

NOTATION VOTE

RESPONSE SHEET

RELEASED TO THE PDR

1/22/98

date

initials

TO: John C. Hoyle, Secretary

FROM: COMMISSIONER MCGAFFIGAN

SUBJECT: SECY-97-249 - RECOVERING THE BUDGETED COSTS
RELATED TO FEDERAL AGENCIES, NONPROFIT
EDUCATIONAL INSTITUTIONS, SMALL ENTITIES,
REGULATORY SUPPORT TO AGREEMENT STATES, THE
SITE DECOMMISSIONING MANAGEMENT PROGRAM, AND
GENERIC DECOMMISSIONING AND RECLAMATION
ACTIVITIES

Approved X ^{with comments} Disapproved _____ Abstain _____

Not Participating _____ Request Discussion _____

COMMENTS:

See the attached comments.

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D FOR

Edward M. Galt
SIGNATURE

November 20, 1997
DATE

Release Vote 1 X 1

Withhold Vote 1

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PDR COMMS NRCC
CORRESPONDENCE PDR



Commissioner McGaffigan's Comments on SECY-97-249

I support the recommendation by the staff that the costs of activities which raise significant fairness and equity issues be excluded from any legislation which may be proposed to extend the requirement for NRC to continue to recover its budget from fees. The activities in question would include all of the activities identified by staff (\$49.5 million) plus the activities relating to DOE regulation (Hanford Waste Tank Remediation and pilot program activities) (\$6.5 million) for a total of approximately \$56 million¹ in FY 1999.

I recognize the attractiveness (in terms of maximizing NRC flexibility) of requesting that a percentage amount be provided through a General Fund appropriation with the remaining percentage coming out of fees. However, I believe that realistically we would have to defend a specific dollar amount each year in the appropriations process with the usual back-up detail (similar to that provided in this SECY and its companion information paper SECY-97-226) on what activities the General Fund appropriation was meant to cover. Furthermore, the percentage approach will no more easily accommodate an expansion of the NRC mission into external regulation of DOE than will a specific dollar approach. Either would have to be adjusted in any legislation authorizing DOE external regulation in FY 2000 or FY 2001.

In voting to make this request to OMB and the Congress, I by no means imply that the activities which raise fairness and equity concerns are marginal or discretionary. Indeed, many of these activities are at the heart of several critical NRC health and safety functions, including decommissioning, the entire materials program, oversight of Federal licensees, and carrying out our statutory responsibilities for Agreement State oversight. I am sure that Congress and OMB would recognize that. What drives my vote is the changed circumstances for the nuclear utility licensees since 1994 when the Commission last approached Congress on this matter. The paradigm that NRC fees, however unfair, could simply be passed on to utility customers through rate adjustments no longer holds in the increasing number of states which are deregulating their electric power industry. (Indeed, in the past few days the Illinois and Massachusetts legislatures passed deregulation legislation and thereby added to the momentum toward nation-wide deregulation). Of course, that paradigm never held for materials licensees.

¹If the 18 FTE in International Programs who carry out FSU/CEE assistance programs are fully reimbursed by AID and DSWA as the Chairman and I have advocated in our votes on SECY-97-207, this amount would be reduced by \$3.2 million, and the FTE would move to the business-like category.

It is true that the Balanced Budget Act puts tremendous pressure on discretionary General Fund appropriations. The \$56 million request which I propose for FY 1999 would be competing with many other high priority programs throughout the Federal government. That is why it would be important to structure the authorizing fee legislation in such a way that, if the Appropriations Committees did not have sufficient discretionary General Fund appropriations available in any year, and yet wanted these critical health and safety activities to be funded, they could shift activities back onto the fee base notwithstanding the fairness concerns.

Now is the time to propose legislation for these purposes to OMB and Congress since our current fee legislation expires at the end of FY 1998. Some legislation to address the fee issue must be enacted in FY 1999 or the agency will revert to the pre-OBRA-90 33% fee recovery and a General Fund appropriation of about \$320 million will be required. Congress recognizes both the need for legislation and the fairness problem in the current fee legislation. Senators Chafee and Inhofe attempted to deal with the issue during Senate consideration of the Balanced Budget Act, but were thwarted by arcane budget scoring issues. A provision to extend 100% fee recovery in the House version of the bill failed in conference for the same reason.

While the Chafee-Inhofe bill has, in my view, certain technical problems that need to be addressed, it would allow us to identify a range of NRC activities that should be removed from the fee base. The main problem with the bill is that it would require NRC to identify activities and costs to be removed from the fee base by annual rulemaking. The rulemaking approach would not be practical for NRC or for the Appropriations Committees. I have attached proposed modifications to the Chafee-Inhofe bill that would replace the rulemaking requirement with provisions that would require the NRC to identify activities and costs to be funded from General Fund appropriations in its annual budget submittal. I would urge that we use this draft legislation as a basis for our proposal to remove certain activities from the fee base.

