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JUL 6 1984

Public Service Company of Oklahoma
 ATTN: Mr. Vaughn L. Conrad
 Manager, Corporate Development
 Post Office Box 201
 Tulsa, Oklahoma 74102

Gentlemen:

This is in response to your letter of June 8, 1984 requesting additional information in support of Invoice C0203 in the amount of \$884,275 for the Black Fox 1 & 2 construction permit (CP) application which was withdrawn on April 6, 1982.

The following is in response to your specific requirements:

1. Requirement: A precise delineation of the applicable regulations.

Response: The assessment of license fees for withdrawn applications is covered by 10 CFR 170.12(b) and 170.21.A.4.a. (Enclosure 1). This regulation became effective March 23, 1978, and was further clarified on November 10, 1980, when the Commission published a proposed rule (Enclosure 2) to clarify its intent that charges would be assessed whenever any review is brought to an end. The interpretative amendments to 10 CFR 170.12 were intended to remove any misunderstanding about the Commission's intent to charge fees on withdrawal, denial, suspension or postponement of action on an application. The final rule was published effective November 6, 1981 (Enclosure 3). On November 25, 1981, several electric utilities petitioned for review of the rule in the U. S. Court of Appeals, First Circuit. On July 19, 1982, the Court rendered a decision in the case of New England Power v. NRC (Enclosure 4). The Court held that the NRC may bill an applicant for applications withdrawn on or after November 6, 1981. Since Public Service Company of Oklahoma withdrew the CP application after November 6, 1981, the NRC, under the Court case, can recover the full costs of processing the withdrawn application.

54-556
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2. Requirement: An accounting of the professional staff hours expended, including the organization making the billing, the purpose of the time spent by review subject and the time period during which the expenditure was charged.

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Response: An accounting of the professional staff hours expended including the organization for which time is charged is found in a memorandum dated May 3, 1984, C. James Holloway, Jr. to Files (Enclosure 5). Enclosure 3 to the memorandum shows that the Office of Nuclear Reactor Regulation (NRR), the Office of Inspection and Enforcement (IE), and the Advisory Committee on Reactor Safeguards (ACRS) contributed directly to the review of the CP application. Attached to Enclosure 3 of the May 3, 1984 memorandum are the submittals made by the program offices providing professional staff hour and contractual services cost data which was used as the basis for the fee calculations. The purpose of the time spent by the organizations involved in reviewing the application is best described in the Notice of Proposed Rulemaking, dated May 2, 1977 (Enclosure 6) for the March 1978 final rule. Beginning on page 22150 and ending on 22154 under the heading "Regulatory Functions" the role of NRR, IE and the ACRS in reviewing an application are described in detail. The time period covered for the review of the withdrawn CP application is from August 8, 1975, the date the CP application was filed with the Commission to March 7, 1983, the date the Atomic Safety and Licensing Board (ASLBP) dismissed the proceedings.

3. Requirement: Documentation and justification of the hourly rate at which the professional staff hours were billed, including an explanation of any loadings designed to recover support expenditures.

Response: The documentation and justification of the hourly rates assessed under 10 CFR 170 are found in NUREG-0268, "U.S. Nuclear Regulatory Commission Determination of Proposed License Fees for Fiscal Year 1977" (Enclosure 7). Section 1 (pages 7, 9 and 10) documents the hourly rate of \$39 (NRR), \$36 (IE), and \$50 (ACRS) which were assessed for Black Fox 1 & 2. Section 2 (pages 14 through 22) documents the costs of the six offices which provide indirect support to the licensing and inspection process and which are included in the hourly rates assessed for fees.

4. Requirement: Documentation should be specific as to expenses charged by individuals for lodging, travel, or out-of-pocket expenses during the field investigations or the public proceedings in the Tulsa area.

Response: Specific expenses such as lodging, travel and other out-of-pocket expenses were not charged directly to the Black Fox project by the licensing and inspection staffs. The licensing or inspection professionals working on the case charge only their time (hours) to the Black Fox project for billing purposes. The hourly rate assessed (e.g., \$39 for NRR) includes a proportionate share for travel costs

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(see NUREG-0268, Encl. 7, p. 7). With respect to public proceedings in Tulsa, the hearing was contested and as a result the NRC did not bill for 6,237 professional hours charged by the licensing staff and 36 professional hours charged by the inspection staff to the contested hearing (see Enclosure 5).

