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Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
Attn: Rulemaking and Adjudication Staff

DOCKET NUMBER  
PROPOSED RULE **PR 170 + 171**  
(64FR15876)

Gentlemen:

**Subject: Kennecott Uranium Company's Comments on Revision of Fee Schedules; 100% Fee Recovery, FY 1999 Federal Register Volume 64, Number 62, Pages 15876 to 15903**

Kennecott Uranium Company is a uranium recovery licensee and is the operator and manager of the Sweetwater Uranium Project, one (1) of the six (6) remaining conventional uranium mills in the United States. The Sweetwater Uranium Project is located in the Great Divide Basin in Sweetwater County, Wyoming and licensed under Source Materials License SUA-1350. The Sweetwater Uranium Project is not operating. It is in standby status awaiting an improved uranium market. Kennecott Uranium Company has reviewed the above described Federal Register notice and has the following comments concerning the re-baselining of the NRC's annual fees:

**1. Fees Paid to Date by Kennecott Uranium Company**

The table below lists the fees paid to date by Kennecott Uranium Company to the NRC related to Source Material License 1350.

Year	License Fee	Hourly Charges	Total
1991	\$ 100,100.00	\$ 9,870.00	\$ 109,970.00
1992	\$ 168,082.00	\$ 24,461.00	\$ 192,543.00
1993	\$ 100,133.00	\$ 6,116.00	\$ 106,249.00
1994	\$ 74,670.00	\$ 22,302.00	\$ 96,972.00
1995	\$ 60,900.00	\$ 46,166.00	\$ 107,066.00
1996	\$ 57,000.00	\$ 14,088.00	\$ 71,088.00
1997	\$ 57,000.00	\$ 12,138.00	\$ 69,138.00
1998	\$ 61,800.00	\$ 51,988.00	\$ 113,788.00
Total	\$ 679,685.00	\$ 187,129.00	\$ 866,814.00

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NRC license fees and hourly charges comprise a substantial portion of the Sweetwater Uranium Project's budget over the past eight (8) years, averaging in excess of 7 percent of the budget, in spite of the fact that the project has remained in standby status and generated no revenues due to a depressed uranium market. The Sweetwater Uranium Project has paid more than \$850,000.00 in fees to the NRC over the last eight (8) years. This is a large sum of money. Kennecott Uranium Company believes that it is excessively large in comparison to the regulatory services received from the agency.

## 2. Re-baselining Annually Versus Re-baselining Only Every Several Years

NRC license fees and hourly review charges comprise a substantial portion of the total budget of the Sweetwater Uranium Project which is in standby status. The facility budget must be prepared in advance and must accurately reflect future costs. Thus NRC licensee fees and hourly charges should be predictable to enable the licensee to budget and plan accurately. Therefore re-baselining should only be done every several years and not each year so that NRC license fees and hourly charges will remain reasonably predictable from year to year. A reasonable degree of predictability of NRC fees and hourly charges will enable licensees to plan, forecast and budget accurately.

The issue of the need for predictability of NRC license fees and hourly charges has been raised in previous licensee comments on proposed NRC license fee charges. This need for predictability in NRC fees and hourly changes has not changed. This issue was previously addressed by former Chairman Ivan Selin when he stated:

We [NRC] have to find a way to avoid large changes from year to year which are not predictable from the licensee's point of view, just based on a new analysis that we do. Even if the new figures are fairer than the old figures, people have to be able to have some assurances that when they budget that the budget just won't be swamped because a federal agency did a new calculation.

*Transcript of December 21, 1993, Briefing on Results of Fee Study*

## 3. Assessment of Project Managers' Time

The notice states that **"...the NRC is proposing that all project managers' time, excluding leave and time spent on generic activities such as rulemaking, be recovered through Part 170 fees assessed to the specific applicant or licensee to which the project manager is assigned."** Currently only project manager time spent on specific licensing actions or inspections is billed at the hourly rate while costs for remaining project manager activities are recovered through annual fees.

