

PMFermiCOLPEm Resource

From: Carpentier, Marcia
Sent: Tuesday, September 24, 2013 3:53 PM
To: Terry Lodge
Cc: FermiCOL Resource
Subject: Response to your letter of September 18, 2013

Terry Jonathan Lodge, Esq.
tjlodge50@yahoo.com

Dear Mr. Lodge:

I am writing to you in response to your letter of September 18, 2013, requesting production of invoices and correspondence related to billing for pre-application activities related to Fermi 3, and of proof of payment by Detroit Edison Co. for any such charges billed. This request appears to follow up on a request from intervenor expert witness Arnold Gundersen to which the NRC Public Document Room (PDR) responded on September 17, 2013. We understand that Kevin Kamps, a named intervenor and representative of intervenor organization Beyond Nuclear, filed a Freedom of Information Act (FOIA) request for the same documents on September 18, 2013. We note that Mr. Gundersen's original request to the PDR did not encompass actual financial documents such as invoices or proofs of payment, and accordingly they would not have been included in the PDR's response. The PDR's responses to Mr. Gundersen indicated that the NRC did send bills for pre-application activities to Detroit Edison and also provided the dates of those invoices.

We understand that Mr. Kamps' FOIA request will be coordinated with the Office of the Chief Financial Officer (OCFO), as such records are maintained by OCFO in NRC's financial management systems. If it is determined that the invoices can be released to the public, they will be provided to Mr. Kamps for forwarding to the other intervenors, and the Fermi 3 project staff will obtain them at approximately the same time as the intervenors. Furthermore, we are unaware of any correspondence associated with the invoices such as letters, memoranda, or e-mails related to billing. The PDR's search did not identify any correspondence during the period in question, and we understand from OCFO that no such general correspondence is to be expected for routine billing transactions.

As stated above, we expect that the intervenors will receive the requested invoices as soon as they are retrieved through the FOIA process. I note, however, that the NRC staff does not agree that routine billing documents of this sort sent to persons or organizations under 10 C.F.R. Part 170 would meet the criteria for disclosure in this proceeding under 10 C.F.R. §§ 2.336 and 2.1203. Billing for pre-application activities is not relevant to the resolution of any substantive quality assurance (QA) issue in dispute in Contention 15. For purposes of resolving the QA issues in Contention 15, whether an activity occurred prior to September 18, 2008, or after that date has no bearing on the substantive resolution of the issues in question (i.e., how they were resolved through either enforcement or licensing processes). Invoices and other financial documents are also irrelevant to the legal question of whether any specific provisions of NRC regulations in 10 C.F.R. Parts 50 and 52 applied to Detroit Edison before it submitted the Fermi 3 COL application. Under 10 C.F.R. § 170.2(g), the NRC is authorized to charge fees to COL applicants. However, the NRC does not charge fees for pre-application activities under 10 C.F.R. § 170.2(g), but rather under a separate and distinct provision found in 10 C.F.R. § 170.2(o) that authorizes the NRC to charge fees to persons "requesting preapplication/licensing assistance by consulting with the NRC and/or by filing preliminary analyses, documents, or reports." The Schedule of Facility Fees in 10 C.F.R. § 170.21 also makes this distinction in that it lists fees associated with

combined license applications under “A. Nuclear Power Reactors” and fees associated with pre-application activities under “J. Special Projects.” The distinct structure of Part 170 is not replicated in Parts 50 and 52, and therefore any legal argument that relies on an analogy between Part 170 and Parts 50 and 52 is irrelevant to the admitted contention. For these reasons, we do not agree that your request for invoices and associated information concerns documents relevant to the admitted contentions

However, I am happy to summarize a couple of key points in the interest of making sure we have a common understanding of what pre-application activities were covered by the invoices. The only reports the NRC staff generated related to substantive pre-application activities are publicly available in ADAMS, and were available to the public well before Contention 15 was filed. These reports are as follows:

1. The audit report for the staff’s July 2007 audit of pre-application subsurface investigation activities has been submitted into the record of this proceeding as Staff Exhibit S8. This audit occurred during the three-month period ending September 15, 2007, and was billed on an invoice dated October 15, 2007. This invoice was identified in the PDR’s response to Mr. Gundersen.
2. Only one other pre-application activity requiring significant NRC staff time was billed to Detroit Edison prior to September 18, 2008, specifically a visit to the Fermi site by NRC environmental staff on May 8-9, 2008. This visit did not concern any safety-related activity and is not relevant to Contention 15. However, the trip report for this site visit is publicly available in ADAMS under Accession No. ML082470325. This activity occurred during the three-month period ending June 21, 2008, and was billed on an invoice dated July 21, 2008. This invoice was also identified in the PDR’s response to Mr. Gundersen.
3. A second environmental site visit took place on July 9-10, 2008. Although this site visit was a pre-application activity, it was not billed until after September 18, 2008, and the invoice associated with it is therefore not on the list that the PDR provided to Mr. Gundersen. Like the May 2008 environmental staff visit, this visit did not concern any safety-related activity and is not relevant to Contention 15. However, the trip report for this site visit is publicly available in ADAMS under Accession No. ML082520756.

Fewer than sixty hours of NRC staff time were billed prior to September 18, 2008, for all other pre-application activities. This time, averaging only three hours per month, was primarily spent on administration and did not result in substantive analyses or reports.

If it will address the concern underlying your request, the staff would be willing to stipulate (1) that the activities listed above occurred, and (2) that the NRC sent invoices billing Detroit Edison for these activities on the specified dates. However, except for the substantive content of Staff Exhibit S8 as referenced in prefiled written testimony, the staff does not agree that either the occurrence of pre-application activities or the fact that they were billed to Detroit Edison is relevant to Contention 15.

For the reasons set forth above, the NRC staff does not agree that the requested invoices or other billing records meet the criteria in 10 C.F.R. Part 2 for being produced as part of the Fermi COL proceeding at this time. However, the NRC staff is reviewing the FOIA request submitted by Mr. Kamps, and we anticipate that the intervenors will receive the invoices in question through that process. The activities covered by the invoices are described in the reports listed above, which are already available to the public and in one case already part of the hearing record related to Contention 15.

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"FermiCOL Resource" <FermiCOL.Resource@nrc.gov>
Tracking Status: None
"Terry Lodge" <tjlodge50@yahoo.com>
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