

ILLINOIS POWER COMPANY



CLINTON POWER STATION, P.O. BOX 678, CLINTON, ILLINOIS 61727

March 22, 1985

Docket No. 50-461

Mr. William O. Miller, Chief
License Fee Management Branch
Office of Administration
U. S. Nuclear Regulatory Commission
Washington, DC 20655

Subject: Clinton Power Station (CPS) Unit 1
License Review Bill Payment

Dear Mr. Miller:

Enclosed is Illinois Power Company's (IPC's) check for \$2,754,095 in payment of Bill Number D0162 transmitted with your letter of January 23, 1985. This payment is being made under protest, subject to the reservation of rights and the request stated below.

IPC believes that a fee ceiling of \$3,077,400 for the operating license review of Clinton 1 is erroneous because it represents a retroactive application of a new fee schedule. IPC submits that the Clinton 1 fees became fixed when review time for the operating license application reached the ceiling established in the 1978 regulation. Any other interpretation of the regulations results in an application of the new ceiling in the fee schedule retroactively, which is improper under the Independent Offices Appropriation Act, 31 U.S.C. 9701, as interpreted in New England Power Company vs. NRC, 683 F.2d 12, 15n4 (1st Cir. 1982).

Furthermore, the Statement of Considerations interpreting the regulation does not give full notice of the NRC's intention to apply the new ceiling retroactively. Under the Statement of Considerations, the fees through June 23, 1984, are computed on the basis of the Staff hourly rates used for the 1978 rule, 49 Fed. Reg. 21296. By computing the fees at the rates applicable to the 1978 regulation, the NRC in effect concedes that the old rate, including the ceiling, should apply to time charges prior to June 23, 1984.

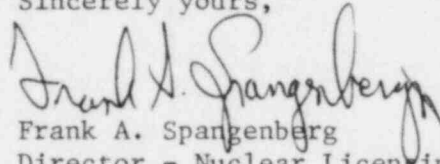
For these reasons, IPC protests this payment. In addition, the bills are based on operating license review costs through June 23, 1984, but give no supporting data or analysis showing how these costs were derived. IPC requests that documentation supporting these costs be provided for our review. In the Statement of Considerations for the 1984 amendments to 10 CFR 170, the NRC invited applicants to audit NRC costs, 49 Fed. Reg. 21293, 21300 (May 21, 1984). Therefore, Illinois Power requests that the NRC allow an audit of the detailed back-up records after we have had an opportunity to review the initial documentation for the fee bill.

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IPC would be pleased to discuss either of these matters with you at your convenience. If you believe that that would be useful, please contact the undersigned at (217) 935-8351, Extension 324.

Sincerely yours,


Frank A. Spangenberg
Director - Nuclear Licensing
and Configuration
Nuclear Station Engineering

FAS/jgh