This change could easily double the number of hours billed to uranium recovery licensees which are now being billed at \$140.00 per hour instead of the existing rate of \$121.00 per hour. The net result of increasing the hourly rate from \$121.00 per hour to \$140.00 per hour and doubling the number of hours billed would increase hourly billings 2.3 times. This is extremely burdensome to

licensees. In addition, a \$140 hourly rate equals or exceeds the hourly charges of senior consultants or principals at major consulting firms, and exceeds the generally accepted rate for similar work in private industry.

Kennecott Uranium Company also believes that agency staff, on some occasions, spends excessive time on reviews of licensee submittals. This, in turn, causes excessive hourly charges.

#### **4. Re-baselining With or Without a Cap**

If forced to choose, Kennecott Uranium Company prefers re-baselining with a cap which would increase the annual fee to \$92,100.00 per year as opposed to re-baselining without a cap which would increase the annual fee to \$131,000.00 per year. This would at least spread the increase out over two (2) years so that there would not be such a drastic change to the facility's budget in a given year.

#### **5. Uranium Recovery Issues**

The proposed fee structure has selected the uranium recovery industry for especially steep increases in fees. Without a cap, the proposed conventional mill license fee is 112 percent higher and the solution mining license fee is 212 percent higher. While the proposed fees for the uranium recovery industry are sharply higher, power reactors, under re-baselining without a cap, would receive a reduction in fees of 6.8 percent, and other materials licensees would receive increases of up to approximately 57 percent. Power reactors are operated by utilities which are able to pass cost increases onto their rate payers. The cost increases are spread over a large number of rate payers (utility customers). The uranium recovery industry, on the other hand, produces a commodity which is sold under fixed contract or spot market prices. The uranium recovery industry does not have the ability to raise its prices to recover the proposed license fee and hourly rate increases. In addition, "certain materials licensees" would receive reductions of approximately 7 to 49 percent. Kennecott Uranium Company believes that the uranium recovery industry is being unfairly treated in comparison to other NRC licensees, especially nuclear power reactors.

Kennecott Uranium Company believes that the way in which the proposed percentage changes in fees for uranium recovery licensees was expressed on page 16 (last paragraph) of the fee document was somewhat misleading. Kennecott Uranium Company believes that the fee increase should have been expressed as a direct multiple of the current fee. For example, the change in fee for a conventional uranium mill caused by re-baselining without a cap should have been expressed as an increase of 2.12 times ( $\$131,000/\$61,800 = 2.12$ ), rather than an increase of 112 percent.

The uranium recovery industry is being treated especially harshly under this proposed fee schedule when compared to other classes of licensees. This treatment is especially unfair for the following reasons:

**5.1 Economic Condition of the Uranium Recovery Industry**

The domestic uranium recovery industry is experiencing economically difficult times. The current price for restricted (non-CIS origin) uranium is \$10.85 per pound (Uranium Exchange - April, 19, 1999). This is very low. Increases in hourly rates and license fees place an undue burden upon an industry already suffering from a depressed market.

A graph of uranium prices based on prices posted by TradeTech (The Uranium Exchange Company), is attached. Current prices for uranium are lower now than they were in mid-1996. As stated above, uranium recovery operators are unable to pass these proposed fee and hourly rate increases on to customers. These increases are taken directly out of already dwindling revenues from sales of yellowcake (uranium oxide) into a depressed market.

**5.2 Contrary to the National Interest**

The preservation of a uranium recovery industry and the capability to produce uranium in the United States is in the national interest. Imposing high fees and hourly rates on operating facilities and facilities which are on standby awaiting an improved uranium market discourages present uranium production and discourages companies from holding existing licensed facilities in standby status pending an improved market. This is against the national interest of preserving a domestic energy production infrastructure.

**5.3 Performance-based Licenses in the Uranium Recovery Industry**

The uranium recovery industry is moving toward performance-based licenses. Performance-based licenses mean less regulatory oversight since many issues formerly addressed by amendment requests submitted to the agency are now handled by the licensee's Safety and Environmental Review Panel (SERP). This should translate into lower licensee fees for uranium recovery licensees, since less oversight should be required.