I would stress that the marked up bill would establish a ceiling² for the General Fund appropriation, but the bill would not preclude the Appropriations Committees from shifting activities requested under the General Fund back into

²I suggest \$60 million to allow some modest growth in pilot activities relating to DOE external regulation prior to passage of enabling legislation in that area.

the fee base. Thus, I do not believe that attempting to correct fairness and equity issues need compromise NRC's ability to obtain the necessary funds to implement programs that will protect public health and safety.

Finally, I note some inconsistency in the staff's handling of the papers which deal with fee and reimbursement issues. SECY-97-249, and its companion information paper, SECY-97-226, are marked "Sensitive Information--Limited to the NRC Unless the Commission Determines Otherwise." The SECY on reimbursement policy, SECY-97-146, and the SECY on reimbursable business-like FTEs, SECY-97-207, are intended for public release and the former has already been released. I can find very little in SECY-97-249 and SECY-97-226 that was not already discussed publicly in DSI-21 and its appendices. All of these papers are inter-related. Consequently, I would urge the Commission to release the papers and voting record per the usual practice when the final SRM is completed.

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105TH CONGRESS
1ST SESSION**S.** _____

IN THE SENATE OF THE UNITED STATES

Mr. CHAFEE (for himself, Mr. INHOPE, Mr. JEFFORDS, Mr. SMITH of New
Hampshire, Mr. Graham

_____) introduced the following bill; which was read twice
and referred to the Committee on _____

A BILL

To extend the authority of the Nuclear Regulatory Commis-
sion to collect fees through 2005, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "NRC Fairness in
5 Funding Act of 1997".

6 **SEC. 2. NUCLEAR REGULATORY COMMISSION ANNUAL**
7 **CHARGES.**

8 Section 6101 of the Omnibus Budget Reconciliation
9 Act of 1990 (42 U.S.C. 2214) is amended—

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1 (1) in subsection (a)(3), by striking "September
2 30, 1998" and inserting "September 30, 2005"; and

3 (2) in subsection (c)—

4 (A) by striking paragraph (2) and insert-
5 ing the following:

6 "(2) AGGREGATE AMOUNT OF CHARGES.—The
7 aggregate amount of the annual charge collected
8 from all licensees shall equal an amount that ap-
9 proximates 100 percent of the budget authority of
10 the Commission for the fiscal year for which the
11 charge is collected, less, with respect to the fiscal
12 year, the sum of—

13 "(A) any amount appropriated to the Com-
14 mission from the Nuclear Waste Fund;

15 "(B) the amount of fees collected under
16 subsection (b); and

17 "(C) for fiscal year 1999 and each fiscal
18 year thereafter, *any amount appropriated to*
19 *the Commission from the General Fund for the*
20 *costs of activities which the Commission has identified*
21 *pursuant to the determination made*
22 *made under paragraph (5); and*

22 (B) by adding at the end the following:

23 *INSERT (5A)*
24 ~~"(5) EXCLUDED BUDGET (CHARGE)~~

24 ~~"(A) IN GENERAL The rulemaking under~~
25 ~~paragraph (2) shall include a determination of~~

(5) EXCLUDED BUDGET COSTS. -

(A) IN GENERAL. - For fiscal year 1999 and each fiscal year thereafter, the Commission shall:

(i) make a determination of those activities of the Commission for which it would not be fair and equitable to assess annual charges on a Nuclear Regulatory Commission licensee or class of licensee; and

(ii) include the costs of activities determined under subparagraph (A)(i) in its budget submittal as a request for appropriations from the General Fund.

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1 ~~the costs of activities of the Commission for~~
2 ~~which it would not be fair and equitable to as-~~
3 ~~sess annual charges on a Nuclear Regulatory~~
4 ~~Commission licensee or class of licensee.~~

5 "(B) CONSIDERATIONS.—In making the
6 determination under subparagraph (A), the
7 Commission shall consider—

8 "(i) the extent to which activities of
9 the Commission provide benefits to persons
10 that are not licensees of the Commission;

11 "(ii) the extent to which the Commis-
12 sion is unable to assess fees or charges on
13 a licensee or class of licensee that benefits
14 from the activities; and

15 "(iii) the extent to which the costs to
16 the Nuclear Regulatory Commission of ac-
17 tivities are commensurate with the benefits
18 provided to the licensees from the activi-
19 ties.

20 "(C) MAXIMUM EXCLUDED COSTS.—The
21 total amount of costs ~~incurred~~ *for which appropriations from the* by the Commis- *GENERAL*
22 sion pursuant to the determination under sub- *Fund may*
23 paragraph (A) shall not exceed \$70,000,000 *be sought* for
24 any fiscal year."