

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

DDR

JUL 11 1980

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Rockwell International
Attn: M. E. Remley, Director
Health, Safety & Radiation Services
8900 DeSoto Avenue
Canoga Park, California 91304

Gentlemen:

This refers to your June 12, 1980 letter (REF. 80ESG-5748) to Douglas Weiss of this office, concerning the \$8,300 amendment fee submitted for the review of your May 19, 1980 physical security plan for the protection of moderate strategic quantities of special nuclear material. You requested that we reconsider the necessity for the \$8,300 fee since you believe submissions to meet new regulatory requirements should not be subject to fees.

Please be advised that fees are required for Commission review of licensee submittals which are required by new or amended regulations. The Commission's fee program is based on the Independent Offices Appropriation Act of 1952 (IOAA) which authorizes the recovery of costs attributable to specific services provided to identifiable recipients. These guidelines for fees also take into account several court decisions concerned with fees under the IOAA, and provide that fees may be assessed to persons who are identifiable recipients of "special benefits" conferred by specifically identified activities of the NRC. The term "special benefits" includes services rendered at the request of a recipient, and all services required for the issuance of a license, permit, approval, amendment or other services necessary to assist a licensee in complying with statutory obligations, or obligations under the Commission's regulations. Under the IOAA, the Commission is authorized to recover the full cost of any expenses incurred in assisting an applicant or licensee to comply with statutory or regulatory requirements. Because the review of physical security plans is considered as assisting licensees in complying with statutory and regulatory requirements, amendment fees have been assessed for the review of these plans. Even though a regulation became effective after the March 23, 1978 revision to the license fee schedule, this does not mean that submittals now received and requiring review and approval are exempt from fees.

In addition, a licensee's compliance with Commission regulations, including amendments thereto, are considered to be licensee initiated and therefore, subject to the fee schedule. Footnote 1(d) of Section 170.31 provides that amendments resulting from NRC written request may be exempt from fees at the discretion of the Commission when the amendment is issued for the convenience of the Commission. However, the term "written NRC requests," as used in the footnote, is not intended to apply to a licensee's compliance with Commission regulations.

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The Licensing staff has determined that physical protection plans for fuel cycle facilities will require a major review effort to determine their acceptability. Therefore, the \$8,300 major safeguards amendment fee we received was required for licensing review of your plan. Upon completion of the review, the Commission will review its costs and, if applicable, make any necessary refunds.

If you have any further questions on this matter, please let us know.

Sincerely,

William O. Miller, Chief
License Fee Management Branch
Office of Administration

Enclosure:
10 CFR 170