

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of the Application of)
PUBLIC SERVICE COMPANY OF OKLAHOMA,)
ASSOCIATED ELECTRIC COOPERATIVE, INC.,) Docket Nos.
AND) STN 50-556
WESTERN FARMERS ELECTRIC COOPERATIVE) STN 50-557
(Black Fox Station, Units 1 and 2))

APPLICATION FOR WAIVER OF WITHDRAWAL FEES
UNDER 10 C.F.R. § 170.12(b)

PUBLIC SERVICE COMPANY OF OKLAHOMA, ASSOCIATED ELECTRIC COOPERATIVE, INC., and WESTERN FARMERS ELECTRIC COOPERATIVE (the "BFS Co-Owners") respectfully ask the Nuclear Regulatory Commission (the "N.R.C.") to waive fees for withdrawal of their nuclear construction-permit application. A total withdrawal fee of \$1,009,275 has been charged against the cancelled Black Fox Station nuclear project (the "BFS Project"). Of this, the BFS Co-Owners paid \$125,000 when they filed their construction-permit application for the BFS Project in 1975. By color of 10 C.F.R. § 170.12(b), the N.R.C. issued invoice #C0203 dated May 3, 1984 for the \$884,275 balance plus interest at the rate of .75% per month.

The BFS Co-Owners' request for a waiver of this withdrawal fee rests upon the unique facts surrounding their construction-

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permit application. These facts show that assessment of withdrawal fees against the BFS Co-Owners would violate the fairness, public-policy, and value-to-applicant principles of the Independent Offices Appropriation Act of 1952, Title V, 31 U.S.C.A. § 9701(b) (West 1983) (the "IOAA"). In support of this request, the BFS Co-Owners state:

1. Before November 1981, withdrawal of a construction-permit application was charge-free under 10 C.F.R. § 170.12(b). Except for the initial non-refundable fee, no additional fees fell due for the N.R.C.'s review of a construction-permit application unless such application were ultimately granted.

2. For withdrawals on or after November 6, 1981, a newly-adopted version of 10 C.F.R. § 170.12(b) imposes a withdrawal fee equal to the fee that would have been due had the construction-permit application actually been granted.

3. Apart from this change in N.R.C. fee rules, every assessment of withdrawal fees must comply with the principles of the IOAA: The withdrawal fee must be fair as applied to each withdrawing construction-permit applicant. The amount of the fee must be computed from the N.R.C.'s actual costs expended for the individual application withdrawn. The withdrawal fee charged against each withdrawing applicant must depend upon the value of the N.R.C.'s service to that applicant. The withdrawal fee must not contravene any public policy associated with assessment of such a fee. Finally, assessment of the withdrawal fee must rest

upon the relevant facts surrounding the withdrawing construction-permit applicant. See 31 U.S.C.A. § 9701(b)(1) & (2)(A)-(D) (West 1983).

4. The BFS Co-Owners filed their application for the BFS construction-permit in August 1975. A Limited Work Authorization issued for the BFS Project in July 1978. The administrative record was completed in February 1979. Issuance of the construction-permit seemed almost assured in ordinary course.

5. But less than one month after completion of the BFS administrative record, the accident occurred at Three Mile Island in March 1979. For the next three years, N.R.C. actions and inactions foreclosed issuance of the BFS construction-permit. Understandably, the Three Mile Island accident triggered safety concerns. But BFS safety design differed materially from the reactor units at Three Mile Island. Even so, the BFS Co-Owners cooperated actively and fully from the very start, as the N.R.C. sought to dictate new safety requirements that the BFS Co-Owners might meet to avoid another accident like Three Mile Island. This N.R.C. effort, however, to adopt new safety requirements proved almost interminable. The difficulty was not only regulatory inactivity, but activity with constantly changing course and focus. By January 1982, when the N.R.C. spoke with any finality about new safety requirements and design, the economic viability of BFS as a project was destroyed.

6. The BFS Project became economically infeasible because of what new safety requirements the N.R.C. formulated and the long stall in their formulation. Whatever the justification for the N.R.C.'s regulatory actions between 1979 and 1982, such actions are the sole reason for demise of the BFS Project. As between the N.R.C. and the BFS Co-Owners, then, the N.R.C. must bear the ultimate responsibility for why the BFS Co-Owners were forced to withdraw their construction-permit application. Most pertinently to the withdrawal fee of almost a million dollars now sought by the N.R.C., it was even N.R.C. actions which prevented the BFS Co-Owners from effecting withdrawal before November 6, 1981 when they could have easily avoided such a withdrawal fee altogether.

7. The relevant facts surrounding the BFS Co-Owners and their Project are unique. To show that such facts render assessment of any withdrawal fees unfair, contrary to public policy, and otherwise impermissible under the IOAA, 31 U.S.C.A. § 9701(b), the BFS Co-Owners simultaneously submit with the present Application their Brief In Support Of Application For Waiver Of Withdrawal Fees Under 10 C.F.R. § 170.12(b).

WHEREFORE, the BFS Co-Owners respectfully ask the Nuclear Regulatory Commission:

(A) to waive withdrawal fees for the cancelled Black Fox Station nuclear project; and

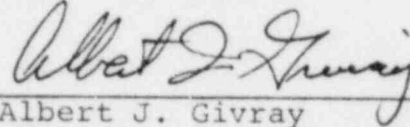
(B) to set this matter for informal hearings and meetings with representatives of the Nuclear Regulatory Commission, so that

further elaboration and factual exchange may be conducted on the present fee-waiver Application.

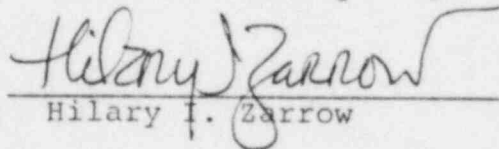
Respectfully submitted,

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