

SEP 15 1983

Combustion Engineering, Inc.
C-E Power Systems
ATTN: Mr. A. E. Scherer
Director of Nuclear Licensing
1000 Prospect Hill Road
Windsor, Connecticut 06095

Gentlemen:

Your letter dated August 8, 1983 (LD-83-072), to Mrs. Rodriguez of the Division of Accounting and Finance regarding the \$20,000 fee for review and approval of Topical Report No. CENPD-266 has been forwarded to us for response. It is your position that fees pursuant to 10 CFR 170 are not appropriate for the review of CENPD-266 entitled "ROCS and DIT Computer Codes for Nuclear Design." You state that (a) your Company did not request the review because you filed the report in response to a Nuclear Regulatory Commission (NRC) letter dated December 17, 1979, (b) the ultimate beneficiaries are the NRC and the general public, and (c) the claim for payment is without legal merit. Consequently, you request termination of this fee collection.

The purpose of the NRC's Topical Report Program addressed in NUREG-0390 ("Topical Report Review Status") is to provide a procedure whereby industry organizations such as yours may, upon their own volition or at the request of the NRC staff, submit reports to the NRC on subjects important to the safety of nuclear power plants. The benefits resulting from this program are considered to be a minimization of time and effort required of both industry and the NRC on subjects repeated in numerous licensing actions or applicable to a number of facilities licensed for operation. Consequently, at the inception of the program, the benefits were recognized as being two-fold in nature (i.e., industry and the NRC). Consistent with the policy and procedures of the Topical Report Program, as the NRC identifies the desirability for addressing an "Important to Safety" issue relating to a new methodology, design, code or system applicable to at least two potential nuclear power plant users, the NRC may request the cognizant industry organization(s) to submit a topical report for review and approval, as was done in the December 17, 1979 letter to your Company. This procedure is required as a result of the

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Topical
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Note: This was
before the special project
fee note was added to
§§ 170.21 + 170.31 in 1994
(See criterion 2 of those
Footnotes).

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info /
Language
Otherwise

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NRC's mandated role of assuring that nuclear facilities are constructed and operated in a safe manner without endangering the health and safety of the public. Consequently, the NRC staff is obligated to request certain data from applicants, licensees, vendors and architect-engineers associated with the design, construction and operation of nuclear facilities. Data are requested by letters as well as by regulations in Title 10 of the Code of Federal Regulations. Such requests do not make the required review exempt from the fee requirements of 10 CFR 170.

The benefit to your Company for Topical Report CENPD-266 is not obscure in that your Company has competitive and marketable data that have NRC approval and can be used repetitively by nuclear power plants with merely a reference in lieu of added costs of reproduction to provide the data to each of your clients. The codes, methodology, design and/or system have the advantage of being readily marketable items which your clients purchase and use at their facilities. The NRC is fulfilling its obligation to the public as a regulatory agency; it is not a beneficiary of this process.

The claim for payment is legally valid. Fees for topical reports and other reviews are based on 31 U.S.C. §9701 [formerly 31 U.S.C. 483a, Title V of the Independent Offices Appropriations Act of 1952]. 31 U.S.C. §9701 provides in pertinent part that:

- (a) It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.
- (b) The head of each agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies are subject to policies prescribed by the President and shall be as uniform as practicable. Each charge shall be --
 - (1) fair; and
 - (2) based on --
 - (A) the costs to the Government;
 - (B) the value of the service or thing to the recipient;
 - (C) public policy or interest served; and
 - (D) other relevant facts.

It is clearly the sense of Congress, expressed in 31 U.S.C. §9701, that agency activities performed on behalf of persons the agency serves shall be self-sustaining to the extent possible. Accordingly, the Commission may legally

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impose the fees established in 10 CFR 170 for topical reports. 10 CFR 170 was judicially reviewed and validated in all its provisions. See Mississippi Power and Light v. NRC, 601 F.2d 223 (5th Cir. 1979).

In consideration of the above, it has been determined that an exemption from the fee requirements of 10 CFR 170 for the \$20,000 fee for Topical Report CENPD-266 is not appropriate. Therefore, we request that your Company remit the assessed fee for this report to the Division of Accounting and Finance.

Sincerely,

Original Signed by
Wm. O. Miller

William O. Miller, Chief
License Fee Management Branch
Office of Administration

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(SEE PREVIOUS CONCURRENCE SHEET FOR PREVIOUS CONCURRENCES.)

OELD	LFMB:ADM
RFonner	WOMiller
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