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March 8, 1985

William G. Miller, Chief
License Fee Management Branch
Office of Administration
United States Nuclear Regulatory
Commission
4550 Montgomery Avenue
Room 2015
Bethesda, Maryland

Re: Midland Energy Center Operating License Fee
Assessment

Dear Mr. Miller:

Attached is the official response of Consumers Power Company to your bills nos. D0184 and D0185. Due to logistical difficulties the enclosed letter is a xerox copy, but the original with a live signature will be in your office on Monday morning, March 11, 1985.

Thank you for your consideration in this matter.

Yours truly,

Frederick C. Williams
Frederick C. Williams

FCW:kls

cc: Janet M. Rodriguez

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Consumers
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March 7, 1985

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

MIDLAND ENERGY CENTER OPERATING LICENSE FEE ASSESSMENT
FILE: 0485.11, 1300 SERIAL: 32196

This letter responds to your letter of February 8, 1985 informing us that fee notifications were imminent and two fee bills dated February 11, 1985 from your office for the operating license reviews for Midland Units 1 (No. DO184) and 2 (No. DO185). These bills request payment of \$3,077,400 for each unit. Consumers Power Company respectfully declines at this time to pay the fee bills DO184 and DO185 without further documentation and analysis.

The bills state 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. Consumers requests that you provide back-up documentation to support the figures set forth in the bills. In addition, 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). Consumers therefore requests that, after Consumers has had an opportunity to review the initial documentation for the fee bills the NRC then allow Consumers personnel to audit the detailed back-up records which the NRC keeps to support its time charges at a mutually convenient time and place. Consumers Power Company further requests 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 reaching a final position.

With respect to particular items, Consumers Power Company concludes from the regulations and the 1978 and 1984 Statements of Considerations that various elements of review charges are properly excludable from the total fee. Without review of documentation and full audit we are, of course, unable to ascertain with certainty that time has been improperly charged. However, it is Consumers Power Company's position that any time associated with review relating to the soils remedial work, and in particular any geotechnical review beyond what would have been performed for an ordinary operating license, is

not properly billable. In addition, time expended in preparation for, attendance at, or otherwise associated with contested hearings, either the OM hearings or the OL hearings, is also properly excludable, under existing NRC regulations, from the fee bill. Thus, the total amounts aggregated should be reduced by any charges which are related to such costs.

In addition, we believe that time may be improperly allocated between units. For example, hours expended in reviewing common or duplicate systems should be charged under one of the two units and should thus come under the ceiling for the single unit. In addition, we believe that some review time which is charged for unit 2 may be properly applicable to unit 1, or vice versa.

Consumers Power Company believes also that the application of the ceiling of \$3,077,400 to the fees for each unit at Midland is erroneous as a matter of law because it is a retroactive application of a new fee schedule. Consumers Power Company believes that its Midland OL fees became "fixed" when review time for the OL applications reached the ceilings established in the 1978 regulations. Any other interpretation of the regulations results in an application of a fee schedule retroactively, which is impermissible under the Independent Office Appropriations 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, even if the NRC could apply a new ceiling retroactively, the Statement of Considerations does not give fair notice of any NRC intent to do so. In fact, the Commission indicated to the contrary in the Statement of Considerations:

Since the final rule would now retain ceilings for most major licenses, and the hourly rates established by this rule will apply only to work that occurs after the effective date of the final rule, this particular aspect of the question of "retroactive" application of the amendments is no longer germane.

49 Fed. Reg. 21293, 21296 (May 21, 1984).

In summary, Consumers Power Company requests that the NRC extend the due date for its fee bills for at least 90 days, that the NRC provide written documentation for the fee bills, that the NRC then provide Consumers with an opportunity to audit the supporting records and that the NRC apply the ceilings under the 1978 regulations to the fee bills.

Consumers Power Company would like to discuss these considerations with you at your convenience. Therefore, we request that you either schedule a conference pursuant to 10 C.F.R. § 15.31(c) or a personal interview with Consumers Power

* Review of the Midland Operating License applications began prior to the effective date of the 1978 regulation when there was no "cost-based" fee schedule in effect. Accordingly, no fees should be assessed for time expended prior to March 23, 1978.

Company pursuant to 10 C.F.R. § 15.25(b). Such a conference or interview would most likely be more productive if held after Consumers has had an opportunity to review documentation and audit records. Thank you for your consideration in this matter.

JWC/PCW/lr

James W. Cook