



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

JAN 28 1985

MEMORANDUM FOR: Commissioner Roberts *DM*

FROM: William J. Dircks  
Executive Director for Operations

SUBJECT: FUNDING OF NRC'S HIGH LEVEL WASTE MANAGEMENT PROGRAM  
COSTS UNDER THE NUCLEAR WASTE POLICY ACT OF 1982 -- USE  
OF NUCLEAR WASTE FUND (SECY 84-456)

This is in reply to your memorandum of December 20, 1984, in which you raised questions in two areas prior to casting your vote on the subject paper. Enclosed is the staff's reply. If we can be of further assistance, please let us know.

A handwritten signature in black ink, appearing to read "Bill".

William J. Dircks  
Executive Director for Operations

Enclosure: As Stated

cc: Chairman Palladino  
Commissioner Asselstine  
Commissioner Bernthal  
Commissioner Zech  
H. H. E. Plaine, GC  
OPE  
SECY  
ELD  
ADM  
RM  
RES

REPLIES TO QUESTIONS BY COMMISSIONER ROBERTS  
CONCERNING SECY-84-456

Question:

The analysis provided in SECY-84-456 addresses the use of funds from the Nuclear Waste Fund. Please provide an analysis of the use of imposing fees to recover costs. Can a licensing fee be imposed to recover not only strictly licensing items, but technical assistance projects related to licensing?

Answer

Whether a licensing fee may be imposed in the case of technical assistance projects depends upon the particulars of the case involved. Before addressing such consideration, we wish to note that there currently is no statutory basis for charging DOE a fee for licensing action prompted by the NWPA, nor would staff recommend use of the license fee concept in any event.

First, 31 U.S.C. 9701 and applicable cases place serious limitations on the use of license fees to recover all agency costs for programs that include large research components. It also is generally understood that costs incurred prior to the filing of an application are not recoverable by license fees. The legal limitations on license fee collections under present law are analyzed in detail in the Commission's Statement of Considerations for the revision to 10 CFR Part 170 published in 1978 (43 FR 7210, February 21, 1978).

Turning back to applicability of fees to technical assistance projects, the expression "technical assistance projects related to licensing" is understood to refer to technical work performed by contractors who are called upon for assistance by NRC staff. Such assistance typically is needed in the preparation of a regulation or development of a staff technical position in anticipation of licensing actions. A subsequent license applicant would not be charged a fee for the previous technical assistance obtained by NRC.

Question:

In the CRBR licensing case, the NRC was in an analogous situation to the upcoming repository licensing, i.e., having the Department of Energy be a licensee before the NRC. What were the financial arrangements in the CRBR case? If licensing fees were imposed, were they paid from appropriated funds?

Answer

Apart from DOE's eventually being a licensee before the NRC, the CRBR case is not truly analogous. The relationship of the Government (DOE) to sources of project funding was not the same. CRBR was an unusual project with complicated evolution. It was initiated on the basis of cost-sharing and management by a consortium of utilities. For a variety of reasons, the Government (DOE) took over management; it has primary responsibility for funding costs.

While DOE is now a party to the CRBR construction permit application (which has not been officially withdrawn), the initial applicants were TVA and the operating arm of the consortium, Project Management Corporation. Staff understands that project funding came from the Government and utilities, and interest-bearing accounts were involved; the project also received support in the form of goods and services from contractors. For all practical purposes, the project funding was commingled because of the project's system of billings and reimbursements.

NRC staff does not have information which definitively identifies the source of funds for the CRBR construction permit filing fee due at the time of the initial application. Staff understands, however, that the project accounts were established in such a manner that the filing fee was not paid by appropriated funds and that any TVA-origin monies would have come from its revenues. Staff's understanding of the CRBR arrangements is based on consultation with an NRC staff member who was associated with the establishment of the project and informal contacts with a DOE staff member of the former CRBR Project Office.

NRC license fees for CRBR are chargeable under Section 161w. of the Atomic Energy Act. CRBR is treated as an "advanced reactor" under the NRC's fee schedule. Except for the CP application fee, no further fee has yet been levied for CRBR. Upon granting of a motion to withdraw the application or other final action by the Licensing Board, however, the parties will be

billed for the full cost for review of the application pursuant to 10 CFR 170.21 F, Advanced Reactors, which entails no ceiling (see 49 FR 21303, May 21, 1984). Staff does not have current information about the status and accounting arrangements for CRBR remaining funds. The latest available estimate (November 1983) indicates that the CP review costs chargeable to the applicants total on the order of \$12M, plus or minus 10%.