

Docket No. 50-267

APR 3 1989

Public Service Company of Colorado
ATTN: Mr. H. L. Brey
Manager, Nuclear Licensing
and Resource Management
P.O. Box 840
Denver, Colorado 80201-0840

Gentlemen:

This is to acknowledge receipt of your letter dated February 14, 1989, requesting total exemption from the annual fee requirements of 10 C.R. 171 for fiscal year 1989 and each year thereafter for the Fort St. Vrain Nuclear Generating Station. Our review of your current request and your request for fiscal year 1988 will be completed as soon as possible. When decisions on your requests have been made, a letter will be sent to you informing you of the results of our review.

Your Company will not be billed for any 1988 or 1989 annual fee payments for the Fort St. Vrain plant while your applications are under consideration.

Sincerely,

Signed by:

C. James Holloway, Jr.

C. James Holloway, Jr., Chief
License Fee Management Branch
Division of Accounting and Finance
Office of the Controller

DISTRIBUTION w/cy of 2/14/89 Ltr:

PDR

LPDR

Regulatory Docket File 50-267

GJohnson, DAF

KHeitner, PD-IV

PNoonan, PD-IV

CJHolloway, LFMB

RMDiggs, LFMB

LFMB 171 Exemption File

LFMB Reactor File f/Ft. St. Vrain

LFMB R/F (2)

OC/DAF R/F

DW/RMD/Doc. No. 50-267

OFFICE : DAF/LFMB

SURNAME: RMDiggs:ab

DATE : 3/31/89

: DAF/LFMB

: CJHolloway

: 3/31/89

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Public Service®

February 14, 1989
Fort St. Vrain
Unit No. 1
P-89044

Public Service
Company of Colorado
P.O. Box 840
Denver, CO 80201-0840

where is my fee?

2/9/89

3/3/89

Executive Director of Operations
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

*Dear Sir -
back to say
that they do
not show
receipt
has letter
in EDO.*

Docket No. 5C-267

SUBJECT: Exemption from Annual Fees Under
10 CFR Part 171

3/3/89

- | | |
|---|---|
| REFERENCE: 1) Federal Register (53
FR 52632) 10 CFR Parts
170 and 171, Revision
of Fee Schedules | 4) NPC Letter, Stello to
Williams, August 7, 1987
(G-87268) |
| 2) NRC Letter, Johnson to
Williams, October 5, 1987
(G-87358) | 5) PSC Letter, Williams to
Executive Director of
Operations January 21,
1987 (P-87031) |
| 3) PSC Letter, Williams to
Executive Director of
Operations, September 25,
1987 (P-87335) | |

Dear Sir:

Pursuant to 10 CFR 171.11 Public Service Company of Colorado (Public Service) hereby makes application to the Nuclear Regulatory Commission (Commission) for an exemption regarding the payment of annual fees therein. Under the revised fee schedule (Reference 1), the basis for each annual fee will be the budgeted obligations for activities applicable to each nuclear power reactor as one of a type or class of reactors. Public Service's Fort St. Vrain Nuclear Generating Station, a High Temperature Gas-Cooled Reactor (HTGR), is unique in the industry and does not fit into the types or classes of reactors generally addressed by the rule.

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February 14, 1989

Notwithstanding that the Commission is mandated to recover 45 percent of its budget for Fiscal Year 1989, it was not the intent of the Commission under the original rule to promulgate a fee schedule at such a level that owners of smaller, older reactors would suffer an adverse economic impact. Under the State of Colorado regulatory scheme, Fort St. Vrain is not in the rate base and Public Service is permitted to sell its power at only 4.8 cents per kilowatt hour. The cost to produce power at Fort St. Vrain in 1988 was 10.2¢ per kilowatt hour. In light of this regulatory treatment, Public Service finds the annual fees assessed under 10 CFR 171 an undue burden and requests a total exemption therefrom. Similar requests were made in 1987 (Reference 5) when a partial request was granted (Reference 4) and in 1988 (Reference 3) which is under review (Reference 2).

The criteria for exemption from the annual fee are listed in 10 CFR 171.11. Analysis of factors (a) through (d) has not changed substantially from Public Service's 1988 and 1987 requests. The factor (e) discussion does contain significant additional information.

- a) Age of Reactor: Fort St. Vrain first went critical in January, 1974. As such, it was the first reactor to go initially critical in 1974. Prior to 1970, eight reactors went critical; between 1970 and 1972 fifteen more went critical, and during 1973 eleven reactors went critical. Therefore, of the 110 reactors currently having operating licenses, Fort St. Vrain was the 35th reactor to go critical. This makes Fort St. Vrain among the oldest third of the nuclear units currently licensed.
- b) Size of Reactor: Fort St. Vrain is rated at 330 MWe net. However, the unit is currently restricted to 82% of rated capacity and much of the time has been inoperable while equipment modifications were being made. Reactors that have gone critical since 1980 have ranged in size from 829 MW for Farley 2 to 1221 MW for the Palo Verde units. The newer units are roughly 4 times larger than the restricted rating of Fort St. Vrain, roughly 9 times larger than the capacity that Fort St. Vrain often realizes, and infinitely larger than the shutdown capacity that has often been required in order to make safety-related modifications and repairs. This factor greatly limits the ability of the Fort St. Vrain reactor to produce revenue to offset any licensing fees imposed by the Commission.
- c) Number of Customers in Rate Base: The number of customers in rate base is not applicable to Fort St. Vrain. No additional expenses of any kind, including additional fees such as the 10 CFR 171 fees, can be passed on to the Public Service rate payers. As the result of a litigation settlement between Public Service and the Colorado Public Utilities Commission (PUC), along with other litigants, Fort St. Vrain was removed from the Public Service rate base.

