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DOCKET NO. 70-1821

Volpe, Boskey and Lyons World Center Building ATTN: Mr. Bennett Boskey 918 16th Street, N.W. Washington, D.C. 20006 DEC 2 2 1980

Gentlemen:

In accord with your request the staff has again reviewed the history of the application filed by Allied-General Nuclear Services (AGNS) for the proposed Plutchium Products Facility, and based on the facts in the record concludes that there is no basis for a discretionary refund of any part of the application fee.

To provide the cost detail you wanted, it was necessary to contact the Department of Energy, who in turn had to go to their contractor, Los Alamos Scientific Laboratories (LASL), who had participated extensively in the review. Recently, we received manpower data covering most of LASL's effort on the AGNS application. LASL was primarily concerned with facility design and accident analysis. Enclosed are copies of the following data which describe the Commission's specific costs associated with review of the AGNS application:

- Memorandum dated January 17, 1980 from W. Dircks, Director, NMSS, to D. Donoghue, Director, ADM, which listed 718 man-hours of review effort for the July 1, 1974 revised application, and less than 100 hours for the July 2, 1973 application.
- Memorandum dated February 25, 1980 from F. P. Schauer, Chief, Structural Engineering Branch, to W. O. Miller, ADM, which reported 384 man-hour of review time.
- 3. Letter dated October 22, 1980 from LASL to W. O. Miller, ADM, with attachments of cost data.

In earlier correspondence on the subject, I informed you that costs for the review exceeded \$100,000. At the time the AGNS application was undergoing review, the fees in 10 CFR 170 were based on average costs to process a particular type of application. Using the average-cost method to determine the fees would mean that in some instances the costs for any one application could either exceed or be less than the fee. In developing its costs for the purpose of assessing fees to be charged license applicants, the Commission used reasonable approximations, not precise calculations. The Fifth Circuit

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Court of Appeals, in its wyust 24, 1979 decision, upheld this approach. (Mississippi Power and Light v. NRC, 601 F.2d 223, 232; cert. denied 444 U. S. 1102 (1980)). Based on the manpower and cost data provided to us by those involved in the review, the costs of the AGNS review are:

Office of Nuclear Material Safety and Safeguards - \$ 30,134 (793 m-hrs @ \$38/m-hr)

Office of Nuclear Reactor Regulation

Los Alamos Scientific Laboratories

84,200 1/

14.976 (384 m-hrs @

\$39/m-hr

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\$129,310 - Total

You will note that LASL's submission contains minimum cost figures. e.g., only actual travel time was included for the on-site review at Barnwell, S.C., in February 1975 by LASL staff members. This would mean that the time and costs required to prepare for this visit have not been included. Likewise, the time and costs of writing follow-up reports and briefings were not included.

The costs incurred for review of the July 1973 application, which AGNS had improperly filed under the provisions of 10 CFR Part 50, have been included as part of our cost computations. Because the application Tacked sufficient information for the licensing staff "to determine specifically what AGNS is committing to construct....", the Commission prepared detailed questions and comments to assist AGNS in preparing supplemental information in support of their application. (See enciosed copy of letter to AGNS dated January 9, 1974.) Upon review of the revised application, the licensing staff was able to determine that the proposed facility did not meet the definition of a production and utilization facility as defined in 10 CFR Part 50.2, and subsequently informed AGNS that the review would take place in accordance with 10 CFR 70. Consequently, I see no justifiable reason why the costs incurred by the Commission for review of the July 1973 application should be excluded.

Under Section 170.12(a) of 10 CFR 170, it has been Commission practice to charge application fees "irrespective of the Commission's disposition of the application or a withdrawal of the application". In this instance, the applicant elected to suspend design work for the plutonium facility pending an outcome of the GESMO proceeding, which in turn, led the Commission to discontinue review of the application shortly thereafter. Notwithstanding the provisions of Section 170.12(a), where an application is withdrawn prior to the staff commencing the review, the fee would be refunded to the applicant as an exercise of agency

1/ Includes \$2,000 charged by LASL for providing backup cost data.

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discretion under 10 CFR 170.11. However, in this instance, the Commission had incurred considerable time and cost in processing an application which had been voluntarily filed by AGNS. The record shows these costs to be approximately \$130 thousand, and apparently this figure does not include all costs from the contractor who participated in the review. Accordingly, I find no basis in equity in the record to support return of any part of the application fee.

Sincerely,

ORIGINAL SIGNED BY

Daniel J. Donoghue

Daniel J. Donoghue, Director Office of Administration

Enclosures:

- Memorandum dtd 1/17/80 fm W. Dircks to D. Donoghue
- Memorandum dtd 2/25/80 fm F. Schauer to W. O. Miller
- 3. Ltr dtd 10/22/80 from LASL
- 4. Ltr to AGNS dtd 1/9/74
- 5. 10 CFR 170