**5.4 Excessive Regulatory Oversight**

In some cases the NRC engages in what appears to be excessive regulatory oversight of uranium recovery licensees, specifically:

5.4.1 Conducting two (2) annual inspections of uranium in-situ mining operations.

5.4.2 Requiring excessively detailed studies and analysis of surface water drainage issues at sites with uranium mill tailings impoundments.

As described under the Uranium Recovery Matrix, Kennecott Uranium Company questions the NRC's need for significantly increased efforts related to ground water issues at in-situ uranium recovery operations, when it is questionable if the NRC should even be regulating ISL well fields and associated ground water issues.

The NRC should consider a more balanced approach to uranium recovery regulation. A more balanced approach would result in less regulatory oversight and lower costs. This is

especially reasonable in light of the very low risks posed by uranium extraction operations and uranium mill tailings impoundments.

#### 6. Agreement State Issues

The proposed rule discusses the \$900,000.00 received by NRC for processing 2500 amendment requests. The proposed rule concludes that this amount will drop because **"The number of amendments as well as the Part 170 fee collections, will decrease as more states become Agreement States,"** A policy of forcing a dwindling number of licensees to shoulder the costs of the NRC cannot continue forever. The agency cannot continue to compensate for a shrinking licensee base by increasing fees for the remainder. At some point, if forty-nine (49) of the fifty (50) states become agreement states, the nuclear reactor community plus the licensees in the remaining state will be forced to subsidize the entire NRC. Wyoming, for example, has stated that it will never become an agreement state. Does this mean that at some point in the future the nuclear reactor community plus the NRC licensees in Wyoming will be forced to shoulder the entire cost of the NRC?

This issue has been discussed by the NRC Office of Inspector General (IG). In a briefing to the Commission on its 1993 Fee Audit the IG staff stated:

It is our understanding that no long-range plan has been prepared by NRC to address these potential effects. The Commission may be interested in determining the economic implications of future higher license fees and a declining number of licensees. . . If one category of licensees is exempted from paying the fees, a burden is created in the form of higher fees which must be borne by other licensees.

*Transcript of December 10, 1993, Briefing by IG on Fee Audit*

The NRC needs to develop a means of addressing the issue of a dwindling number of licensees (due to individual states becoming Agreement States) being forced to shoulder the costs of the agency through steadily increasing fees.

#### 7. Revisions to Omnibus Budget Reconciliation Act of 1990 (OBRA)

Kennecott Uranium Company believes that only through legislative changes to OBRA can the problems associated with the NRC's fee structure be ultimately addressed. Kennecott Uranium Company agrees with Chairman Jackson's written response to a question from the Senate Subcommittee on Clean Air, Wetlands, Private Property and Nuclear Safety, in which she stated:

The Commission has determined that reducing the percentage amount the NRC must recover through fees accomplishes the goal of reducing the financial burden on NRC licensees attributable to fairness and equity issues while

allowing the NRC to budget for activities which support necessary government functions or national policy requirements. We have notified the Office of Management and Budget that if Congress does not enact such legislation in FY 1999, the Commission intends to develop, as part of our FY 2000 budget request, a legislative proposal to revise the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) to reduce the percentage amount of budget authority that the NRC is required to collect in fees. Based on previous work, the collection requirement could be revised to remove 10 percent of the agency's budget authority from the fee-based category, in addition to amounts appropriated from the Nuclear Waste Fund and for regulatory reviews and other assistance provided to DOE.

*October 7, 1998, Response from Commissioner Shirley Jackson  
to Senate Question 34(A).*

Kennecott Uranium Company supports changes to OBRA that would result in a reduction in fees.

Kennecott Uranium Company believes that in this proposed fee structure the NRC has unfairly targeted the uranium recovery industry for fee increases, especially in light of the fee reductions proposed for power reactors, the diminished level of oversight required by the uranium recovery industry given the low level of risk associated with it, its excellent compliance record and recent movement toward performance based licensing.

Kennecott Uranium Company appreciates the opportunity to comment on this proposed rule. If you have any questions please do not hesitate to contact me.

Sincerely yours,

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