5. Requirement: It has been said that not all review hours and hearing hours were billed; please explain how this delineation was made.

Response: During the review for a construction permit application, a mandatory hearing is required. If the hearing is not contested, fees are assessed for the hours spent on the uncontested hearing. If the hearing is contested, the hearing hours charged by the professional staff to the contested hearing are not billed as indicated in item 4 above. As mentioned earlier, only the time charged by a professional to a specific case or docket is eligible for fee recovery. In some of the cases which have been on file for several years, the computer printout will show that Licensing Assistant time for example was charged to the docket. Licensing Assistants are not considered professional review staff so their time would be excluded from fees.

We hope the enclosed information responds to the requirements of your June 8 letter. If you have any questions concerning the information please do not hesitate to contact this office.

Your Company also requested a waiver of any interest penalty while the Commission provides substantiation for the referenced billing. We fail to see any basis in this case where it would be in the interest of the U.S. Government to waive the interest on the outstanding debt since the fee assessed is in accordance with Title V of the Independent Offices Appropriation Act of 1952 (now codified at 31 U.S.C. 9701). The data in support of the bill is and has been available since Invoice C0203 was issued on May 8, 1984. In accordance with 10 CFR 15, we find no basis to waive the late payment charge.

Sincerely,

Original Signed by
Wm. O. Miller

William O. Miller, Chief
License Fee Management Branch
Office of Administration

DISTRIBUTION:
IDR 5-3 Exemption File
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PUBLIC SERVICE COMPANY OF OKLAHOMA
A CENTRAL AND SOUTH WEST COMPANY



P.O. BOX 201 / TULSA, OKLAHOMA 74102 / (918) 599-2000 / TWX 910-845-2106

June 8, 1984

Office of Administration
U.S. Nuclear Regulatory Commission
License Fee Management Branch
Washington, DC 20555

Re: Docket Nos. 50-556 and 50-557
Bill No. C0203

Attention: William O. Miller, Chief

Dear Mr. Miller:

By correspondence dated May 3, 1984, your office notified the co-owners of the Black Fox Station Nuclear Project of the Commission's intent to invoice them for the review costs of the withdrawn construction permit application; such an invoice was subsequently issued by the Division of Accounting and Finance, Office of Resource Management, on May 8, 1984, in the net amount of \$884,275.

On June 1, 1984, I spoke at length with your Ms. Reba Diggs, Facilities Programs Coordinator, who provided me with some further information regarding the computation of the review fee. Although she was most helpful, she was unable to provide more than a gross accounting of the professional staff hours. As I explained to her, any further expenditures on behalf of the Black Fox project, either for termination of contractual obligations or for operating expenses in pursuit of an orderly disposition of assets, requires substantial documentation prior to payment.

These requirements are in accordance with Order No. 217735 of the Oklahoma Corporation Commission in Cause 27639 issued on June 3, 1982, and the subsequent order on June 22, 1983 of the Federal Energy Regulatory Commission adopting the Proposed Settlement in Docket No. ER82-80-000 and ER82-389-000. In addition to these orders which bind the Public Service Company of Oklahoma, the other two co-owners, Associated Electric Cooperative, Inc. and Western Farmers' Electric Cooperative have substantially similar requirements flowing from the Rural Electric Administration and the Cooperative Finance Corporation.

Finally, in addition to these regulatory requirements, our respective managements and the outside accounting firms of Arthur Anderson & Co. and Coopers & Lybrand will require a more substantial accounting. At the same time, counsel for the co-owners will review the regulations for applicability to our factual situation. Please recognize that these standards of documentation and review have been and are being applied to each and every termination claim for the Black Fox Project and are documented in quarterly filings to the Oklahoma Corporation Commission and the FERC.

