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DOCUMENT DATE: 05/03/1974

TITLE: PRM-170-001 - 39FR15521 - ATOMIC INDUSTRIAL FORUM,
INC.

CASE REFERENCE: PRM-170-001
39FR15521

KEY WORD: RULEMAKING COMMENTS

Document Sensitivity: Non-sensitive - SUNSI Review Complete

ATOMIC ENERGY COMMISSION

[Docket No. PRM-170-1]

ATOMIC INDUSTRIAL FORUM, INC.

Filing of Petition for Rule Making

Notice is hereby given that the Atomic Industrial Forum, Inc., 475 Park Avenue South, New York, New York, by letter dated April 9, 1974, has filed with the Atomic Energy Commission a petition for rule making.

The petitioner requests that the Commission amend its regulation 10 CFR Part 170 to allocate a portion of the costs of the Commission's licensing program to the public in accordance with the principles set out in the recent Supreme Court decision National Cable Television Assn. Inc. v. United States et al (39 L Ed 2d 370).

The petitioner states that future fee schedule revisions are particularly critical with the advent of standardization policy implementation and that license fees based on full cost recovery could deter or retard optimal participation in standardization by a number of companies for whom very large licensing fees would have severe economic consequences.

The Commission staff is reviewing the provisions of 10 CFR Part 170 in the light of the referenced Supreme Court decision and a related decision Federal Power Commission v. New England Power Co. et al (39 L Ed 2d 383), and the petitioner's request for rule making will be considered in the further conduct of that study.

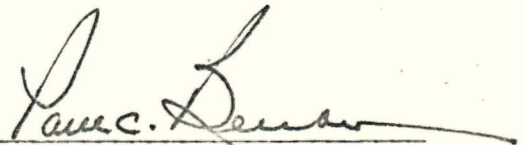
A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C. A copy of the petition may be obtained by writing the Rules and Proceedings Branch at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Rules and Proceedings Branch, Office of Administration-Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before July 2, 1974.

Dated at Germantown, MD.
day of April 1974.

this 29th

For the Atomic Energy Commission.

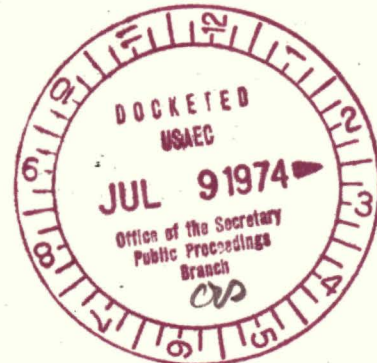
A handwritten signature in dark ink, appearing to read "Paul C. Bender", is written over a horizontal line.

Paul C. Bender
Secretary of the Commission

JUL 8 1974

PRM-170-1

Mr. Walter A. Morris, Jr.
General Counsel
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003



Dear Mr. Morris:

This is to acknowledge your letter of July 2, 1974, commenting on the petition for rule making PRM-170-1 requesting that the Commission allocate a portion of the costs of the Commission's licensing program to the public in accordance with the principles set out in the recent Supreme Court decision National Cable Television Assn. Inc. v. United States et al (39 L Ed 2d 370) filed with the Commission by the Atomic Industrial Forum, Inc.

Your comments have been noted and will receive careful consideration in our review of the petition and the provisions of 10 CFR Part 170.

Sincerely,

(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation

Distribution:
Central Files Subj.
Hutton Rdr
R&P Br. Rdr
F. W. Karas
PDR
W. O. Miller

OFFICE	DRA	DRA				
SURNAME	GLHutton:dra	DMFelton				
DATE	7/8/74	7/1/74				

Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N Y 10003
Telephone (212) 460-2416

July 2, 1974

Rules and Proceedings Branch
Office of Administration-Regulation
U.S. Atomic Energy Commission
Washington, D.C. 20545



Re: Docket No. PRM-170-1

Gentlemen:

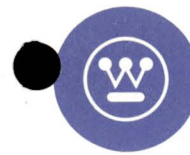
This letter is in response to your invitation for comments concerning the Petition for Rulemaking on Licensing Fee Schedule Revisions which was filed by the Atomic Industrial Forum Inc. The request was published in the Federal Register on May 3, 1974.

Con Edison agrees with the Atomic Industrial Forum, and with the comments of the Edison Electric Institute, which were submitted to the AEC by letter of Mr. W. Donham Crawford dated May 14, 1974. The recent decisions of the U.S. Supreme Court referred to in these documents would indicate that the AEC must reconsider its licensing fee schedules. A public rulemaking proceeding would be an appropriate forum to facilitate this review. It is important to note that meaningful public participation requires that the cost data relevant to the considerations specified by the Supreme Court are made available prior to the commencement of the hearing.

