

NOV 22 1985

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

Dear Mr. Scherer:

I apologize for the late response regarding your appeal of the Combustion Engineering CENPD-266 review fee.

Based on reviewing previous correspondence, discussion with various members of the staff and our discussion of this matter, I have concluded that there is not adequate justification to refund the fee.

Previous documentation and correspondence with CE discussed at length issues relating to public and industry benefit from the topical report process. Various citations were noted that support the underlying bases for concluding that, even though there is a public benefit derived from the topical report process, the topical report review fee is still justified. There were, however, two additional points raised during our discussion. Namely, the assertion that CE lost revenues as a result of submitting to the topical report process, and that there was pressure by the staff for CE to submit the topical report.

With regard to the first point, the financial impact should have been clear to CE when the topical report was submitted. CE could have refused to submit the topical report if it was in their interest to do so. It is not, however, clear when viewed in the longer term whether the net result is an overall loss or gain in revenues to CE, after having the benefit of a staff approval for the topical report. Without approval of the topical report, it is at least conceivable that utilities may have elected to use other vendors for reload fuel if they viewed the basis for reload applications supported by CE as uncertain. In any event, I do not believe the issue of profit margin to CE should or can be an overriding factor in NRC's decision whether or not to request the topical report.

With regard to the second point, as I indicated during our discussion, I believe there was pressure from the staff on various vendors to provide information via the topical report process for reload applications, because the reload review schedules were very demanding. Having been part of that process during the late 1970s, I have a vivid recollection of the difficulties we were having processing reload applications consistent with licensee schedules. I therefore conclude that the pressure was justified by the need for an orderly and efficient licensing process and accordingly, was in the public interest.

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It is my view that the overall topical report process has substantially improved the licensing process and that the fees established for that purpose are both justified and fair.

Sincerely,

Original signed by
Victor Stello

Victor Stello, Jr.
Deputy Executive Director
for Regional Operations and
Generic Requirements

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As previously stated, topical reports benefit the public and industry. The review and approval of CENPD-266 entitled C-E and its customers to reference an approved document without further presentation of the codes to the NRC. It provided greater assurance that utilities using C-E services could meet their reload schedules. And, it alleviated safety concerns. It has been held that the fact that an agency service to an identifiable recipient also benefits the public does not remove the service from the special benefit class, even though the public benefit may exceed the private benefit. Also, it is not necessary to allocate the cost of rendering a service in proportion to the degree of public or private benefit. The agency may recover its full cost. See National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); Federal Power Commission v. New England Power Company, 415 U.S. 345 (1974); National Cable Television Association, Inc. v. Federal Communications Commission, 554 F.2d 1094 (1976); National Association of Broadcasters v. Federal Communications Commission, 554 F.2d 1118 (1976); Electronic Industries Association v. Federal Communications Commission, 554 F.2d 1109 (1976); and Capital Cities Communication, Inc. v. Federal Communications Commission, 554 F.2d 1135 (1976).

While it may be true that C-E could have made greater profits by dealing with each utility on an individual basis and providing repetitive documentation rather than developing a single report (CENPD-266), the NRC's principal concern is the safety and protection of the public and the execution of these responsibilities in the most efficient and effective method to achieve this objective. This responsibility cannot be influenced by individual profit margin.

Accordingly, in view of the above, we find no justification to refund the fee paid by Combustion Engineering for the review and approval of Topical Report CENPD-266.

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~~District of Columbia Circuit~~
~~Fourth Circuit~~ ~~of Appeals~~

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Dear Mr. Scherer:

On April 4, 1983, the Nuclear Regulatory Commission approved Topical Report CENPD-266, "The ROCS/DIT Computer Codes for Nuclear Design" and subsequently Combustion Engineering, Inc. (C-E) was billed for \$20,000 of the \$25,842 NRC review costs.

In an August 8, 1983 letter, C-E requested termination of the NRC collection procedure for Topical Report CENPD-266 arguing that the company was not the ultimate beneficiary of NRC's analysis of the report and that it was not clear that any benefit was ever conferred specifically on C-E. Based on the agency's cost recovery policy and court decisions affecting the fee assessment, the staff found no basis for waiving the charge and found benefit in the review and approval of CENPD-266. C-E was informed of the determination. Subsequently, C-E appealed this decision and the appeal was denied on the basis that the fee assessment was both fair and equitable. Additional letters followed and C-E paid the fee under protest on December 1, 1983.

In a meeting with NRC staff, C-E representatives again expressed their opinion that the charge for the review of CENPD-266 was inappropriate and unfair and that by submitting a topical report C-E "suffered a net reduction of revenues from those which would have otherwise been obtained in the normal course of business."

C-E has consistently opposed the assessment of fees for the review of topical reports. This opposition began in 1977 when the Commission published a notice of proposed fee schedules which included fees for review of topical reports and special projects. The Commission agreed with C-E's comment that fees do impact vendors and other applicants. Thus, the Commission decided to place a low ceiling on fees for topical reports realizing they do provide significant benefit for the public as well as for the vendor and utility. This decision was continued in the June 20, 1984 rule for the same reason. While it may be true that C-E could have increased revenues by dealing with each utility individually, the procedure was not working effectively; it hampered the licensing process because of the difficulty in obtaining adequate information.

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The NRC has encouraged industry to submit topical reports instead of providing separate program descriptions for each nuclear project. One of the reasons was that some utilities, vendors and architect-engineers were changing programs from one project to another, and thus requiring the staff to rereview completely each and every submittal so that changes and their effects could be assessed. This impeded licensing of individual nuclear projects and increased the cost of completing the review of applications. It also ran counter to the agency's efforts to encourage greater standardization in the nuclear power industry. The NRC has found that topical reports provide an effective procedure whereby the nuclear industry, including vendors, architect-engineers and utilities, may either of their own volition or at the request of the agency, submit reports on specific safety related subjects that affect multiple applications or licenses and have them reviewed independently of an application filed by a utility. This leaves only the plant specific information requiring review.

The NRC is authorized and directed by Title V of the Independent Offices Appropriation Act of 1951, 31 U.S.C. 483a (now found at 31 U.S.C. 9701) to assess fees for services it renders to applicants and licensees.

C-E's principle arguments for opposing fees for Topical Report CENPD-266 seem to be that the company was required by the NRC staff to file the report when it preferred to do otherwise; the ultimate beneficiary of the review services was the general public; and it would have been more profitable for C-E to deal with each utility individually in resolving reload methodology questions and problems.

The staff requested a topical report from C-E as a vehicle to resolve ongoing major reload problems with reactors that C-E was servicing. At the time, other vendors were filing topical reports covering reload methodology. These utilities were dependent upon C-E for reload methodology and the information of record needed by the NRC staff to evaluate the adequacy of the procedure was not available as needed. The information was being submitted on a piecemeal basis with the result that the licensing effort was impeded. It was difficult to correlate individual requests for the utilities and the information they referenced. Sometimes the information referenced was not part of docket file or even available to the staff. This experience caused the staff to request the topical, believing that it would be the most effective and efficient way to obtain the necessary licensing information and arrive at a resolution of a major licensing problem. The overriding reason for requesting the report was the NRC's regulatory obligation to assure that licensed nuclear power plants operate safely, and fuel reload methodology is merely one aspect of that safety responsibility.

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