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CENTRAL AND SOUTH WEST SYSTEM

Central Power and Light
Corpus Christi, Texas

Public Service Company of Oklahoma
Tulsa, Oklahoma

Southwestern Electric Power
Shreveport, Louisiana

West Texas Utilities
Arlene, Texas



June 8, 1984

Re: Docket Nos. 50-556 and 50-557
Bill No. C0203

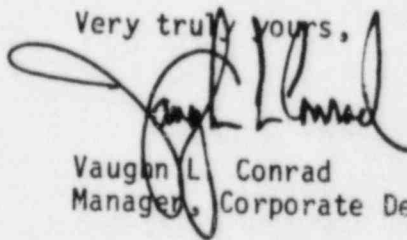
Page 2

More specifically, in order to satisfy our many overviews as to the acceptability of the billing and the prudence of payment, we will require a precise delineation of the applicable regulations and an accounting of the professional staff hours expended. This should include identification of the organization making the billing, the purpose of the time spent by review subject, and the time period during which the expenditure was charged (broken into the smallest available billing unit). In addition, we will need documentation and justification regarding the hourly rate at which the professional staff hours were billed, including all NRR, I&E, Contract, and ASLB personnel. This should also include a documentation and explanation of any loadings designed to recapture support expenditures.

The documentation should be specific as to expenses charged by individuals for lodging, travel or out-of-pocket expenses during the field investigations or the public proceedings in the Tulsa area. If these were not individually charged to the Black Fox project, please explain how these expenses were handled. It has been said that not all review hours and hearing hours were billed; please explain how this delineation was made.

Accordingly, the Black Fox Station Co-owners request, for good cause shown and the reasons enumerated above, a waiver of any interest penalty while the Commission provides substantiation for the referenced billing. Your office should address all correspondence to the undersigned who has been designated by the Black Fox Co-owners as responsible for the resolution of this matter. We would appreciate a prompt indication as to your projected schedule for response.

Very truly yours,



Vaughan L. Conrad
Manager, Corporate Development

VLC:mch

cc James E. McNabb, AECI
O.W. Fullbright, WFEC
A.J. Givray, Esq.

A copy of "Abstracts of Comments and Staff Responses: Proposal that Nuclear Regulatory Commission Amend Table S-3 of 10 CFR 51.20(e) to Include Economic Impacts of Various Waste Management Activities of the Uranium Fuel Cycle—Docket No. PRM 51-5," will be placed in the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C., for public inspection and copying for a fee.

The effect of the Commission's action on this petition is that it is denied.

Dated at Washington, D.C., this 3rd day of November, 1980.

For the U.S. Nuclear Regulatory Commission.

Samuel J. Chilk

Secretary of the Commission.

Separate Views of Chairman Ahearne and Commissioner Hendrie

Chairman Ahearne and Commissioner Hendrie, who voted to deny the petition, based their decision on the following analyses:

The decision whether to resolve issues by rulemaking or in individual licensing proceedings, and determination of the scope of a given rulemaking proceeding, is a matter of Commission discretion. By itself, Table S-3 does not and is not intended to implement all the requirements of NEPA. Its purpose is to fix generically, by rulemaking proceedings, certain environmental effects attributable to the variety of uranium fuel cycle activities in support of a model 1,000 MWe nuclear reactor, which are beyond the control of the license applicant, so that it is not necessary for each applicant, other interested persons, and the NRC staff to redefine and litigate these values in every individual reactor licensing proceeding. Cost data are somewhat regional or site-specific and vary with time; and the applicant has some control over costs by choice of alternatives, e.g., method for waste treatment or method of decommissioning. Moreover, generic dollar values would be subject to challenge because they may not remain valid for very long, and if included in Table S-3, they would have to be frequently updated by rulemaking proceedings to amend Table S-3. The necessity to frequently update economic values in the S-3 fuel cycle rule would defeat its purpose—to avoid constant relitigation. For these reasons, the economic commitments related to the various nuclear waste activities involved in the uranium fuel cycle should continue to be addressed on a case-by-case basis and discussed in a manner similar to the way all other economic commitments are addressed in

the applicable sections of environmental reports and environmental impact statements. Since the applicant and the staff both have access to current cost data and estimated costs, the evaluation of the economic costs of power generation and related cost-benefit analyses in environmental reports and impact statements should be based on current regional or site-specific cost projections, rather than generic values.