Very truly yours,

Walter A. Brown

DOCKET NUMBER
PETITION RULE PRM-170-1



Westinghouse Electric Corporation

Power Systems

Water Reactor Divisions

Box 355
Pittsburgh Pennsylvania 15230

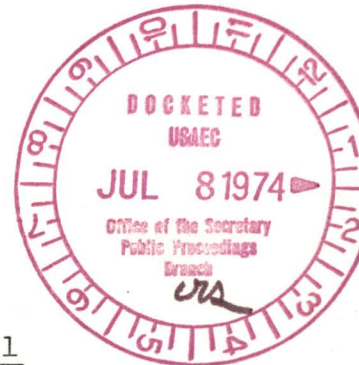
July 2, 1974

U. S. Atomic Energy Commission
Office of Administration - Regulation
Washington, D. C. 20545

Attention: Mr. Frank W. Karas, Chief
Rules and Proceedings Branch

Gentlemen:

Subject: Atomic Industrial Forum, Inc.
Petition for Rule Making, Docket PRM-170-1



The Westinghouse Electric Corporation offers the recommendations in this letter in response to the notice filed in the Federal Register of May 3, 1974 inviting comments on the subject petition to amend 10CFR Part 170. The subject petition requested a reduction in licensing fees imposed by the USAEC based on a reassessment of the value of its services to each licensee. Westinghouse is engaged in numerous USAEC-licensed activities and thus has a direct interest in the proceedings.

We note that a nearly identical petition has been docketed as PRM-170-2. We assume that the Commission will, in fact, deal with these petitions simultaneously.

Westinghouse concurs with the position presented in the petition docketed under PRM-170-2. Furthermore, we propose that the reasoning presented as the basis for that request can be directly applied to the subject of materials licensing. We appreciate that the review of the initial license application by the USAEC provides an effective professional review of the radiological safety of the proposed activity, and has, on occasion, produced constructive criticisms. We do not feel that, on the average, annual license administration provides nearly the same contribution that can be construed as having "value" to the licensee.

Based on this rationale, Westinghouse recommends that the annual fee categories specified in Section 170.31 of 10CFR Part 170 be reduced by a factor of approximately five (5).

Such reduced annual fees would, in our opinion, more closely accord with the concept of "value to the recipient" balanced with "public policy or interest served" as provided in the Independent Offices Appropriation Act of 1952, 31 USC §483a.

Thank you for this opportunity to express our position on this matter at this stage of the proceedings.

Very truly yours,

A handwritten signature in cursive script that reads "Karl R. Schendel".

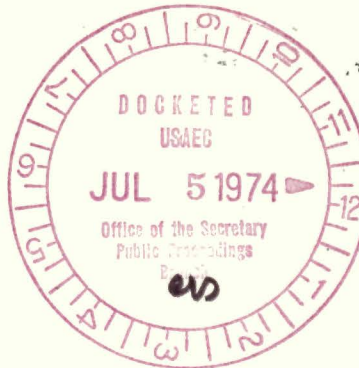
Karl R. Schendel
License Administrator

KRS:jh

Docket No. PRM-170-1

7-3-74

T. M. Daugherty, Esq.
Offshore Power Systems
8000 Arlington Expressway
Box 8000
Jacksonville, Florida 32211



Dear Mr. Daugherty:

This is to acknowledge your letter of June 28, 1974, commenting on the petition for rule making PRM-170-1 requesting that the Commission allocate a portion of the costs of the Commission's licensing program to the public in accordance with the principles set out in the recent Supreme Court decision National Cable Television Assn. Inc. v. United States et al (39 L Ed 2d 370) filed with the Commission by the Atomic Industrial Forum, Inc.

Your comments have been noted and will receive careful consideration in our review of the petition and the provisions of 10 CFR Part 170.

Sincerely,

(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation

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R&P Br Rdr
Karas
PDR
W. O. Miller

OFFICE ➤	DRA	DRA				
SURNAME ➤	GLHutton:bd	JMFelton				
DATE ➤	7/3/74	7/ /74				

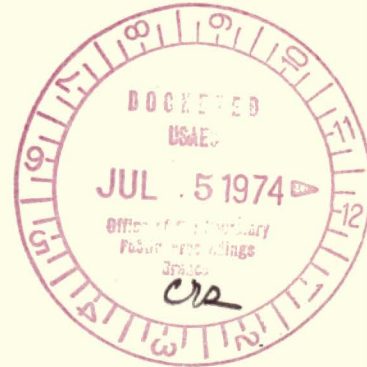
Offshore Power Systems

8000 Arlington Expressway
Box 8000 Jacksonville, Florida 32211
904-724-7700

A Westinghouse-Tenneco
Enterprise

June 28, 1974

Rules and Proceedings Branch
Office of Administration-Regulation
U. S. Atomic Energy Commission
Washington, D. C. 20545



Re: Docket No. PRM-170-1
Atomic Industrial Forum, Inc.
Petition for Rulemaking on
Licensing Fee Schedules

Gentlemen:

Responding to the notice provided in the Federal Register, Volume 39, No. 87 of Friday, May 3, 1974 at page 15221, Offshore Power Systems endorses and supports the petition for rulemaking requested by the Atomic Industrial Forum, Inc. We believe that only in a rulemaking proceeding can the Commission establish an appropriate record to define and quantify such intangibles as "value to the recipient" in contrast with the general "public interest" and thereby conform to the recent Supreme Court decisions cited in the Notice of Petition.

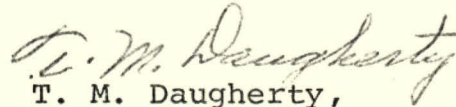
We note particularly the enormous increase in fee schedules that have occurred since implementation of the National Environmental Policy Act of 1969 which by its terms addresses the public interest for current and future generations.

