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

DOCKET NO. 70-1113

JUN 19 1980

General Electric Company  
Attn: Mr. Arthur L. Kaplan, Manager  
Licensing & Compliance Audits  
Castle Hayne Road  
P. O. Box 780  
Wilmington, North Carolina 28401

Gentlemen:

This refers to your May 29, 1980 letter to Douglas Weiss of this office, concerning our request for a \$6,900 amendment fee for review of your physical security plan for special nuclear material. You indicated that new Commission regulations would seem to preclude the payment of amendment fees since these amendments would not be licensee initiated.

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

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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.

Your letter also stated that, because no fees were associated with similar plans filed by your Company in the past, it would be inconsistent for us to charge a fee for your physical protection plan. The reasons no fees were charged for your previous submittals are as follows:

1. Emergency Plan and Decommissioning Plan - The filing of these two plans was not required by Commission regulations at that time; instead, the plans were requested by the NRC licensing staff on the basis that it would be in the best interest of the Commission to incorporate such plans into SNM licenses as soon as possible. Because the subject plans were submitted at NRC's request and for the convenience of the Commission, amendment fees were not assessed for the review of these plans.
2. Measurement Control Plan (per 10 CFR 70.57) - Licensees had originally filed this plan in 1975. Because of a two-year licensing delay in reviewing this plan, the amendment fee for the 1978 revised control plan was waived.

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 \$6,900 major safeguards amendment fee requested in our May 29, 1980 letter is due and payable. Upon completion of the review, the Commission will review its costs and, if necessary, refund any overcharges.

We will be pleased to process your physical security plan upon receipt of the fee. If you have any further questions on this matter, please let us know.

Sincerely,

*W. O. Miller*

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

Enclosure:  
10 CFR 170