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Consumers Power Company

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February 9, 1983

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

Consumers Power Company submits the following comments concerning the Commission's proposal to revise its fee schedules for licenses (47 FR 52454, November 22, 1982). Consumers Power Company operates the Big Rock Point and Palisades nuclear power plants, and is constructing the two-unit Midland Nuclear Energy Center. It also utilizes various types of source, special nuclear and by-product materials that are subject to Commission license. It therefore will be affected directly by the Commission's proposed fee schedule revisions.

Elimination of Fee Ceilings

We believe that the proposed elimination of ceilings on fee charges is undesirable because it will increase planning uncertainty and will give the NRC a largely unrestrained discretion to incur costs which it may then recover from applicants. In 1978, these concerns were raised to certain fees then proposed which also lacked ceilings. The Commission agreed that the feared results were undesirable, and accordingly placed ceilings on those fees. [43 FR 7214 (1978)]. Increased uncertainty and disincentives to restrain costs continue to be undesirable.

Time of Payment

The effect of proposed subsections 170.12(b), (e) and (f) will be to advance the time of payment of accumulated review costs for pending applications from the time the review is completed to the effective date of the regulation. We believe that such a retroactive change in the terms of payment is inconsistent with New England Power Co v NRC, 683 F2d 12, 15n4 (1st Cir 1982):

> To the extent the NRC does claim the authority to adopt a retroactive fees rule . . . we reject its position as unsupported by the IOAA and as destructive of petitioners' justifiable reliance on the regulations as they previously read.

Costs accumulated before the effective date of the revised regulations should remain payable at the end of the review.

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Fees for Nonroutine Inspections

The Commission states, 47 FR at 52457, that fees will henceforth be charged for nonroutine inspections, because they "deal with the same fundamental issues of safety, health physics, safeguards, physical security, and protection of the environment" as do routine inspections. The Commission notes that nonroutine inspections were excluded from the 1978 schedule, "based on a policy decision." Ibid. The referenced policy decision was apparently that nonroutine inspections do not "provide special benefit to applicants or licensees because the recipient of the benefit is not readily identifiable or because the program is conducted on behalf of the public." [43 FR 7213 (1978)]. Also, "[n]o charge will be assessed for management audits, incident inspections, investigations, and enforcement activities . . . [because] they are considered to be an independent public benefit." [42 FR 22161 (1977)]. This was not a mere policy decision, but a matter of law. The standard for determining the propriety of fees is whether the service (1) is requested by the applicant and (2) "bestows a benefit on the applicant, not shared by other members of society." National Cable Television Ass'n, Inc v United States, [415 US 336, 340 (1974)]. Fees may not be assessed "for . . . protective services rendered the public." Ibid. As the Commission has previously acknowledged, the independent purpose of nonroutine inspections is the protection of the public. They are not services requested by an applicant. Their costs are therefore not a proper subject for recovery.

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