Offshore Power Systems is in a position to focus on the reduction in regulatory time and effort as well as other benefits that can be realized under the Commission's standardization policy and will appear and present evidence on this and other matters in any such rulemaking on licensing fee schedules that

Rules and Proceedings Branch
Re: Docket No. PRM-170-1
June 28, 1974
Page No. Two

the Commission may hereafter establish. We hereby request appropriate notice and thank you for this opportunity to comment.

Respectfully,


T. M. Daugherty,
Counsel

TMD:jfs

cc: George L. Gleason, Vice President
Atomic Industrial Forum, Inc.

POWER AUTHORITY OF THE STATE OF NEW YORK

10 COLUMBUS CIRCLE

NEW YORK, N. Y. 10019

(212) 265-6510

TRUSTEES

JAMES A. FITZPATRICK
CHAIRMAN

GEORGE L. INGALLS
VICE CHAIRMAN

WILLIAM J. RONAN

RAYMOND J. LEE



June 18, 1974

GEORGE T. BERRY
GENERAL MANAGER
AND CHIEF ENGINEER

SCOTT B. LILLY
GENERAL COUNSEL

WILBUR L. GRONBERG
ASSISTANT GENERAL
MANAGER - ENGINEERING

JOHN W. BOSTON
DIRECTOR OF
POWER OPERATIONS

THOMAS F. MCCRANN, JR.
CONTROLLER

Mr. Paul C. Bender
Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Re: Docket No. PRM-170-1



Dear Sir:

The Power Authority of the State of New York, as a current applicant for an operating license for one nuclear power plant and a prospective licensee for additional plants, is directly affected by the licensing fees and annual fees currently provided in 10 C.F.R. Part 170. We support the petitions filed in the above-numbered docket by the Atomic Industrial Forum, Inc. and the Edison Electric Institute requesting that the Commission commence a rule making to revise its fees in light of the Supreme Court decisions in National Cable Television Ass'n., Inc. v. United States, 94 S. Ct. 1146, and Federal Power Commission v. New England Power Co., 94 S. Ct. 1151.

We believe it is clear from those cases that the Commission is required substantially to reduce, if not eliminate, its licensing fees. We therefore urge that the Commission promptly institute a rule making to do so. In the meantime, we request that the Commission immediately suspend all fees currently imposed by 10 C.F.R. § 170.21, except application fees, pending final action in the rule making.

Very truly yours,

OFFICE OF THE SECRETARY

Scott B. Lilly
General Counsel

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Acknowledged

6-26-74, csa

DOCKET NUMBER
PETITION RULE PRM-170-1

Docket No. PRM-170-1

MAY 22 1974

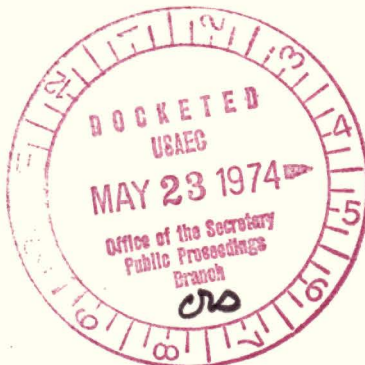
Anthony Z. Roisman, Esq.
Berlin, Roisman and Kessler
1712 N Street N. W.
Washington, D. C. 20036

Dear Mr. Roisman:

This is to acknowledge your letter of May 16, 1974, commenting on the petition for rule making PRM-170-1 regarding license fees filed with the Commission by the Atomic Industrial Forum, Inc.

Your comments have been noted and will receive careful consideration in our review of the petition and the provisions of 10 CFR Part 170.

Sincerely,



(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation

Distribution:

F. W. Karas
PDR
W. O. Miller
Central Files Docket File
J. Becker
Felton Rdr
R&P Br Rdr

OFFICE ➤	DRA	OGC	DRA		
SURNAME ➤	GLHutton:bd	<i>JM</i>	JMFelton		
DATE ➤	5/22/74	5/22/74	5/ /74		

DOCKET NUMBER

PETITION RULE PRM-170-1

Docket No. PRM-170-1

MAY 22 1974

James P. Hogan, Esq.
General Atomic Company
P. O. Box 81608
San Diego, California 92138

Dear Mr. Hogan:

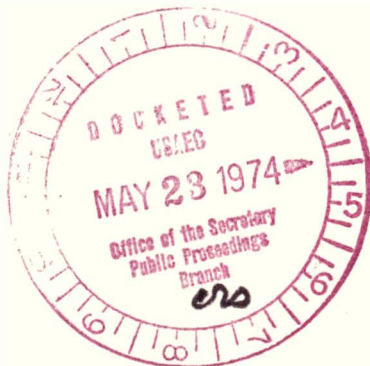
This is to acknowledge your letter of May 15, 1974, commenting on the petition for rule making PRM-170-1 regarding license fees filed with the Commission by the Atomic Industrial Forum, Inc.

Your comments have been noted and will receive careful consideration in our review of the petition and the provisions of 10 CFR Part 170.

