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STN-50-530 Palo Verde Nuclear Station, Unit 3, Arizona Publi 05000530

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RECIP. NAME RECIPIENT AFFILIATION
NRC - No Detailed Affiliation Given

SUBJECT: Forwards, under protest, payment of first quarterly installment of FY88 annual fee, per 10CFR171. Fee exceeds amount authorized by Congress due to inclusion of costs for research rulemaking & is unconstitutional.

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Peter

10-27-87

Arizona Nuclear Power Project

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U.S. Nuclear Regulatory Commission
Office of Resource Management
Division of Accounting and Finance
Washington, D.C. 20555

October 26, 1987
161-00610-EEVB/GS

Reference: Payment Under Protest of First Quarterly Installment of Fiscal Year 1988 Annual Fee, Assessed Pursuant to 10 CFR Part 171 for the Palo Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3 Docket Nos. 50-528, 50-529 and 50-530, License Nos. NPF-41, NPF-51 and NPF-65

Gentlemen:

Subject: Palo Verde Nuclear Generating Station (PVNGS)
Units 1, 2 and 3
Payment Under Protest of 10 CFR.171 Licensing Fees

The Arizona Nuclear Power Project is paying, under protest, to the U.S. Nuclear Regulatory Commission (the "NRC") by electronic transfer of funds, in accordance with the NRC's procedures, the first quarterly installment of the Fiscal Year 1988 annual fee, assessed by the NRC pursuant to 10 CFR Part 171, for Palo Verde Nuclear Generating Station, Unit Nos. 1, 2 and 3. The amount so assessed and paid under protest was $234,000.00 for Palo Verde Unit No. 1 (Docket No. 50-528, License No. NPF-41), $234,000.00 for Palo Verde Unit No. 2 (Docket No. 50-529, License No. NPF-51) and $234,000.00 for Palo Verde Unit No. 3 (Docket No. 50-530, License No. NPF-65).

Because the basis used by the NRC to compute the 10 CFR Part 171 annual fee includes cost budgeted by the NRC for research activities, including costs for research rulemaking, the fee exceeds that which Congress authorized the NRC to impose in the Consolidated Omnibus Budget Reconciliation Act of 1985 and is, therefore, invalid. Moreover, the assessment of a "fee" that not only charges for the benefits provided to the recipients of NRC services but also seeks to recover for generic research and rulemaking activities constitutes the unconstitutional imposition of tax. Therefore, the Arizona Nuclear Power Project is paying these installments under protest and reserves its right to a refund of all amounts which the NRC has illegally assessed.

Very truly yours,

E. E. Van Brunt

E. E. Van Brunt, Jr.
Executive Vice President
Project Director

EEVB/GS/rw

cc: U.S. NRC Executive Director of Operations
A. C. Gehr
E. A. Licitra
J. R. Ball

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