Grounds for Denial

Petition for rulemaking PRM 51-5 should be denied on the grounds that economic costs related to nuclear waste management activities are too variable to be treated generically and are more appropriately addressed on a case-by-case basis in the same manner as other economic cost data relevant to the evaluation of the cost of generating power. Not only does the choice among alternative nuclear waste management activities affect the amount of economic resources committed, but the alternative selected is specific to each reactor and is within the license applicant's control. Since generic cost data are unlikely to remain valid for more than a short period of time, and since appropriate facility-specific data are readily available for use by the applicant, intervenors and the NRC staff, there is little merit in supplying generically derived cost data in Table S-3 for use in the benefit-cost analysis of individual nuclear reactors.

Separate View of Commissioner Gilinsky

I would grant the motions to amend Table S-3 to include the costs in dollars of the various waste management activities connected with power reactor operation. The Table cannot be used for its intended purpose—the balancing of costs and benefits of reactor operation—without such figures. The staff position that the costs related to waste are so variable that they cannot be treated generically is to my mind indefensible.

I should add that I continue to believe, as I wrote in my separate views on the final adoption of the S-3 rule (44 FR 45374), that it is virtually inconceivable that the Table would affect the outcome of any licensing proceeding before our Boards, precisely because of the generic nature of the information it contains. Because the Table does not distinguish among reactors, a decision in one case that the fuel cycle costs outweigh the reactor's benefits is in effect a decision that no reactor should be licensed. As a practical matter, such a finding can only come from the Commission itself. What is wanted for the Boards is therefore not

a table of values but a generic finding by the Commission.

Nevertheless, since the Commission has chosen to have the Boards work with the Table, we should try to make it usable.

While it is true that cost data will vary slightly from region to region and reactor to reactor, bounding assumptions can be made and values can be attached to particular alternatives. Cost figures would not need to be updated more than every five years, and this would be a much easier matter than litigating them in individual proceedings.

Commissioner Bradford agrees with the general thrust of these comments.

(FR Doc. 34474 Filed 11-7-80 8:46 am)

BILLING CODE 7590-01-M

10 CFR Part 170

Fees for Review of Applications

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing an interpretative rule to clarify that fees for review will be charged, as appropriate, when review of an application is completed, whether by issuance of a permit, license, or other approval, or by denial or withdrawal of an application, or by any other event that brings active Commission review of the application to an end.

DATES: Comments are due by December 8, 1980.

FOR FURTHER INFORMATION CONTACT: William O. Miller, Chief, License Fee Management Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: 301-492-7225.

SUPPLEMENTARY INFORMATION: Based upon the language of 10 CFR 170.12(b) and of footnote 3 to 10 CFR 170.21 (footnote 3 reads in pertinent part as follows: "When review of the permit, license, approval, or amendment is complete, the expenditures for professional manpower and appropriate support services will be determined and the resultant fee assessed, but in no event will the fee exceed that shown in the schedule of facility fees. * * *") the Commission has been billing power reactor construction permit applicants for the actual costs of review of their applications up to the time the applicant withdraws the application from Commission consideration.

It was the Commission's intent in promulgating 10 CFR Part 170 that charges be assessed whenever a review is brought to an end, whether by reason

of issuance of a license, a denial of an application, or by its withdrawal, suspension or postponement. Such charges are authorized and directed under Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and supported by judicial decision upholding charges for government services rendered to applicants based upon cost to the agency. See e.g., *Mississippi Power and Light v. NRC*, 601 F.2d 223 (1979) cert. denied 444 U.S. 1102 (1980), and cases cited therein. The fee guidelines approved by the Commission and the Court of Appeals in *Mississippi Power and Light v. NRC*, supra, make clear the Commission's position that the review of an application at the request of a recipient of the service, is a service for which a charge may be made. In the guidelines, fees may be assessed for services rendered at the request of an applicant whether or not these services are linked to or result in the issuance of a permit or license. For example, the guidelines support the inclusion in the fee schedule of "special projects and reviews" that do not result in issuance of permits, licenses or approvals but are yet subject to a fee for the service based upon actual cost. (10 CFR 170.21, Schedule F). The review given a power reactor application that does not end in a permit or license is analogous to a special project with respect to the work performed and the service rendered to the applicant.