Sincerely,

(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation



Distribution:

F. W. Karas

PDR

W. O. Miller

Central Files Docket File

J. Becker

Felton Rdr

R&P Br Rdr

OFFICE ➤	DRA	DRA				
SURNAME ➤	GLHutton:bd	JMFelton				
DATE ➤	5/22/74	5/22/74				

GENERAL ATOMIC COMPANY
P.O. BOX 81608
SAN DIEGO, CALIFORNIA 92138
(714) 453-1000

May 15, 1974

Rules and Proceedings Branch
Office of Administration-Regulation
United States Atomic Energy Commission
Washington, D. C. 20545

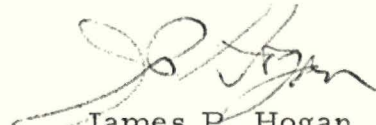
Subject: 10 CFR Part 170

Gentlemen:

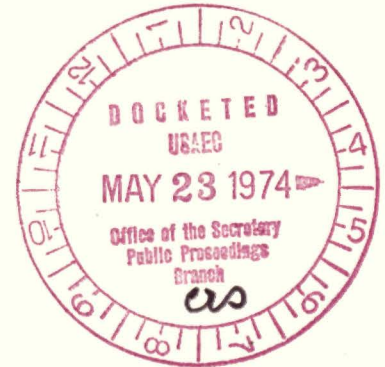
On May 3, 1974, the Commission published notice of the Atomic Industrial Forum's petition for rectification of 10 CFR Part 170 in accordance with the principles stated in National Cable Television Ass'n, Inc. vs. United States, et al., and Federal Power Comm'n vs. New England Power Co., et al.

For the reasons advanced in April 12, 1973, comments of Gulf Oil Corporation concerning the last fee increase, some of which were confirmed in spirit by the Supreme Court's decisions, we believe it is incumbent upon AEC to amend Part 170. Without awaiting expiration of the two months allowed by the Commission's announcement for receipt of comments, we believe AEC should promptly publish a tentative revision of the fee tables together with the information necessary to permit responsible consideration by the industry.

Very truly yours,


James P. Hogan
Attorney

JPH:gjc





EDISON ELECTRIC INSTITUTE

90 PARK AVENUE • NEW YORK 10016 • (212) 986-4100

May 14, 1974

Mr Paul C Bender, Secretary
US Atomic Energy Commission
Washington, D C 20545

Subject: Docket No PRM-170-1

Dear Sir

Edison Electric Institute, the principal national association of investor-owned electric utilities, hereby joins the Atomic Industrial Forum, Inc in petitioning the Atomic Energy Commission, pursuant to 10 C.F.R. Sec 2.802 (1974), to initiate a rule making to revise the schedules of fees for production and utilization facilities and materials licenses presently set forth in 10 C.F.R. Part 170 (1974).

This petition is based on the decisions of the Supreme Court on March 4, 1974, in National Cable Television Ass'n, Inc. v. United States, 94 S. Ct. 1146, and Federal Power Commission v. New England Power Co., 94 S. Ct. 1151. In those cases, the Court interpreted the Independent Offices Appropriations Act of 1952, 31 U.S.C. Sec 483a, to permit an agency to assess fees only for specific services to specific individuals or companies and further held that the amount of any such fee could not be computed solely upon the cost to the agency. Rather, the Court directed that the portion of that cost attributable to the benefit to the public could not properly be assessed against licensees. In other words, a fee to a licensee may not exceed the "value to the recipient" of whatever services are covered by the fee.

In light of the two Supreme Court decisions, we question whether there is any basis remaining for the Commission's schedule of annual fees to licensees. As we understand it, those fees are based upon a computation of "costs of health and safety inspection and compliance activities." 38 Fed. Reg. 4273 (1973). Accordingly, it appears that the activities upon which the fees are based inure to the benefit of the public, rather than the licensee.

Other fees in the schedule also need to be reexamined. For example, fees for construction permits and operating licenses apparently also reflect costs for inspection and compliance activities. If so, the licensing fees should be reduced.

Acknowledged

5-21-74 *ers*



P C Bender
Docket No PRM-170-1
Page #2

In its comments dated April 3, 1973 upon the proposed revision of fees last year, the Institute requested that the Commission publish or make available the cost data justifying the proposed increased fees. We believe that public disclosure of the Commission's cost analysis is even more important now, in view of the Supreme Court decisions. In promulgating a new rule making to revise the existing schedules of fees, the Commission should set forth its cost calculations and either publish or otherwise make available the cost data underlying those calculations.

Respectfully submitted,

EDISON ELECTRIC INSTITUTE

By 
W Donham Crawford, President

OFFICE OF THE SECRETARY

'74 MAY 17 AM 10:56

RECEIVED

BERLIN, ROISMAN AND KESSLER
1712 N STREET, NORTHWEST
WASHINGTON, D. C. 20036

DOCKET NUMBER
PETITION RULE PRM-170-1

AREA CODE 202
PHONE 833-9070

EDWARD BERLIN
ANTHONY Z. ROISMAN
GLADYS KESSLER
DAVID R. CASHDAN
KARIN P. SHELDON
STUART M. BLUESTONE
CLIFTON E. CURTIS



May 16, 1974

COMMENTS OF
NEW ENGLAND COALITION ON NUCLEAR POLLUTION
ON PRM-170-1

The Petitioner argues that under 10 CFR Part 170 no fees may be charged to an Applicant unless the Applicant receives a benefit and then only to the extent of the benefit received. The argument is sound as far as it goes but neglects consideration of any rational basis for measuring the value of the benefit conferred.

