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Submitter Information

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Organization: Nuclear Energy Institute

General Comment

See attached file(s)

Attachments

03-24-22 NEI Comments on FY22 Proposed Fee Rule

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March 24, 2022

Ms. Annette Vietti-Cook
Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemaking and Adjudications Staff

Submitted via Regulations.Gov

Subject: Industry Comments on Fiscal Year 2022 Proposed Fee Rule (NRC Docket ID NRC-2020-0031)

Project Number: 689

Dear Ms. Vietti-Cook:

On behalf of the Nuclear Energy Institute's (NEI)[1] members, we provide the following comments for the U.S. Nuclear Regulatory Commission (NRC) staff's consideration as it finalizes the fiscal year 2022 fee rule.

We appreciated the public webinar meeting held by Ms. Cherish Johnson and other NRC staff on March 17 to discuss the FY2022 proposed fee rule and its underlying basis and assumptions. These meetings are always informative and should be continued.

The proposed fee rule reflects a total budget authority of $887.7 million, an increase of $43.3 million or 5.1% over FY2021. After accounting for excluded activities and net billing adjustments, the NRC must recover approximately $752.2 million in fees in FY2022; an increase of 6.2% over FY2021. Of this amount, the NRC estimates that $188.9 million will be recovered through 10 CFR Part 170 service fees. This is a decrease of $1.6 million compared to FY2021. The remaining $563.3 million would be recovered through the Part 171 annual fees in FY2022. This is an increase of $45.8 million when compared to FY2021.

Restricted Use of Fee-Based Carryover Funds

It is important to note that a significant portion of the 5.1% increase in proposed budget is a direct result of the absence of congressionally authorized use of carryover. For the previous five budget years (Figure 1), Congress has directed NRC to utilize fee-based carryover in its budget, enabling a one-for-one decrease in fee-based collections. In FY2021, Congress directed NRC to use $35 million in fee-based carryover funding;

[1] The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

$16 million for the University Nuclear Leadership Program (UNLP) and $19 million to reduce fee collections. In the recently signed budget authorization for FY2022, Congress directed the use of $16 million of the approximately $39 million in available carryover funding for the UNLP. Had Congress further directed, consistent with prior years, that available fee-based carryover be used for the purpose of reducing licensee fees, the increase seen by licensees would be much less. We encourage NRC to use its available discretionary authority in applying fee-based carryover funds for the purpose of reducing licensee fees.

