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December 5, 1980

Mr. Samuel J. Chilk
Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Re: 10 CFR Part 170 Proposed Rule
on "Fees for Review of Applications"
45 Fed. Reg. 74493 (November 10, 1980)

Dear Mr. Chilk:

This is in response to the Commission's proposed amendments to 10 CFR Part 170 published in the Federal Register on November 10, 1980. 45 Fed. Reg. 74493.

The proposed amendments purport to clarify the existing regulations by "restating" what allegedly has been the Commission's rule on collecting fees for withdrawn or otherwise terminated applications since these regulations became effective on March 23, 1978.

Our review of the existing regulations has not disclosed any provision which imposes fees for withdrawn or terminated applications. Moreover, not only do the statements of considerations published by the Commission when these regulations were proposed and adopted not state that such fees will be imposed, but instead they support the position that no such fees were intended. Thus the currently proposed amendments do not "restate" the Commission's rule, but seek to impose such fees retroactively. Since the retroactive imposition of such fees would be unauthorized and since there is no policy basis for attempting to impose such fees retroactively, the proposed amendments to Part 170 should not be adopted by the Commission.

2-4-81 PL.170

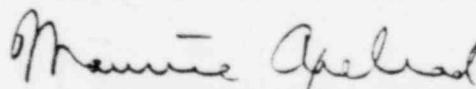
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In addition to our view that the existing regulations do not impose fees for any withdrawn or terminated applications and that the Commission cannot impose any such fees retroactively, we also wish to bring to the Commission's attention that there is a category of applications with respect to which it has explicitly committed not to impose any fees. When the Commission adopted its existing regulations in 1978, for reasons of fairness and equity discussed in the statement of considerations, it exempted from the payment of fees a number of actions (e.g., Preliminary Design Approvals, Final Design Approvals, early site reviews) if a complete application was on file prior to the effective date of the regulations (March 23, 1978). 43 Fed. Reg. 7214-15 (1978). Regardless of the Commission's position concerning its authority to impose fees on applications in general, it thus cannot impose fees retroactively on the applications within that exempt category, whether action thereon has been favorable or such applications are withdrawn or terminated.

Finally, we would point out that even if the Commission considers itself authorized to impose prospectively (not retroactively) fees on withdrawn or terminated applications, we believe that the Commission should not do so, particularly since no benefits are conferred on applicants in such circumstances. If the Commission does adopt such fees prospectively, however, it should provide a sufficient notice period so that the fees are payable only by applicants who do not notify the Commission of the withdrawal of their applications prior to the expiration of the notice period. Whether or not subsequent action by the Commission or an Atomic Safety and Licensing Board are required under 10 CFR § 2.107 in connection with the withdrawal, an applicant who has notified the Commission within the notice period should not be subject to the fees.

Respectfully submitted,



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