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 FACIL: 50-400 Shearon Harris Nuclear Power Plant, Unit 1, Carolina 05000400
 AUTH. NAME AUTHOR AFFILIATION
 CUTTER, A. B. Carolina Power & Light Co.
 RECIP. NAME RECIPIENT AFFILIATION
 DENTON, H. R. Office of Nuclear Reactor Regulation, Director (post 851125)

SUBJECT: Requests exemption from requirements of 10CFR171.11 re annual fees, until commercial operation achieved. Fees paid per 10CFR71 results in double payment by low power licensees during low power QL & full power QL issuance.

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 TITLE: 10 CFR 171 Application for Partial Exemption From Annual Fee

NOTES: Application for permit renewal filed. 05000400

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SERIAL: NLS-86-418. *for 171*

*Copy ret'd to
Jim McKnight
12/23/86*

Mr. Harold R. Denton, Director
Office of Nuclear Reactor Regulation
United States Nuclear Regulatory Commission
Washington, DC 20555

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SHEARON HARRIS NUCLEAR POWER PLANT
DOCKET NO. 50-400/LICENSE NO. NPF-53
EXEMPTION REQUEST FROM 10 CFR 171 - ANNUAL FEES

Dear Mr. Denton:

Carolina Power & Light Company (CP&L) is in receipt of Invoices for the 1987 annual fees payable during the first two Quarters of the fiscal year 1987. CP&L will remit the invoiced amount, however, the remittance is made so that CP&L remains in compliance with the Federal Regulations while the commission considers the exemption request from the annual fees outlined below. If granted, CP&L expects that the remitted fees will be credited against the fees due after the requested exemption period.

In accordance with 10 CFR 171.11, CP&L requests exemption from the assessment of annual fees for the SHNPP until such date that the facility achieves commercial operation. This exemption request stems in part on the double assessment of fees under Parts 170 and 171 for plants in receipt of a low power operating license and in part on the philosophy that a facility should not be assessed fees until the benefit from the services rendered for those fees are realized.

10 CFR 171 was promulgated to offset a greater portion of the commission's costs by assessing fees for services the commission provides in the regulation of licensed power reactors. Part 171.3 assesses an annual fee on power reactors with an operating license. As written Part 171 also applies to OL applicants from the moment the OL is issued regardless of any limiting conditions incorporated in the new OL. Low-power licensees (i.e., power reactors with OLs restricted to low-power operations to facilitate startup testing) are then liable for Part 171 annual fees; however, low-power OLs have already paid, via Part 170, for Commission services up through issuance of the full-power license¹. Therefore, fees paid in accordance with Part 171 results in double payment of fees by low-power licensees during the period of time between low-power license issuance and full-power license issuance. This situation is clearly not within the intent of Part 171 as expressed in either the Federal Register Notice Supplemental Information issued with 10 CFR 171 (51FR33224, Section I.A & I.B) or in the legislative provisions on which this part is promulgated (132 Cong. Rec. H879, 3-6-86 or 132 Cong. Rec. S2725, 3-14-86).

¹ Title 10, Code of Federal Regulations, Part 170 (10 CFR 170) assesses fees to applicants for power reactor generating licenses to offset the cost of Commission review in issuing those licenses (i.e., licensing activities). Part 170.21 (Schedule of Facility Fees, Part A, Note 1) is specific that the licensing fees are based on the reviews necessary to issue the full-power operating license (OL).

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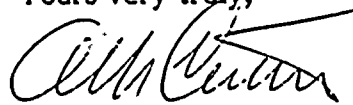
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Beyond the issuance of the full-power license, Part 171 fees should not be assessed until the date of commercial operation. Assessment of the annual fee before commercial operation charges the licensee for services rendered by the commission before the benefit of commission "Regulations" is realized. In addition, the time between issuance of the full-power license and commercial operation is spent performing testing required to conform to NRC regulations; therefore, assessment of fees during this time becomes a penalty for compliance with regulations.

Therefore, given that SHNPP is a low power licensee that has: 1) already paid for commission services up through full power license issuance and 2) that the facility cannot realize the full measure of regulatory benefit of the commission's services until commercial operation, CP&L requests exemption from 10 CFR 171 for the SHNPP facility until such date that SHNPP achieves commercial operation.

Carolina Power & Light Company is prepared to discuss this exemption in greater detail at your convenience. If you have any questions, please call me at (919) 836-6231.

Yours very truly,



A. B. Cutter - Vice President
Nuclear Engineering & Licensing

ABC/SDC/kts (5052SDC)

cc: Mr. B. C. Buckley (NRC)
Mr. G. F. Maxwell (NRC-SHNPP)
Dr. J. Nelson Grace (NRC-RII)