis plant as much as one-third of the amount of its resources it devotes to an operating reactor? Again, in the absence of data demonstrating the validity of such a large fee on AlliedSignal, the proposed rule is not appropriate.

## CONCLUSION

AlliedSignal has, in addition to commenting on the yearly revisions to the annual fee, suggested to the Commission, in response to its requests, ways in which the fee could be made fair and equitable. See, in particular, the "lessons-learned" letter from W. Scott Nix to Ronald M. Scroggins (October 4, 1991) and AlliedSignal's comments on the Commission's fee schedule made by letter of Sanford I. Rock to the Secretary of the Commission (July 19, 1993). These letters are attached to these comments.

Despite the Commission's requests for suggestions on ways to improve the fee system and AlliedSignal's efforts to respond positively, the proposed rule perpetuates the structure of previous years' fees without significant modification or adjustment. The effect on AlliedSignal of continuing to treat the $UF_6$ converters as a separate subcategory is particularly dramatic and adverse. The Commission proposes to place AlliedSignal in a subcategory of one and increase its fee by 72%. That fee is disproportionately higher than that charged to licensees in the uranium recovery category and disproportionately close to what is assessed to operating reactors.

The fee assessed against AlliedSignal should be substantially lower. To fit into the methodology employed by the Commission, AlliedSignal requests the Commission to

incorporate AlliedSignal in the uranium recovery class or at least to allocate the fee of the $UF_6$ conversion subcategory equally between Sequoyah and AlliedSignal.

Respectfully submitted,

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Attachments