d) Net Increase in KWh Cost for Each Customer Directly Related to the Annual Fee Assessed Under This Part: No increase in KWh cost to customers of Public Service will result due to the imposition of the annual fee. Public Service is not permitted to seek future rate increases based on increased costs at Fort St. Vrain. As referenced in paragraph c) above, the Fort St. Vrain Nuclear Generating Station was removed from the Public Service rate base and no costs associated with Fort St. Vrain are reflected in the rates charged to customers. Of additional importance is the fact that the PUC has limited Fort St. Vrain cost recovery to 4.8 cents per kilowatt hour produced.

e) Any Other Relevant Matter Which the Licensee Believes Justifies the Reduction of Annual Fee:

- 1) Public Service intends to cease nuclear power production operations at Fort St. Vrain on or before June 30, 1990. Most of the generic Commission activities to be recovered under the 10 CFR 171 fees relate to long-term considerations or have long-term applicability at the affected plants. Public Service is in compliance with current regulations and requirements, and intends to maintain compliance throughout its remaining operations. The Commission activities with long-term implications have very little applicability to Fort St. Vrain and their associated cost should not be passed to Public Service.

In conjunction with the announcement to cease nuclear operations at Fort St. Vrain on or before June 30, 1990, Public Service expects some increased Commission attention. However, the attention would likely involve activities covered under 10 CFR 170, and would be billed to Public Service on an as-used basis. This would increase the Public Service payments and further augment the disproportionate share Public Service pays for Part 170 fees.

- 2) Fort St. Vrain is an HTGR. Most of the Commission investigations, rule makings, program development, and regulatory research are directed to light water reactors. The Commission HTGR related research and development activity is directed to advanced HTGR reactors and has little application to Fort St. Vrain. Substantial additional effort must be made on the part of Public Service to analyze the results of the light water reactor determinations in order to apply them to Fort St. Vrain where indicated. The Commission seldom explicitly defines the relevance of a general regulatory activity to an HTGR.

Because the work that is funded by the Part 171 annual fee is not directed to Fort St. Vrain, Public Service incurs substantial additional and unusual costs to analyze Commission regulatory information for non-light water reactor applicability and implementation. An exemption from the annual fee should be permitted to offset the increased expenses that Public Service incurs in this process.

- 3) Another item that Public Service believes justifies the total exemption from the Part 171 fees is the impact of the current Fort St. Vrain regulatory scheme. As mentioned before, Fort St. Vrain was removed from the Public Service rate base, no additional costs associated with Fort St. Vrain are recoverable through Public Service customer rates, and cost recovery for Fort St. Vrain produced power is limited to 4.8 cents per kilowatt hour. Every dollar Public Service pays for Fort St. Vrain related items is a current, direct expense. Thus, each dollar paid as annual fee is also an expense dollar that could be spent to maintain or enhance safe operations at Fort St. Vrain. Given the lack of direct applicability of 10 CFR 171 fees to Fort St. Vrain, the fees are an unduly burdensome expense to Public Service.

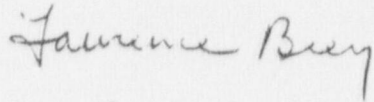
As the concept underlying the revised fee schedules is that those requiring the greatest expenditure of Commission resources should pay the greatest fees, Public Service requests total exemption from the 10 CFR 171 annual fee for fiscal year 1989 and each year thereafter. The Commission resource expenditures recovered through the Part 171 annual fee have minimal applicability to an HTGR. The Fort St. Vrain planned short term nuclear operations period further reduces this applicability.

In addition, the concept noted above provides the basis for both the 10 CFR 171 and the Part 170 fees. Public Service has historically paid fees for the 10 CFR 170 services two times greater than the average paid by other utilities. The announcement to cease nuclear operations at Fort St. Vrain by June 30, 1990, and the associated regulatory matters that encompasses are sure to sustain this trend. During the short term operational period and upcoming defueling and decommissioning stages, Public Service through Fort St. Vrain will once again provide information of great benefit to the entire nuclear industry. Public Service should not be required to make further financial contributions in support of nuclear technology through the imposition of the 10 CFR 171 annual fee.

P-89044
Page 5
February 14, 1989

Should you have any questions regarding Public Services' application for exemption, please contact Mr. M. H. Holmes at (303) 480-6960.

Very truly yours,



H. L. Brey
Manager, Nuclear Licensing
and Resource Management

HLB:PJA/pjb

xc: U. S. Nuclear Regulatory Commission
NRC Document Control Desk
Washington, D.C. 20555

C. James Holloway, Jr., Chief,
License Fee Management Branch
Division of Accounting and Finance
Office of Administration and
Resource Management

Regional Administrator, Region IV
ATTN: Mr. T. F. Westerman
Chief, Projects Section B

Mr. Ken Heitner, Project Manager
Project Directorate - IV
Office of Nuclear Reactor Regulation

Mr. Robert Farrell
Senior Resident Inspector
Fort St. Vrain



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To: U. S. Nuclear Regulatory Commission
License & Fee Management Branch
Office of the Controller
Division of Accounting & Finance
Washington, D.C. 20555

ATTENTION: C. James Holloway Jr.

Reference No. _____
Contents Merchandise
Postmaster: This parcel may be opened for inspection if necessary.
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