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June 25, 1982

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

Re: Docket No. 50-548

Dear Mr. Miller:

RECEIVED BY LFMB	
Date	6/30/82
Log	AM
By	Rmf
Orig. To	
Ablien Campf	

Omaha Public Power District ("OPPD") is one of the petitioners in New England Power Co. et al. v. NRC. (1st Cir. No. 81-1839) and as such received a copy of your May 7, 1982, letter to Delmarva Power & Light Company. In that letter you stated that if a utility could demonstrate that "it notified that NRC prior to March 23, 1978, of its decision to withdraw its application and terminate the proceeding and if all work by the NRC on the application therefore ceased prior to March 23, 1978, then the NRC will not bill the utility for its review of the withdrawn application."

The purpose of this letter is to supply the NRC with documentation that demonstrates that OPPD effectively withdrew its licensing application prior to March 23, 1978, and that all work by NRC on the application was completed prior to that date. Accordingly, OPPD requests that the NRC withdraw the August 21, 1981, invoice which OPPD received from the Office of Controller of the Commission for \$619,959.

OPPD filed its construction permit application for Fort Calhoun, Unit 2 ("Unit 2") on August 1, 1975. By letter dated February 3, 1977, OPPD notified the Atomic Safety and Licensing Board ("ASLB") that it had cancelled all construction contracts for Unit 2. OPPD withdrew its prior request for a hearing and explained that at a later date it would instruct the ASLB with regard to further work on the application. OPPD did not formally withdraw its

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application at that time, for it was contemplating continuing the application for the purpose of obtaining an early site review. But it is very clear that OPPD gave notice in February 1977 that it did not want any additional work done with respect to the issuance of a construction permit.

By letter dated June 17, 1977, OPPD informed the ASLB that it in fact wanted the Regulatory Staff to continue work on a Final Environmental Statement ("FES"). It also requested that the ASLB "hold in abeyance" the scheduling of any public hearings on the environmental and site suitability issues until a lawsuit involving OPPD and Nebraska Public Power District ("NPPD") was resolved. There is no indication that OPPD required or desired any other staff work to be done on its application.

In March 1978, the NRC issued its FES for Unit 2. In transmitting this letter to the ASLB, NRC counsel, Mr. Joseph R. Gray, Esq., noted that the NRC wondered what to do next because "the referenced proceeding has been in a suspended status since February 1977 when the Applicant cancelled Unit 2." Mr. Gray's letter demonstrates beyond any doubt, that as of February 1977, the NRC staff was on actual notice that no further work was to be done on Unit 2's application, other than preparing the FES. The letter also shows that after completion of the FES, the staff did not plan to do any further work until instructed to do so by OPPD.

On March 17, 1978, the NRC wrote to OPPD and asked for further instructions. In a series of phone calls OPPD informed the NRC that the FES was all that it wanted. By letters dated April 19, 1978 and May 5, 1978, OPPD confirmed in writing that no more staff work was needed. OPPD explained further, however, that it was not going to terminate the application until the NPPD litigation was terminated. The suspended application then remained undisturbed until November 13, 1980, when OPPD formally requested withdrawal of its construction permit application.

As the OPPD/NRC correspondence makes clear, the NRC was notified in February 1977 that OPPD was terminating all plans for construction of Unit 2. The NRC correspondence shows that Regulatory Staff intended to complete work on the FES and then await further instructions with regard to handling the rest of the application. It is apparent, therefore, that OPPD's June 17, 1977, letter effectively changed its application into a request for an early site review.

Prior to 1978, the NRC did not charge fees for early site reviews. Furthermore, in promulgating its 1978 regulations it stated that "the Commission will exempt from

payment of fees. . . special projects, e.g., early site reviews. . . provided such complete and acceptable applications were filed prior to the effective date [March 23, 1978] of this notice." 43 Fed. Reg. at 7214-15. Not only had OPPD made its request for an early site review prior to this date, but the actual work was completed and the FES issued by March 13, 1978. If any additional early site review work was done after this date, and there is no claim or evidence of such, it was done pursuant to the June 17, 1977, request, and therefore exempt from charges under the NRC's early site review policy referenced above. Moreover, if any construction permit application review work was done after receipt of the February 3, 1977, letter, it was done in disregard of OPPD's instructions.

In light of this history, OPPD requests that you withdraw the \$619,959 assessment of fees. For your convenience I have enclosed copies of the above-referenced correspondence. I would be happy to meet and discuss this matter with you. If you require any additional information please let me know.

Sincerely,

Harry H. Voigt

cc: Peter G. Crane, Esq.
Mr. Kenneth J. Morris