If it was illegal to set fees based upon the cost to the Staff to process applications the basis of the illegality must be that the cost of the Staff review has no direct relationship to the amount of the benefit. It follows that benefit must be measured in some other manner not suggested by the Petitioner.

Acknowledged

5-20-74 *ers*

Petitioner badly misreads the Supreme Court decisions upon which it relies. First, those cases begin with the premise, articulated in the legislative history (H. Rep. No. 384, 82d Cong., 1st Sess., pp. 2-3) that the purpose of the statute was to collect more money for the government not to assist an industry by lightening the economic costs of doing business. Second, the distinction between a tax (prohibited) and a fee (allowed) is that the latter represents a charge for the rendering of services by an agency where such services have been voluntarily requested by the Applicant. When those principles are applied to the AEC fees, it is clear that the fees under 10 CFR Part 170 are legal being fully justified as equal to or less than the value of the benefit conferred on the Applicant.

The benefit which is to be measured is the benefit obtained by the Applicant from the action of the Commission or, as the Supreme Court stated it in National Cable Television Association v. U. S., 420 U.S.L.W. 4306 (No. 72-948 decided March 4, 1974) quoting from 31 U.S.C. Section 483a - "value to the recipient". Where the action is approval of a construction permit, operating license or amendment thereto, it represents a "voluntary act" of the Applicant for which a fee should be imposed. National

Cable Television Association v. U. S., supra. The benefit is easily measurable. For construction permits and operating licenses, without which Congress has declared^{*/} no plant may be built or operated the benefit is spelled out in the appropriate section of the FES. It far exceeds the cost of the Staff review and because that cost sets the upper limit, fees that are fully reimbursable are legally required under 31 U.S.C. Section 483a. Amendments are of some economic value to applicants but need to be measured on a case-by-case basis. Some are required to meet regulations and without them the plant can not operate. Their benefit is clearly higher than review costs. Other amendments, like 8x8 fuel, give Applicants some economic benefit but are not so easily quantified. To alleviate the problem of quantifying

^{*/} Unlike cable TV or conventional power generation and gas shipment, the conduct of nuclear activities has been regarded as requiring special controls. Private participation in such activities was prohibited until 1954 and then authorized only under special controls. In addition special benefits, in the form of subsidies & safety research have been given to encourage private enterprise. In this context the regulatory activities of the AEC are principally the sine qua non for any private entity to enter the nuclear field. The public interest of protection from radiation would be even better served, i.e., risks would be reduced, if no licenses were issued. To the extent the public benefits from nuclear reactors it bears the cost of any fees imposed by the rates it pays. Thus fees charged to the Applicant are the best way to ensure spreading the cost among beneficiaries. Even where the Applicant is not a utility the fee eventually is passed to rate payers because it enters into the cost of equipment or services purchased by the utility.

the economic benefit of amendments, Applicants should be required to include in the proposed amendment a detailed statement of the economic (as opposed to regulatory) bases for the proposed amendment. From this, perhaps with additional information supplied on request, a fee which does not exceed the benefit conferred or the Staff cost, whichever is lower, can be computed.

Where annual fees are charged the problem is more complex. Providing continuing supervision of facilities, benefits Applicants by increasing reliability and reducing the possibility of accidents which can require costly repairs, long outages and loss of public confidence in the nuclear technology. We have no ready formula for measuring that benefit but suggest the following factors:

- 1) Cost to Applicants of providing similar supervision from outside the AEC.
- 2) Cost to Applicants of loss of nuclear generating capacity and a comparison of reliability before and after some identifiable increase in supervision by the AEC.
- 3) Cost to Applicants of accidents which could have occurred but for the AEC supervision. For instance, AEC supervision resulted in detection and removal of thin-walled valves, rerouting of steam and high pressure lines outside of containment, improved

ECSS criteria, etc. All contributed to "defense indepth" which ultimately saves money.

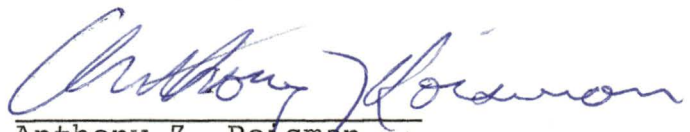
To responsibly apply the legal requirements of 31 U.S.C. Section 483a, the AEC needs the help of high level economists. Public Interest Economics Center in Washington, D. C. is a non-profit tax exempt organization which assists, inter alia, government agencies in obtaining the highest quality economic assistance from throughout the country. The Commission should contact them for help in locating and securing the services of economic consultants to thoroughly analyze the issues involved in application of 31 U.S.C. Section 483a.

