

DUKE POWER COMPANY

POWER BUILDING, BOX 33180, CHARLOTTE, N. C. 28242

W. H. OWEN

EXECUTIVE VICE PRESIDENT

ENGINEERING, CONSTRUCTION & PRODUCTION GROUP

(704) 373-4120

May 24, 1985

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

MAY 24 1985

Re: Bill Number D0258

Gentlemen:

This will acknowledge receipt of the above-captioned bill, dated April 24, 1985, and will serve as Duke Power Company's response, in accordance with 10 CFR Parts 15.31 and 170.51, explaining why Duke believes the debt assessed in Bill Number D0258 is incorrect in fact or in law.

Duke does not dispute the fact that some payment for the NRC's review of Duke's withdrawn application for the Perkins Nuclear Station may be appropriate. However, for the reasons set forth below, Duke is unwilling to pay the bill as it is presently constituted. Briefly, Duke believes that the debt may be incorrect in fact or in law because its underlying bases may have been calculated by using an inappropriate fee schedule for a part or all of the amount, and because the amount billed may include charges for reviews that Duke believes are not appropriate. Moreover, whether or not the amount for which payment is requested was correctly calculated, Duke requires further information regarding the bases for such amount before payment can be made.

(1) The license application for the Perkins Nuclear Station was filed March 29, 1974, and docketed April 24, 1974. The NRC issued its Draft Environmental Statement in May of 1975, its Final Environmental Statement in October of 1975, its Safety Evaluation Report in March of 1977, and the supplement to its Safety Evaluation Report in July of 1977. Following several evidentiary hearing sessions (the majority of which were held in 1976 and 1977), three separate Partial Initial Decisions were issued. (See Duke Power Company (Perkins Nuclear Station, Units 1, 2, and 3), LBP-78-25, 8 NRC 87(1978); LBP-78-34, 8 NRC 470 (1978); LBP-80-9, 11 NRC 310 (1980).) No construction permit was ever issued and, on March 2, 1982, Duke filed a motion to withdraw the application for a construction permit. That motion triggered a round of briefing and resulted in yet another order by the Licensing Board (LBP-82-81, 16 NRC 1128 (1982)) which authorized withdrawal of the application for the construction permit without prejudice. Based on the foregoing

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chronology, it appears that the major part of both the NRC Staff's safety and environmental review and the evidentiary hearings had been completed by the end of 1977.

As this is the case, in Duke's view the fee schedule on which the costs assessed in the bill were calculated may not be appropriate. The NRC's letter of April 24, 1985, which transmitted the bill states that the fee schedule which became effective March 23, 1978, formed the basis for the Perkins bill because it "was in effect at the time the construction permit application was withdrawn". But as discussed above, the major portion of the NRC's review was completed well before that time and it would seem that the appropriate fee schedule to use is the one that was in effect during the NRC review.

(2) Duke also believes that the total amount billed may include charges for reviews that Duke believed were not appropriate at the time they were performed and that Duke continues to believe are not appropriate. For example, in June of 1978 the NRC Staff on its own motion reversed the position it had taken before the Licensing Board less than two months before and moved for a reopening of the record on alternate sites. That motion resulted, over the strong objections of Duke, in reanalyses of alternate sites by both Duke and the NRC Staff, culminating in evidentiary hearings during 1979, and the issuance of LBP-80-9 on February 22, 1980. As this portion of the review associated with the Perkins docket is attributable solely to the actions of the NRC Staff, and was of no benefit either to Duke or to the public, Duke does not believe it should be responsible for costs associated with that effort. At a minimum, if the original environmental review was in error, then Duke should not be charged for the erroneous review or for any excess costs of the supplemental review. Finally, Duke would point out that, with the exception of the alternate site question, the NRC Staff review was complete prior to March of 1978.

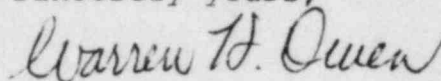
(3) Even assuming, for the sake of argument, that the license fees are proper, Duke cannot be expected to pay them at this time based on the information now available to it. Before Duke could approve any such bill for payment, information on how the amount assessed was developed must be made available. For example, Duke needs to know the formula used to develop the charges, as well as a complete description and breakdown of the charges. Such a description should include, but not be limited to, man-hours, dates, specific work performed, specific items reviewed, nature of the review, the position and/or title of the reviewer, the basis for the charge for the specific reviewer, and expenses. It is also necessary to know how expenditures were made - for example, whether an expenditure is associated with review of a particular item, a site visit, hearings, etc. Such information is simply that required by standard business practice. Nevertheless, it is particularly appropriate in this case, where more than three years have elapsed

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between Duke's withdrawal of the application for a construction permit and tender of the bill by the NRC, and the work for which Duke is being billed was performed eight to ten years ago.

We trust that this letter will serve to extend the due date of the subject fee so that interest will not accrue on any balance due. If this is not the case, please notify us promptly. We will be happy to meet with the Staff of the NRC to discuss these matters so that they may be resolved in a mutually agreeable fashion.

Sincerely yours,

A handwritten signature in cursive script that reads "Warren H. Owen".

Warren H. Owen

AVCjr/dm