The interpretative amendments to 10 CFR 170.12 are intended to remove any possibility of misunderstanding the Commission's intent in appropriate cases to charge fees on withdrawal or denial of an application, and in cases of suspension or postponement of action on an application. The Commission will consider billing an applicant for costs incurred in the processing and review of an application upon either a statement of intent by the applicant to postpone further review effort or a delay in the construction schedule which causes the staff to postpone further review. In the event such an application is reinstated without significant changes, or review effort recommenced, subsequent charges will accrue only from the time of reinstatement or recommencement of review effort. In such cases the aggregate of charges for review of applications covered by the actual cost principle will not exceed the scheduled amount for the class of facility.

Although the impetus for issuing this interpretative rule stems from the withdrawal of power reactor construction permit applications, the interpretative amendments also apply to certain materials licenses applications

subject to the actual cost principle as stated in footnote 4 to 10 CFR 170.31. These are primarily major fuel processing and fabrication plants, waste storage and disposal facilities, spent fuel storage facilities, uranium milling plants, evaluation of casks and packages, and special projects.

Since the new language merely restates what the Commission's rule has been on collecting fees for withdrawn or otherwise terminated applications since the promulgation of revisions to 10 CFR Part 170 (43 FR 7418), the clarifying language, if adopted as proposed, will be applicable to all license applications on file before the Commission on or after March 23, 1978, the effective date of the current version of 10 CFR Part 170, as well as to those received after adoption of the clarifying language.

Although the rules' changes in these amendments are interpretative only and could be published effective immediately without notice and comment under 5 U.S.C. 553(b), and without the customary 30 days notice under 5 U.S.C. 553(d), the Commission has decided to solicit public comment and, therefore, is proceeding by normal notice and comment rulemaking procedure prior to adopting the clarifying language.

Pursuant to Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), the Atomic Energy Act of 1954, as amended, and Sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Part 170, Title 10, Chapter 1, Code of Federal Regulations, is contemplated.

1. Paragraphs 170.12(b), (e), and (f) of 10 CFR 170.12 are amended to read as follows:

§ 170.12 Payment of fees.

(b) *License fees.* Fees for review of applications for construction permits, operating licenses, manufacturing licenses, and materials licenses, are payable upon notification by the Commission when the review of the project is completed. For the purposes of this Part the review of a project is completed when a permit or license is issued, or an application for a permit or license is denied, withdrawn, suspended, or action on the application is postponed.

(e) *Approval Fees.* fees for review of applications for spent fuel cask and shipping container approvals, standardized spent fuel facility design approvals, and construction approvals are payable upon notification by the

Commission when the review of the project is completed. For the purposes of this Part the review of a project is completed when the approval is issued, or the application for an approval is denied, withdrawn, suspended, or action on the application is postponed. Fees for facility reference standardized design approvals will be paid in five (5) installments based on payment of 20 percent of the approval fee (see footnote 3 § 170.21) as each of the first five (5) units of the approved design are referenced in an application(s) filed by a utility or utilities. In the event the standardized design approval application is denied, withdrawn, suspended, or action on the application is postponed, fees will be collected when the review is completed and the five (5) installment payment procedure will not apply.

(f) *Special Project Fees.* Fees for review of special projects are payable upon notification by the Commission when the review of the project is completed. For the purposes of this Part the review of the project is completed upon notification by the staff that it has finished its review, upon withdrawal or the request, or suspension or postponement of further review.

2. A new paragraph is added to § 170.12 of Part 170 to read as follows:

§ 170.12 Payment of fees.

(i) this section applies to all applications for licenses, permits approvals or requests for review of special projects on file with the Commission on or after March 23, 1978.

(Sec. 501, 65 Stat. 290 (31 U.S.C. 483a), Sec. 161, 68 Stat. 948 (42 U.S.C. 2201))

Dated at Washington, D.C., this 3rd day of November 1980.

For the Nuclear Regulatory Commission,

Samuel J. Chilk,

Secretary to the Commission.

[FR Doc. 80-31851 Filed 11-7-80; 8:45 am]

BILLING CODE 7590-01-01

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-80-35]

Retailer Price Rule for Motor Gasoline

AGENCY: Economic Regulatory Administration.

ACTION: Notice of postponement of public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department