One final point relates to the form of the Petition. It in no way complies with the requirements of Section 2.802. In addition it is devoid of any information from which the Commission could develop a rule to meet the objective of the Petition. No attempt is made to provide support for the particular action requested - lowering the fees. The statute does not contemplate lower fees to help small business. The Supreme Court specifically rejected the principle that the fees could be used to meet other social objectives. National Cable Television Association, supra. Nor does Petitioner provide any data to substantiate its claim

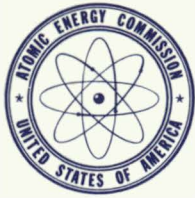
that small businesses are being or will be hurt by the current fee schedules. While the Commission is obviously reluctant to reject petitions merely because they are inartfully prepared or submitted by laypersons, nonetheless certain minimum requirements should have to be met before a petition is accepted for filing. The principles enunciated in Section 2.101 are equally applicable to petitions. Because of the obvious infirmities of the petition, we believe that any formal proposed regulation should be preceded by a notice of proposed rulemaking setting forth the relevant considerations in developing a rule and soliciting suggested proposed rules.

We appreciate the opportunity to comment on the petition.

Respectfully submitted,


Anthony Z. Roisman
Counsel for New England Coalition
on Nuclear Pollution

May 16, 1974



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

PRM-170-1

MAY 8 1974

F. W. Karas, Chief, Public Proceedings Staff, SECY

ATOMIC INDUSTRIAL FORUM, INC. -- PRM-170-1

Enclosed are the Public Document Room file and the file for your office covering petition for rule making 170-1, Atomic Industrial Forum, Inc.

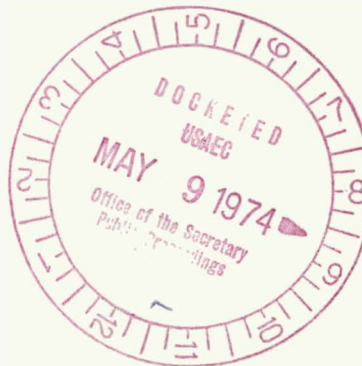
A handwritten signature in blue ink, appearing to read "J. M. Felton", is positioned above the typed name.

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation

Enclosures:

1. PRM-170-1 Folder for PDR
2. PRM-170-1 Folder for SECY

cc: J. M. Becker, OGC



PRM-170-1

MAY 8 1974

W. O. Miller, Business Management Branch, DRA

ATOMIC INDUSTRIAL FORUM, INC. -- PRM-170-1

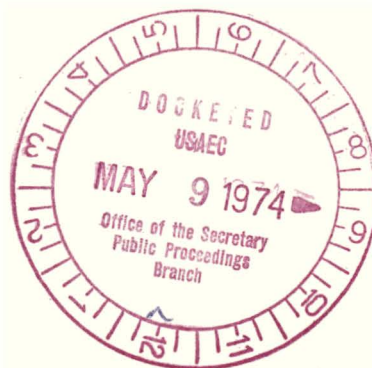
Enclosed for your further action is the docket file on the petition for rule making filed by the Atomic Industrial Forum, Inc. We have provided the Records Section and the Public Document Room with copies of the docket files on this petition.

(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration

Enclosure:
PRM-170-1 File Folder

cc: J. M. Becker, OGC



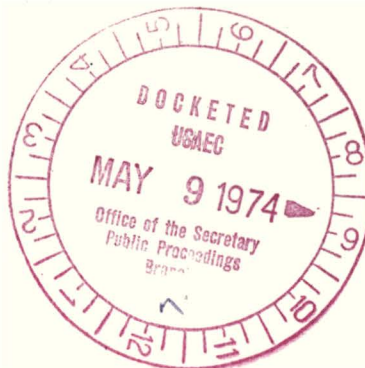
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F. W. Karas

OFFICE	DRA	DRA				
SURNAME	GLHutton:drh	JMFelton				
DATE	5/8/74	5/ /74				

PRM-170-1

MAY 8 1974

Mr. William R. Gould
Atomic Industrial Forum, Inc.
475 Park Avenue South
New York, New York 10016



Dear Mr. Gould:

This is in response to your letter of April 9, 1974, in which you request that the Commission amend its regulation 10 CFR Part 170 to allocate a portion of the costs of the Commission's licensing program to the public in accordance with the principles set out in the recent Supreme Court decision National Cable Television Assn., Inc. v. United States et al.

The Commission staff is reviewing the provisions of 10 CFR Part 170 in the light of the referenced Supreme Court decision and a related decision Federal Power Commission v. New England Power Co. et al.

This request is considered a petition for rule making as provided in 10 CFR Part 2.802 of the Commission's regulations. The petition has been docketed to recognize your request for amendment and has been assigned Docket No. PRM-170-1. A notice of the petition and request for comments has been published in the Federal Register (copy enclosed).

As staff review progresses on your petition, it may be necessary to request additional information. Please reference the assigned docket number on any correspondence you may have concerning the petition.

We are also enclosing a recent petition on the same subject filed by Troy B. Conner and Nicholas S. Reynolds on behalf of the Cincinnati Gas & Electric Company, et al. A copy of this petition is also being noticed in the Federal Register.

Distribution:
Central Files Subj.
Hutton Rdr
R&P Br. Rdr
PDR
F. W. Karas
W. O. Miller

Sincerely,

(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation

Enclosures:

1. Federal Register Notice
2. Petition, 5/2/74

OFFICE	2	DRA	DRA		
SURNAME		GLHutton:drh	JMFelton		
DATE		5/8/74	5/1/74		

ATOMIC ENERGY COMMISSION

[Docket No. PRM-170-1]

ATOMIC INDUSTRIAL FORUM, INC.