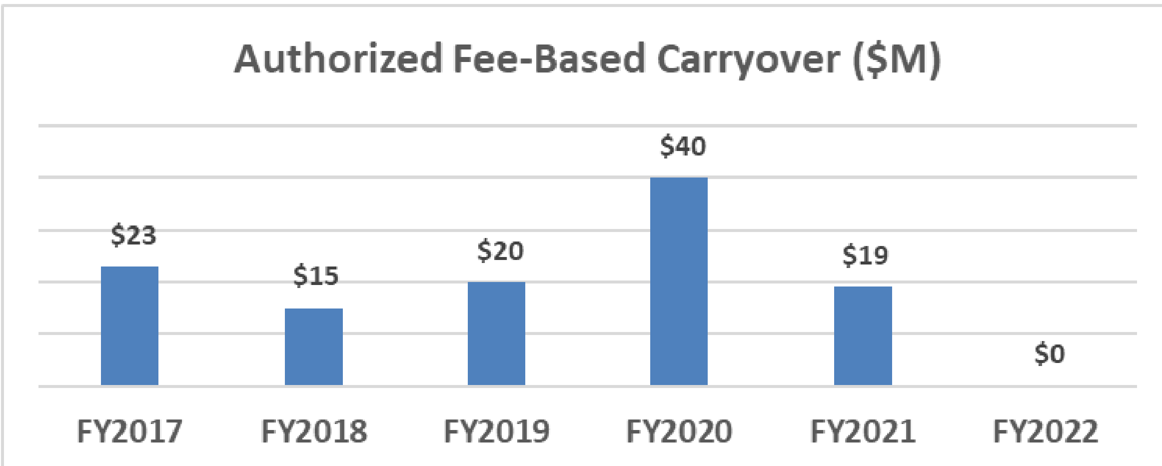

Figure 1 - Use of Fee-Based Carryover

Over $20 Million Should be Excluded from Fee Base

The FY2022 congressionally authorized budget currently includes over $20 million that should not be included in the fee base. The $16 million appropriated for the University Nuclear Leadership Program is currently being addressed by fee-based carryover funds. This is contrary to the Nuclear Energy Innovation and Modernization Act (NEIMA) of 2018, where UNLP is one of the activities excluded from recovery. The FY2022 payment, combined with a similar payment in FY2021, gives $32M in payments that should have been excluded from the fee base. To facilitate the correction of this, we encourage NRC to include UNLP funding in its FY2023 proposed budget as a fee relief item under NEIMA.

The FY2022 budget also includes $4.3 million to subsidize rent for the Food and Drug Administration (FDA) and the National Institutes of Health (NIH). In its October 12, 2021, letter to Congress on NEIMA, NRC identified that the nuclear industry has paid approximately $21 million to subsize rent for the FDA and the NIH in the 3WFN building and, if unchanged, industry will have to pay an additional $27 million to subsidize rent. These payments do nothing to support the agency's mission. We encourage NRC to continue its discussions with Congress to remove these payments from the fee base.

Budget Trend

As outlined below, the industry continues to be concerned with the budget trend over the last several years and what it foreshadows for the future for our industry. Under the proposed budget, annual fees (on average) will increase by 9% over FY2021.

<u>Operating Plants</u>

Approximately 85% of appropriated budget for FY2022 is from the power reactor fee class. Over the past five years the budget for operating reactors has decreased less than 4%. During this same period, the number of operating reactors has decreased by 7% and Part 170 service fee collections have decreased by 33%. The modest decrease in NRC operating plant budget during this time has not kept pace with the significant reduction in operating plant service fee collections. As a result, a greater percentage of the budget is required to be recovered through annual fees. As shown in the Figure 2 below, the percentage of the operating plant budget that is derived from annual fees (currently at 75%) continues to increase; up from 64% in FY 2018. The annual fee for operating plants is increasing by 8.8% over FY2021, to over $5 million per reactor.

