proposed rules which appeared in the **Federal Register** are only small parts of the rules. Both will incorporate by reference "Tiers" 1 and 2 of the complete designs. Thus the proposed rules are substantively as different as the designs themselves. Even the portions published in the **Federal Register** have no legal force with respect to other designs.

The NRC did state that 10 CFR part 170 fees would not be charged for "generic rulemakings (e.g., 10 CFR part 52) on standard plants." However, as the parenthetical reference to 10 CFR part 52 shows, the NRC was using the phrase "generic rulemaking" to refer to rulemaking which, like 10 CFR part 52 itself, applies to all, or at least many, designs.

Comment. ABB–CE asserts that the whole of a design certification rulemaking should be regarded as a "contested hearing" and thus have no 10 CFR part 170 fees charged in connection with it. ABB–CE's argument is, first, that under the Administrative Procedure Act (APA), notice and comment rulemaking constitutes a "hearing", and second, that the rulemaking surely will be "contested", because there will, in all likelihood, be filed "material comments reasonably opposing aspects of the proposed rule." (Comments at 9)

Response. It has long been the policy of the NRC not to charge 10 CFR part 170 fees for "contested" hearings, namely those adjudicatory hearings which are not mandated by law. The costs of such hearings are recovered through annual fees imposed under 10 CFR part 171. The NRC agrees that applicants for design certification should not be charged 10 CFR part 170 fees for any hearings held before an Atomic Safety and Licensing Board under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification.

However, ABB–CE's position that the whole rulemaking is a "contested hearing" is neither required by law nor consistent with the meaning usually attributed to the phrase "contested hearing" in discussions of NRC matters. The phrase refers to those hearings, or parts of hearings, which are held under subpart G or subpart L of 10 CFR part 2, but which would not take place unless some party outside the agency asked for them. The Supreme Court case cited by ABB-CE for the proposition that every rulemaking is a "contested hearing'', US v. Florida East Coast Railway, 410 US 224 (1973), says only that notice and comment rulemaking will, in certain circumstances, satisfy a statute's requirement for a rulemaking

hearing. The Court's decision does not say that every rulemaking is a hearing.

Comment. ABB–CE argues that charging vendors for the costs of certification is inconsistent with the NRC's recent decision to recover the costs of confirmatory research "related to the design" from the utilities, under 10 CFR part 171. If NRC recovers those costs from the utilities, then, argues ABB–CE, NRC should recover all the costs of certification from the utilities, because those costs too are "related to the design."

Response. ABB-CE misconstrues the policy. Its aim is to charge vendors applying for FDAs and certifications of standard designs for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, would be charged to the utilities under 10 CFR part 171, even if it had a bearing on the review of a standard design. (See 60 FR 14673; March 20, 1995.) There is in this nothing inconsistent with the existing regulations on certification fees. In both cases, the NRC is charging the vendors for what must be done before issuance of the FDA or certification.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is \$525.6 million of which approximately \$22.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$503.6 million in FY 1995 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1995 is about \$9.4 million less than the total amount to be recovered for FY 1994 and \$15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately \$141.1 million will be recovered in FY 1995 from the fees assessed under 10 CFR part 170. The remaining \$362.5 million will be recovered through the 10 CFR part 171 annual fees established for FY 1995.

Recognizing that OBRA–90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA–92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes

to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the Federal Register on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR part 170 fees.

In view of the fact that legislation has not been enacted to address licensees fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is amending 10 CFR parts 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These final changes are summarized as follows and detailed in the following sections.

1. The method for allocating the budgeted costs that cause fairness and equity concerns is changed. Approximately \$56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. These costs will be treated similar to overhead and distributed to the broadest base of NRC licensees based on the percent of the budget for each class. As a result, power reactors will pay a greater percentage of these costs.

2. The selected materials inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as "flat" inspection fees in 10 CFR 170.31, are eliminated and the inspection costs are included with the annual materials fees in 10 CFR 171.16(d). These actions will streamline