Filing of Petition for Rulemaking

Notice is hereby given that the Atomic Industrial Forum, Inc., 475 Park Avenue South, New York, New York, by letter dated April 9, 1974, has filed with the Atomic Energy Commission a petition for rulemaking.

The petitioner requests that the Commission amend its regulation 10 CFR Part 170 to allocate a portion of the costs of the Commission's licensing program to the public in accordance with the principles set out in the recent Supreme Court decision *National Cable Television Assn. Inc. v. United States et al* (39 L Ed 2d 370).

The petitioner states that future fee schedule revisions are particularly critical with the advent of standardization policy implementation and that license fees based on full cost recovery could deter or retard optimal participation in standardization by a number of companies for whom very large licensing fees would have severe economic consequences.

The Commission staff is reviewing the

provisions of 10 CFR Part 170 in the light of the referenced Supreme Court decision and a related decision *Federal Power Commission v. New England Power Co. et al* (39 L Ed 2d 383), and the petitioner's request for rulemaking will be considered in the further conduct of that study.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C. A copy of the petition may be obtained by writing the Rules and Proceedings Branch at the below address.

All interested persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Rules and Proceedings Branch, Office of Administration-Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before July 2, 1974.

Dated at Germantown, MD. this 29th day of April, 1974.

For the Atomic Energy Commission.

PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.74-10120 Filed 5-2-74;8:45 am]

APR 25 1974

Paul C. Bender, Secretary of the Commission

FEDERAL REGISTER NOTICE

Enclosed for your signature is the following notice:

ATOMIC ENERGY COMMISSION

[Docket No. PRM-170-1]

ATOMIC INDUSTRIAL FORUM, INC.

Filing of Petition for Rule Making

The Joint Committee on Atomic Energy has been furnished copies of the petition and notice. Accordingly, the Federal Register notice may be dispatched by the Public Proceedings Staff upon signature.

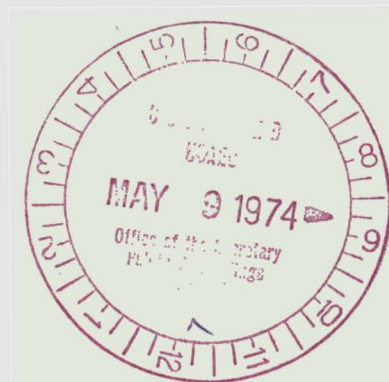
The date for submitting comments on page 2 of the notice will be calculated so that the comment period expires not less than 60 days after publication in the Federal Register.

(Signed) J. M. Felton

J. M. Felton, Chief
Rules and Proceedings Branch
Office of Administration -
Regulation

Enclosure:
Notice of Filing of Petition
for Rule Making

Distribution:
Central Files Subj.
F.W. Karas, SECY
Public Document Room
Hutton Rdr
W. O. Miller, DRA



DRA	DRA	DRA	OGC
GLHutton:bd	JMFelton	DJDonoghue	
4/18/74	4/ /74	4/ /74	4/ /74

ATOMIC ENERGY COMMISSION

[Docket No. PRM-170-1]

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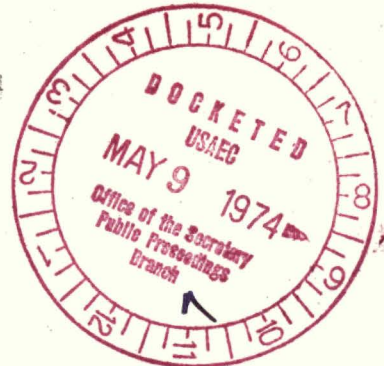
All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Rules and Proceedings Branch, Office of Administration-Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before

Dated at _____ this
day of _____ 1974.

For the Atomic Energy Commission.

Paul C. Bender
Secretary of the Commission

APR 24 1974



Mr. Edward J. Bauser
Executive Director
Joint Committee on Atomic Energy
Congress of the United States

Dear Mr. Bauser:

Enclosed for the information of the Joint Committee on Atomic Energy are copies of a petition for rule making filed with the Commission by the Atomic Industrial Forum, Inc.

The petitioner requests that the Commission amend its regulation 10 CFR Part 170 to allocate a portion of the costs of the Commission's licensing program to the public in accordance with the principles set out in the recent Supreme Court decision National Cable Television Assn., Inc. v. United States et al.

The Commission staff is reviewing the provisions of 10 CFR Part 170 in the light of the referenced Supreme Court decision and a related decision Federal Power Commission v. New England Power Co. et al and the petitioner's request for rule making will be considered in the further conduct of that study.

Enclosed also are copies of a Notice of Filing of Petition for Rule Making which is being transmitted to the Office of the Federal Register.

