



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

OCT 21 1982

MEMORANDUM FOR: Patricia G. Norry, Director
~~Office of Administration~~
FROM: *Robert A. Fitzgerald*
James A. Fitzgerald, Acting Director
Office of Investigations
SUBJECT: PROPOSED REVISION OF LICENSE FEE SCHEDULES:
FED REG NOTICE

As requested by your memorandum of October 18, 1982, I have reviewed the proposed Federal Register Notice on revised license fee schedules. My comments follow.

At pages 10 and 11 of the draft the concept of changing the prior policy of excluding nonroutine inspections from fee recovery is set forth. Non-routine inspections are defined to include, inter alia, reactive inspections and investigations. Obviously, OI's concern is with investigations but some of our remarks directed at including investigations within the ambit of fee recovery would apply to some reactive inspections.

The large majority of OI's cases have their source in allegations from persons outside the NRC and a majority of these do not prove out. That is, they establish no wrongdoing by the subjects of the investigation or inquiry nor problems with the facility. To tab a licensee for this service appears to be grossly unfair. However, some inquiries or investigations do establish wrongdoing or problems and to assess fees for that investigative activity would not necessarily violate fairness concepts. But other considerations militate against charging fees even in those cases:

1. In the past the Commission has had a low threshold for commencing investigative activity and, in our view, this has served the agency well. To charge fees would encumber the decision to open with an extraneous consideration which could be decisive in marginal-appearing cases.
2. Running up a bill could also create a natural pressure to terminate an inquiry or investigation earlier than otherwise. The danger here is that investigators might not pursue a tempting but probably unproductive lead. The question of when to terminate an investigation arises in every case, and we believe this is a call best left to OI's discretion uncluttered by routine cost considerations.
3. Assessing fees would tend to undermine the objectivity of the investigations. After a certain amount of time invested in an investigation, an investigator might feel he had to justify this by "finding something."
4. It would open up investigations to criticism that they were over-worked and slanted to justify the fee.

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5. Fee assessment would most likely be a morass. For example, are fees imposed only if the investigation establishes wrongdoing; or only if enforcement action is taken on the basis of it; or only if the licensee loses at a hearing, or in court or admits the error of his ways? If multiple allegations are looked into and only a portion of one is made out to OI's satisfaction, how would the costs be apportioned? Would the Commission, the EDO, OI or a hearing board determine whether a case had been made by a preponderance of the evidence for purposes of fee assessment?

In short it is the Office of Investigation's view that billing the costs of investigations would in some instances be patently unfair and in other instances have at least a tendency to negatively impact on the investigative process.