

POOR ORIGINAL

Court of Appeals, in its August 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	- 14,976 (384 m-hrs @ \$39/m-hr)
Los Alamos Scientific Laboratories	- 84,200 1/
	<u>\$129,310</u> - 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 lacked 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 enclosed 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 Notwithstanding the provisions of Section 170.12(a), where an application is withdrawn prior to the staff commencing the review, the fee would be refunded to the applicant as an exercise of agency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:

1. Memorandum dtd 1/17/80 fm
W. Dircks to D. Donoghue
2. 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