Sincerely,

Daniel J. Donoghue, Director
Office of Administration -
Regulation

Enclosures:

1. Petition of the AIF
2. Notice of Filing of PRM

Distribution:

Congressional (3)
General Counsel

Central Files Docket File

Hutton Rdr
REG Rdr
R&P Br. Rdr

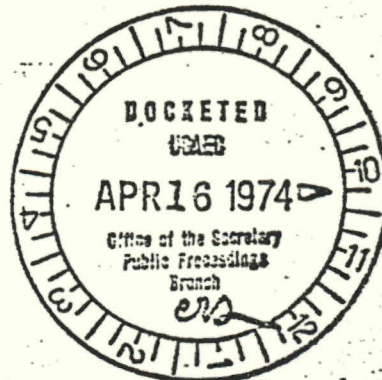
DRA	DRA	DRA				
GLHutton:bd	JMFelton					
4/18/74	4/ /74	4/ /74	4/ /74	4/ /74	4/ /74	

Atomic Industrial Forum, Inc.
475 Park Avenue South
New York, New York 10016
Telephone: (212) 725-8300
Cable: Atomforum Newyork

DOCKET NUMBER
PETITION RULE PRM-

William R. Gould
Chairman

April 9, 1974



The Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545

Attention: Chief, Public Proceedings Branch

Dear Sir:

Last April the Forum submitted comments to the Commission on AEC's revised schedule of fees for facilities and materials licenses (10 CFR Part 170). The Forum's letter objected strongly to the proposed and subsequently adopted fee schedules because, in part, they were "totally out of proportion to the benefits received by individual licensees". The letter also stated, "The Forum staff has reviewed the underlying cost data provided to it by the Commission. This data indicates that the licensing fee schedule was established by allocating the Commission's budget costs among facilities and materials licensees with the objective of full cost recovery...."

I am sure you are aware of the recent Supreme Court decision, National Cable Television Association, Inc. vs. U.S.^{1/}, which supports the Forum's earlier expressed views on fee schedules and, in our view, compels the Commission to alter its full cost recovery philosophy in future revisions of licensing fee schedules. That decision, construing the Independent Appropriations Act of 1952 (31 U.S.C. sec. 483a) and the interpretive OMB Circular A-25, invalidated certain FCC fees charged to the regulated industry on a full cost recovery basis because the fees appeared to exceed the "value to the recipient" as permitted by the Act.

Writing for the Court, Mr. Justice Douglas specifically noted (42 U.S.L.W. at 4308):

...It is not enough to figure the total cost (direct and indirect) to the Commission for operating a CATV unit of supervision and then to contrive a formula that reimburses the Commission for that amount. Certainly some of the costs inured to the benefit of the public, unless the entire regulatory scheme is a failure which we refuse to assume....

^{1/} 42 U.S.L.W. 4306 (No. 72 - 948, decided March 4, 1974)

April 9, 1974

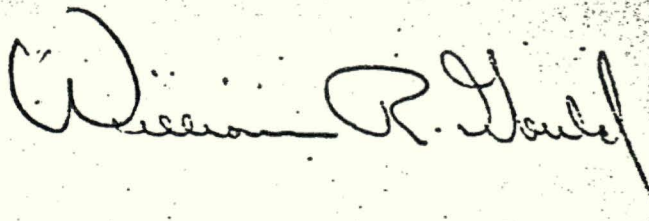
AF

We share the Commission's view that its regulatory program, of which we have on occasion been critical in the past, has undeniably been of substantial benefit to the public. Accordingly, we think it clear that a reassessment of AEC's fee schedule philosophy is now in order, with a view towards accommodation to the authoritative interpretation of the Independent Appropriations Act which the Supreme Court has articulated.

Future fee schedule revisions are particularly critical with the advent of standardization policy implementation since not only are substantial benefits to the public readily anticipated, but these salutary results could easily be vitiated by a continuation of the Commission's present, unduly restrictive licensing fee philosophy. To take an obvious example, full cost recovery could deter or retard optimal participation in standardization by a number of small and moderately sized companies such as many architect/engineers for whom very large licensing fees would have severe economic consequences.

Accordingly, pursuant to 10 CFR Section 2.802, the AIF Board of Directors hereby petitions the Commission to institute a rulemaking to amend 10 CFR Part 170 pertaining to the schedule of fees for facilities and materials licenses to allocate a portion of the costs of the Commission's licensing program to the public, in accordance with the principles set out in the referenced Supreme Court decision.

Sincerely,



WRG/pjh

cc: AEC Chairman Ray

Atomic Industrial Forum, Inc.
475 Park Avenue South
New York, New York 10016
Telephone: (212) 725-8300
Cable: Atomforum Newyork

DOCKET NUMBER
PETITION RULE PRM-170-1

William R. Gould
Chairman

April 9, 1974

The Secretary
U.S. Atomic Energy Commission
Washington, D.C. 20545



Attention: Chief, Public Proceedings Branch

Dear Sir:

Last April the Forum submitted comments to the Commission on AEC's revised schedule of fees for facilities and materials licenses (10 CFR Part 170). The Forum's letter objected strongly to the proposed and subsequently adopted fee schedules because, in part, they were "totally out of proportion to the benefits received by individual licensees". The letter also stated, "The Forum staff has reviewed the underlying cost data provided to it by the Commission. This data indicates that the licensing fee schedule was established by allocating the Commission's budget costs among facilities and materials licensees with the objective of full cost recovery...."

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Acknowledged

4-16-74, ers

April 9, 1974



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Sincerely,

A handwritten signature in dark ink, appearing to read 'William R. Gould'. The signature is fluid and cursive, with a long, sweeping tail on the 'd'.

WRG/pjh

cc: AEC Chairman Ray