



Commonwealth Edison
 One First National Plaza, Chicago, Illinois
 Address Reply to: Post Office Box 767
 Chicago, Illinois 60690

March 8, 1985

William G. Miller, Chief
 License Fee Management Branch
 Office of Administration
 United States Nuclear Regulatory Commission
 Washington, D. C. 20655

RECEIVED

Re: Operating License Fee Assessment

'85 MAR 11 A10:09

Dear Mr. Miller:

U.S. N.R.C.
 LIC. FEE MGMT. BRANCH

This letter is in response to four fee bills, two dated February 11, 1985 from your office for the operating license reviews for Byron Units 1 (No. D0186) and 2 (No. D0187) and two dated February 14, 1985 for the operating license reviews for Braidwood Units 1 (No. D0139) and 2 (No. D0140).

These bills request payment of the following amounts:

Byron Unit 1	\$2,757,405
Byron Unit 2	584,546
Braidwood Unit 1	1,232,040
Braidwood Unit 2	444,841

Commonwealth Edison Company respectfully declines at this time to pay the fee bills D0186, D0187, D0139 and D0140 without further documentation and analysis. In accordance with the provisions of 10 CFR § 15.31, this letter sets forth why the Company believes the fees are incorrect.

The Company believes that fee bills in excess of the ceilings set forth in the 1978 regulation are erroneous as a

8503130191 850308
 PDR ADOCK 05000454
 P PDR

*Moos
 1/0*

matter of law because they represent a retroactive application of a new fee schedule. Edison believes that under the old regulation, fees for Byron and Braidwood attributable to Staff review prior to June 23, 1984, became fixed when review time for the operating license applications reached the ceiling established in the 1978 regulation. Any other interpretation of the regulations results in an application of a fee schedule retroactively, which is improper under the Independent Offices Appropriation Act, 31 U.S.C. § 9701, as interpreted in New England Power Company v. NRC, 683 F.2d 12, 15 n. 4 (1st Cir. 1982).

In addition, the Statement of Considerations interpreting the regulation does not give fair notice of the NRC's intention to apply the new ceiling retroactively. According to 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. Under that regulation those rates were subject to a ceiling of \$1,024,500 for the first unit and \$302,800 for each "concurrent" unit. The fee bills for Byron and Braidwood apply the rates applicable under the 1978 regulation, but inconsistently do not apply the applicable ceiling. 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.

Certainly, there is no indication in the regulation or the Statement of Considerations of any intent to apply the new ceilings to review time expended prior to June 23, 1984.

The bills are based on total operating license review costs for each unit through June 23, 1984, but give no supporting data or analysis showing how these figures were arrived at. Commonwealth Edison Company requests that you provide back-up documentation to support the figures set forth in the bills. In the Statement of Considerations for the 1984 amendments to 10 C.F.R. part 170, the NRC invited applicants or licensees to audit NRC costs. 49 Fed. Reg. 21293, 21300 (May 21, 1984) The Company therefore also requests that, after we have had an opportunity to review the initial documentation for the fee bills, the NRC then allow Edison personnel to audit the detailed back-up record which the NRC keeps to support its time charges at a mutually convenient time and place. We request that the NRC make use of the authority set forth in 10 C.F.R. §15.31(b) and extend the due date of the fee bills for at least 90 days in order to allow us time to review and analyze NRC records before determining the amounts which are properly chargeable for the Byron and Braidwood operating license reviews.

Without review of the documentation and a full audit, the Company is unable to determine whether or not the factual basis for the Staff time charges to the Byron and Braidwood Operating License reviews are correct. However, there are some

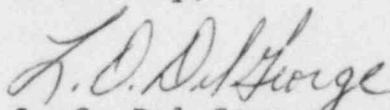
William G. Miller, Chief
March 8, 1985
Page 4

matters which require careful scrutiny. For example, time charges may be improperly allocated between the units. Byron and Braidwood are replicates and the nuclear steam supply system and other safety-related components and systems for all four units are identical. Hours expended in reviewing common or duplicate systems should be allocable to one of the four units and should thus come under the fee ceiling for a single unit. Other factual issues may become apparent after we have had an opportunity to audit the NRC's records.

The Company would like to discuss these matters with you in due course. Therefore, we request that you either schedule a conference pursuant to 10 C.F.R. § 15.31(c) or a personal interview pursuant to 10 C.F.R. § 15.25(b). Such a conference or interview would most likely be more productive if held after we have had an opportunity to review documentation and audit records.

Based on our telephone conversation this afternoon, I will call you during the week of March 11 to schedule a first meeting to review the NRC's documentation for the fee bills. Thank you for your consideration in this matter.

Sincerely,



L. O. Del George
Assistant Vice President