(3)

DOCKETED
USNRC

'97 APR -1 A7:30

OFFICE OF SECRETARY
DOCKETING & SERVICE

United States
Enrichment Corporation

2 Democracy Center
6903 Rockledge Drive
Bethesda, MD 20817

Tel: (301) 564-3200
Fax: (301) 564-3201

USEC

United States
Enrichment Corporation

March 31, 1997

DOCKET NUMBER
PROPOSED RULE PR 170 & 171
(62FR8885)

VIA FACSIMILE AND FEDERAL EXPRESS

SERIAL: GDP 97-0048

Secretary
U.S. Nuclear Regulatory Commission
ATTN: Docketing and Services Branch
Washington, DC 20555-0001

Paducah Gaseous Diffusion Plant (PGDP)
Portsmouth Gaseous Diffusion Plant (PORTS)
AVLIS Uranium Enrichment Plant
Docket Nos. 70-7001 70-7002, 70-3089
USEC Comments on NRC's "Revision of Fee Schedules; 100% Fee Recovery, FY 1997," 62 Fed. Reg. 8885

Dear Sir:

On behalf of the United States Enrichment Corporation (USEC), I am pleased to provide comments on the NRC's Proposed Rule, "Revision of Fee Schedules; 100% Fee Recovery, FY 1997." These comments address particular aspects of the proposed rule concerning the fees for licenses or certificates for the operation of uranium enrichment facilities. USEC believes that the fees which have been proposed for the first time for the uranium enrichment facility category are not fair and equitable when compared to those imposed on similar facilities regulated by the NRC. Uranium enrichment facilities should be subject to the same fees as the other major low enriched fuel cycle facilities because of the similarity of generic regulatory programmatic effort required for such facilities. USEC will also address other aspects of the proposed rule including the assessment of full annual fees on each USEC gaseous diffusion plant (GDP) Certificate of Compliance and the application fee for the construction and operation of a uranium enrichment facility.

Proposed Annual Fee for Uranium Enrichment Facilities

The NRC has proposed an annual fee for each USEC uranium enrichment facility of $2,600,000, the same as that for a high enrichment fuel facility. The rationale for this as expressed in the NRC's Proposed Rule is an unsupported assertion that the relative weighted safety and safeguards factors for USEC's facilities are similar to a high enriched uranium facility. USEC believes this rationale is incorrect, unsupported by the facts, and contradictory to the NRC's own licensing actions. The NRC has, in fact, certified USEC's GDPs as low enriched uranium facilities. As part of that licensing action, the NRC has approved safeguards measures appropriate for low enriched uranium facilities and has not imposed the safeguards measures required at high enriched facilities possessing

005

1/0

DS10

strategic special nuclear material. In accordance with the joint statement of understanding between the NRC and the Department of Energy (DOE), DOE is solely responsible for any strategic special nuclear material which may be located at the Portsmouth, OH, GDP. Accordingly, the presence of any such high enriched uranium at the Portsmouth GDP is not relevant to the NRC's fee-setting process. The NRC methodology for determining annual fees for major fuel facilities, presented in the June 20, 1995, *Federal Register*, clearly states that the issued license is the source for determining authorized nuclear material and use/associated activity and is the determining factor in placing a licensee into one of the five fuel facility license fee categories created in the NRC's methodology. USEC's GDPs are clearly in the low enriched fuel category on the basis of the issued licenses (certificates) and not in the high enriched fuel category. The NRC's proposal to put the GDPs into the same fee category as high enriched fuel facilities has not been justified by the cited NRC methodology and appears to be arbitrary. The NRC has provided no basis for its conclusion that the relative weighted safety and safeguards factors for the GDPs are similar to a high enriched uranium facility. The annual fee for the GDPs should be the same as that set for other low enriched facilities, $1,276,000 annually.

Further, USEC is currently performing design and safety analysis work in support of obtaining a future AVLIS uranium enrichment plant NRC license. Preliminary safety analysis studies of the AVLIS plant indicate that the safety and safeguards characteristics of that facility will certainly be more consistent with low enriched rather than high enriched facilities. The currently proposed establishment of an annual fee for "...operation of a uranium enrichment facility" which is the same as that for a high enriched fuel facility will be inappropriate for USEC's AVLIS plant for the same reasons cited above.

Multiple Assessment of Fees

The United States Court of Appeals for the D. C. Circuit previously ruled that a certain licensee, which owned and operated two separately licensed, low enriched uranium manufacturing facilities, was entitled to an exemption from the annual fee rule to the extent that the NRC had assessed fees on a per-license basis (988 F.2d 146, 300 U.S App.D.C. 198). The Court upheld the licensee's contention that the two facilities were in aggregate operationally equivalent to other single-plant, single-license facilities, and that the double assessment against the two licenses resulted in a significantly disproportionate allocation of costs to them.

USEC contends that essentially the same situation exists with the NRC's proposal to separately assess an annual fee on each Certificate of Compliance for USEC's two GDPs. USEC's two GDPs are parts of one process to produce enriched uranium product. The GDP located at Paducah, KY, has always existed solely to produce feed material for subsequent processing at another GDP. Additionally, since the USEC applications to the NRC for certification are, in large part, identical, the proposed doubling of the annual fee is not justified by a comparable increase in regulatory burden on the NRC from regulating two GDPs. The NRC's proposal to levy a separate annual fee on the two GDPs will result in a significantly disproportionate allocation of the NRC's generic costs to USEC in comparison with other major fuel facility licensees. USEC clearly does not derive twice the benefits associated with the NRC's generic costs as the next highest fee paying materials licensee. USEC requests elimination of separate annual fees for USEC's two GDPs.

Application Fee

USEC has noted an apparent inconsistency in the Schedule of Materials Fees. In all but one category of materials licenses, including licenses for major fuel facilities, NRC actions are performed at full cost or for a flat fee. Only for the category "Licenses for construction and operation of a uranium enrichment facility" is an application fee charged in addition to full cost. USEC requests that the application fee for the uranium enrichment facility category be eliminated to achieve fee equity among all materials licensees.

Thank you for the opportunity to provide our input to the Commission's evaluation process. We would be pleased to discuss these comments with you. Please contact me at (301) 564-3413 or Ms. Lisamarie Jarriel at (301) 564-3247.

Sincerely,

Robert L. Woolley
Nuclear Regulatory Assurance and Policy Manager