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RS-09-070
June 3, 2009

June 9, 2009 (10:23am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U. S. Nuclear Regulatory Commission
ATTN: Rulemakings and Adjudications Staff
Washington, D.C. 20555-0001

Subject: Comments on Proposed Rulemaking Regarding Variable Annual Fee Structure for Power Reactors

The U. S. Nuclear Regulatory Commission (NRC) published an advanced notice of proposed rulemaking (ANPR) in the Federal Register on March 25, 2009 (74 FR 12735). The ANPR requested advice and recommendation from all interested persons regarding whether to propose to amend 10 CFR 171.15, "Annual fees: Reactor licenses and independent spent fuel storage licenses," to establish a variable annual fee structure for power reactors based on the reactor's licensed power limit contained in the operating license. The NRC is considering this rulemaking due to the potential financial challenge that the current annual fee structure could pose for future small and medium sized nuclear reactor licensees.

Exelon Generation Company, LLC (EGC) has reviewed the ANPR and concluded that the NRC should not establish a variable annual fee structure based on reactor output. Establishing such a fee structure for the current operating reactor licensees would be detrimental to the predictability, stability, and fairness of allocating the NRC's cost recovery.

The NRC established 10 CFR 171, "Annual Fees for Reactor Licensees and Fuel Cycle Licensees and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC," to impose an annual fee on power reactors with operating licenses (51 FR 33230; September 18, 1986).

As its underlying basis, 10 CFR 171 allocates NRC costs attributable to a given class of licensee to that class. Previous rulemaking established the current annual fee structure as a single uniform base fee for all operating power reactors. This structure simplified the fee program and provided cost predictability and stability for licensees (60 FR 32218; June 20, 1995). The business planning and financial management aspects of operating reactor licensees were greatly improved by this change, which facilitated better scheduling and allocation of capital and operating and maintenance expenditures and improvements.

Consistent with the conclusions previously reached by the NRC (51 FR 33227; September 18, 1986), the annual fee should not be determined based on the size of the

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reactor because there is no clear relationship between the reactor size and the NRC's regulatory costs. The current NRC regulatory structure issues a license for each individual reactor and collects an annual fee in accordance with 10 CFR 171. Altering this well-established regime to accommodate multiple small and medium reactors would introduce additional complexity for operating reactors and may not reflect the appropriate cost allocation for expended NRC resources, infrastructure, and services.

EGC believes that there are suitable alternatives to effectively address the potentially adverse financial consequences discussed in the ANPR for future small and medium reactor licensees.

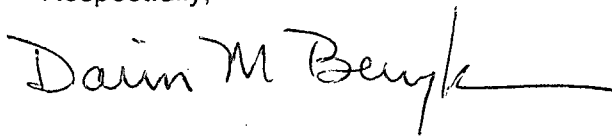
The NRC could re-establish the provisions of 10 CFR 171.11(c) to allow consideration of reactor size in evaluating annual fee exemption requests. These provisions were eliminated in FY 2005 annual fee rulemaking (70 FR 30526; May 26, 2005). While such provisions existed, smaller reactor licensees (e.g., Big Rock Point) were able to request partial exemption from the annual fees.

Alternatively, the current annual fee structure could be modified to recognize small and medium sized reactor licensees as one or more unique sub-class of operating power reactors, or as a separate, distinct class of its own.

Such partial exemption provisions within 10 CFR 171 or establishment of a unique class/sub-class for small and medium reactor licensees would allow the NRC's cost of regulating such reactors to be appropriately allocated. The design, licensing, and operation of small and medium reactors will pose new challenges that cannot currently be foreseen. Similarly, the research, resources, infrastructure, and services that will be necessary for the NRC to effectively regulate such licensees must be responsive to this unique application and scale of technology. These regulatory costs should be borne by small and medium reactor licensees through partial exemption or an appropriate annual fee structure that addresses research, regulation, programs applicable to the technology, and other unique regulatory costs, not to be borne by other classes of licensees.

If you have any questions concerning this letter, please contact me at (630) 657-2811.

Respectfully,

A handwritten signature in black ink that reads "Darin M Benyak" followed by a horizontal line extending to the right.

Darin M. Benyak
Director – Licensing and Regulatory Affairs
Exelon Generation Company, LLC