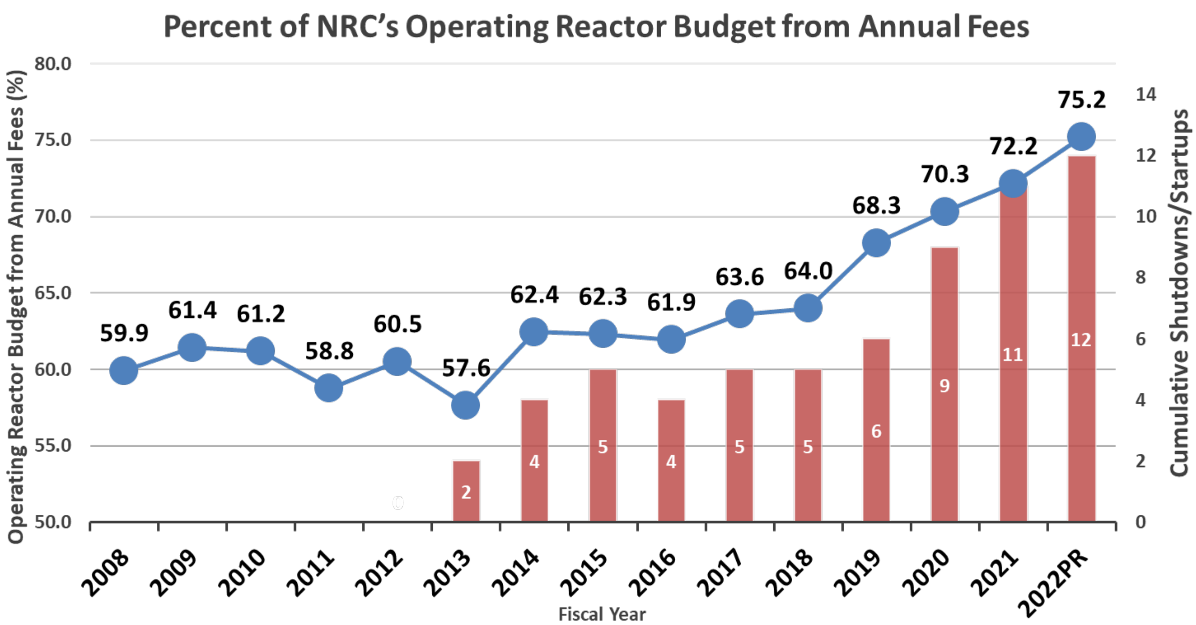

Figure 2 – Percent of NRC's Operating Reactor Budget from Annual Fees

As noted in the fee rule notices and associated work papers, the reductions in service fee collections in recent years have been attributable, in part, to plant closures. Plant closures have a double impact on operating plants' annual fees in that service fee are collected from fewer plants leading to an increase in required annual fees. This annual fee collection is then divided among fewer operating plants.

<u>Research and Test Reactors</u>

The FY2022 proposed fee rule outlines a 16.3% increase in annual fees for non-power production or utilization facilities (NPUFs). It represents the largest fee increase in the FY2022 proposed fee rule of all the licensee categories. The annual fee for NPUFs has remained steady over the course of the last several years. In fact, the FY2021 Final Fee Rule represented a 1.6% decrease in the annual fee for NPUFs.

NRC outlines that the annual fee increase is due, primarily, to the decrease of NPUF facilities subject to annual fees from four to three. University-based research and test reactors are exempt from fees to meet the requirements of 10 CFR 50.41(b). This decrease was known and anticipated; even the FRN outlines the change as "expected" (Page 10090). Total budgeted resources should be appropriately decreased to reflect this change, which would allow for cost efficiency for the remaining three licensees. Rather, the remaining three facilities are left to cover this gap. In other fee categories, such as uranium recovery and fuel cycle facilities, NRC has appropriately recognized that it cannot continue to spread fees across a decreasing licensee class.

The FRN outlines that Part 170 estimated billings are increasing due to a number of factors. The estimated user fees more than double, from $2,576,000 in the FY2021 Final Fee Rule to an estimated $5,803,000 for the FY2022 Proposed Fee Rule. This indicates that the Part 171 annual fees would likely have been even higher, except for being offset by this significant increase in Part 170 fees. This increase should have amply covered the licensees who pay annual fees; they should have seen little-to-no increase. In fact, it would have been appropriate for NPUF annual fees to decrease. This increase in annual fees underscores the need for NRC to decrease the total budgeted resources for this business line, for FY2022 and in future years, to avoid such double-digit increases. We believe that continuing to impose fee increases of this magnitude on this business line is inconsistent with Section 104.c of the Atomic Energy Act, as well as 10 CFR 50 41(b), which direct the Commission to regulate and license class 104 licensees in a manner that "will permit the conduct of widespread and diverse research and development."

Notification of Significant Changes in Advance of Final Rule
As with NRC, the budget for licensee companies is prepared in advance of the start of the calendar year. Most licensees must estimate and budget their NRC fees well in advance of the proposed fee rule and typically use recent NRC fee history in making their estimates. The lack of directed carryover to offset current fiscal year funding is a significant departure from this recent fee history and is cause for significant budget challenges for licensees. We strongly encourage NRC to re-examine the remaining available carryover and use whatever discretion exists to reallocate this carryover to offset current year funding needs, consistent with past NRC budgets. Further, we also strongly encourage NRC to use any means available to notify licensees of any substantial changes made during the crafting of the final rule, e.g., the use of carryover and the number of operating power reactors assumed. This would allow licensees additional time needed to realign their own budgets.

Please contact me if you have any questions regarding these comments.

Sincerely,

Jennifer Uhle

Jennifer Uhle

c: Ms. Cherish Johnson, NRC/CFO
Mr. Anthony Rossi, NRC/OCFO