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Docket No. 50-289

MEMORANDUM FOR: William O. Miller, Chief, LFMB, ADM  
FROM: Robert W. Reid, Chief, ORB #4, DOR  
SUBJECT: LICENSE AMENDMENT FEE FOR TH-1 APPLICATION DATED  
AUGUST 30, 1978 (CHANGE REQUEST NO. 77)

Metropolitan Edison Company (Met Ed), by letter dated December 1, 1978, indicated that the subject request for license amendment should not be subject to a license fee because: (1) it was requested by the Commission, (2) it would simplify the Technical Specifications (TS) and (3) because its issuance would reduce the staff's work load and thereby would be for the convenience of the Commission. Based on these contentions, Met Ed requested that we rereview our fee determination. We have performed such a rereview with the following results:

1. With respect to whether the amendment was requested by the Commission, it is true that we requested in our letter of December 29, 1977, that they submit proposed revised TS for ring girder inspection. This request, however, was not based on convenience to Commission. Rather, it was a direct consequence of the wording of the existing specification which permitted a revision in the inspection program if certain prerequisites were met. In our letter of December 29, 1977, while we did use the word "request" rather than "suggest," the intent was merely to indicate that they had satisfied the prerequisites for requesting a revised inspection program. This usage of the word "request" is for different than the meaning intended in the regulations where a "request" is made "for the convenience of the Commission." In the present case, the real benefit accrues to Met Ed through approval of a less detailed inspection program - not to the Commission. We have no real interest in whether they revise the specification or not; it is strictly up to them and therefore our "request" was actually only an advisory notice.
2. The requested change would significantly reduce the number of pages of TS used to describe this inspection program and, in this sense, would "simplify" the specifications. Again, however, this represents misuse of a word relative to its use in the context of the regulations. In this case, the misused word is "simplify," and in the context of the regulations this means simplification of the existing specification relative to a fixed safety consideration, not replacement of a specification due to a changed safety condition. Further,

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it is implicit in the usage that simplification is encouraged by the Commission in the interest clarity and hence, of safety, and not merely for the convenience of one or more licensees. Accordingly we conclude that Met Ed has used the word "simplify" exterior to the intent of the regulations.

- 3. We have already addressed the question of whether the change is for the convenience of the Commission; and the answer is that it is not. While the staff "requested" or advised Met Ed that it could apply for the change, the Commission has no real interest in whether the change is made or not. The true test of convenience is which party benefits from the change. If it is truly only for the convenience of the Commission, Met Ed should refuse to pay the fee. In that case we will not issue the requested action and will allow the present type of annual surveillance to remain.

Met Ed claims that the change would reduce the Staff's workload and is therefore for the convenience of the Commission. This statement reflects a lack of understanding of the role of the Commission and its Staff. In its proper sense, "convenience of the Commission" refers to the ease and efficiency with which identified regulatory needs can be implemented or modified, and not merely to reduction of review workload. Indeed, many actions will increase the review workload of the Staff, but are nonetheless necessary and are therefore implemented for the convenience of the Commission.

Based on the foregoing we conclude that Met Ed's arguments presented in their letter of December 1, 1978, rest heavily upon literal word usage which is outside the intent and context of the regulations in 10 CFR 170. Accordingly, we further conclude that a fee is required.

In the course of this rereview, we have also had occasion to reconsider our original classification of this requested change. As a result of this reconsideration, we conclude that we erred in our original determination that this was a Class II amendment and that it should more properly be designated Class III. This revised classification arises because the requested change involves not only deletion of a temporary inspection program, but also review and approval of a replacement program. Accordingly, the change is not pro forma or administrative as is required for Class II, but does involve a single safety issue, viz. the adequacy of the replacement surveillance program for the containment ring girder. Therefore, inasmuch as a significant

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hazards consideration is not involved, we conclude that this change should be redesignated as Class III.

Sincerely,

Approved and signed by

Robert W. Reid, Chief  
Operating Reactors Branch #4  
Division of Operating Reactors

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