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Consumers Power Company

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April 3, 1980

Mr. William O. Miller, Chief
License Fee Management Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKET NOS. 50-329, 50-330

Dear Mr. Miller:

Your March 10, 1980, letter to the attention of our Mr. Stephen H. Howell has been referred to me for reply. In it you assert that an amendment fee is owing with respect to our December 19, 1979, application, submitted as a result of the Commission's December 6, 1979, order because:

> "Although the provisions of Footnote 2 to 10 CFR 170.22 exempt amendments resulting directly from orders issued by NRC pursuant to 10 CFR 2.204, it is not intended to exempt those applications for amendments resulting from non-compliance items noted during inspections."

We respectfully disagree. First, Footnote 2 to 10 CFR 170.22 states unequivocally that:

> "license amendments or approvals resulting from Commission Orders issued pursuant to 10 CFR 2.204...are not subject to these fees..."

subject to an exception that does not apply here. In this case, the December 6, 1979, order was issued pursuant to 10 CFR 2.204, as recognized by the Commission in its March 14, 1980, Notice of Hearing in this matter, and our application for an amendment was an application "resulting from" the order. That should decide the matter. Footnote 2 does not differentiate among reasons for issuance of the 2.204 order, establishing applicability of fees in some 2.204 cases and not in others.

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Moreover, your conclusion that Footnote 2 was not intended to excuse fee payment where the application resulted from non-compliances seems inconsistent with the philosophy of nonrecoverability of fees for enforcement activities, as expressed at 42 FR 22156 (5/2/77), item 6. In establishing its fee schedule, NRC determined that it would recover fees for routine inspection activities on the basis that they assist licensees in complying with regulatory requirements, and therefore constitute a "special benefit" to private recipients. NRC determined not to recover fees for nonroutine inspections, investigations, and enforcement activities on the basis that they may be considered as "independent public benefit" for which fee assessment would be improper under the decided cases. Amendment applications resulting from enforcement and other Commission-initiated license modification orders appear to fall within the latter category, and presumbly this is why the Commission saw fit to exempt them from fees that would otherwise apply to amendment applications.

In view of the foregoing, we request that you reconsider the conclusion that a fee is owing in this instance. I have also raised the question with Messrs. Cunningham and Fonner of OELD.

Yours very truly,

JLB/art