



March 11, 1985

POLICY ISSUE

SECY-85-89

(Notation Vote)

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: GPU NUCLEAR CORPORATION'S (GPU) REQUEST FOR EXEMPTION FROM THE FEE REQUIREMENTS OF 10 CFR 170 FOR THE THREE MILE ISLAND NUCLEAR POWER PLANT, UNIT NO. 2 (TMI-2)

Purpose: To request Commission review of EDO's proposed exemption of GPU from payment of licensing and inspection fees for TMI-2.

Discussion: By letter dated July 13, 1984 (Enclosure 1), GPU requested an exemption from fees required under the provisions of 10 CFR 170 for TMI-2. GPU gave the following argument to justify its request:

1. Because of the unique circumstances of TMI-2, fees would impose an undue financial burden on the licensee and divert funds needed for a safe and timely cleanup of TMI-2. (GPU projected fee costs for licensing and inspection activities to be about \$1.1 million for CY 1984, and \$1.8 million each subsequent year.)
2. Fees for inspection and application review activities "do not bear a direct relation to the value of the service to the Licensee."
3. Fees prescribed under Part 170 appear to be inconsistent with recent Commission expressions concerning the adequacy of funding and pace of recovery activities for safe and expedient cleanup of TMI-2.

The record shows that GPU estimates of fee assessments for NRC licensing and inspection services are significantly overstated. Total cost recovery for TMI-2 licensing and inspection services for the five-year

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period of March 28, 1979 to July 31, 1984 has been approximately \$700,000. This collection covers only a small part of NRC costs for efforts associated with TMI-2. Experience indicates that agency's costs for licensing and inspection services subject to recovery under Part 170 should not exceed \$200,000 per year.

It is clear that the Commission may recover its full costs for review of applications filed by GPU for TMI-2 and for inspection services. This point was explicitly emphasized in the court decision of Mississippi Power and Light v. U.S. Nuclear Regulatory Commission, 601 F. 2d 223 (5th Cir. 1979).

Although there is no legal objection to NPC's recovery of its costs for services rendered to GPU for TMI-2, Section 170.11(b)(1) of the Commission's regulation authorizes the waiving of fees on an individual decision basis. I have concluded that the fees for TMI-2 should be waived for the following reasons:

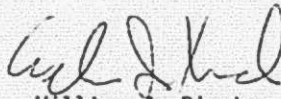
1. TMI-2 is a unique situation and poses problems and considerations unlike any other licensee. The agency's first concern is the safe, expedient cleanup of the unit.
2. The Commission has pressed GPU to step-up its pace of cleanup operations and encouraged other interested parties to financially support the cleanup effort. It now appears that the recovery activities are receiving greater attention, and a decision for the NRC to waive licensing and inspection fees would be consistent with the Commission's expressed interest in this case.

Although the waiving of fees for TMI-2 would make a modest amount of money available to GPU for cleanup of the site (estimated at \$200,000 per year), this

would not appear to be a violation of Section 169^{1/} of the Atomic Energy Act of 1954, as amended, or a violation of Section 10(a) of the NRC Authorization Act for Fiscal Years 1982-83, Public Law 97-415 (96 Stat. 2067; Jan. 4, 1983).^{2/} These statutory restrictions apply only to funds appropriated to NRC.

Recommendation: That the Commission:

1. Approve the exemption of CFR Part 170 fee requirements for TMI-2 to be effective on the date of my letter to GPU.
2. Note that I will inform GPU that its request for an exemption from fees for TMI-2 is approved and a letter will be dispatched to GPU after Commission approval. A draft of the proposed letter is enclosed (Enclosure 2).



William J. Dircks
Executive Director for Operations

Enclosures:

1. GPU ltr dtd 7/13/84
2. Draft ltr to GPU

^{1/} Sec 169. No Subsidy. - No funds of the Commission shall be employed in the construction or operation of facilities licensed under section 103 or 104 except under contract or other arrangement entered into pursuant to section 31.

^{2/} Sec 10(a). No part of the funds authorized to be appropriated under this Act may be used to provide assistance to the General Public Utilities Corporation for purposes of the decontamination, cleanup, repair, or rehabilitation of facilities at Three Mile Island Unit 2.

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, March 26, 1985.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Tuesday, March 19, 1985, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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July 13, 1984

Office of the Executive Director
for Operations
Attn: Mr. W. J. Dircks
Executive Director
US Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Dircks:

Three Mile Island Nuclear Station, Unit 2 (TMI-2)
Operating License No. DPR-73
Docket No. 50-320
Licensing Fees

In accordance with 10 CFR § 170.11(b)(1), GPU Nuclear Corporation requests an exemption from the provisions of 10 CFR Part 170 as they apply to Three Mile Island Unit 2 (TMI-2). Licensee submits that, because of the unique circumstances at TMI-2 leading to increased licensing activity, 10 CFR Part 170 imposes an undue burden on Licensee and diverts funds that are sorely needed for a safe and expeditious cleanup of TMI-2. For that reason, it is both fair to Licensee and consistent with the public interest to grant the exemption.

Based on past licensing activity and assuming the NRC staff expends as few as six man-years on activities chargeable to the TMI-2 Recovery Program, the fees for those activities (i.e., based on the average cost per professional staff hour contained in Section 170.20) would approximate \$400,000 in CY 1984 and as much as \$800,000 per year thereafter. In addition, it is understood that TMI-2 would be liable for a fixed annual fee for routine inspections amounting to \$300,000 plus full-cost reimbursement for non-routine inspections. Thereafter, the

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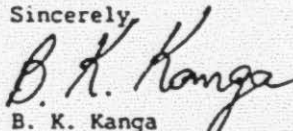
total cost may be as much as \$700,000 in CY 1984 and exceed \$1 million each year thereafter.

Exempting TMI-2 from application of 10 CFR Part 170 is indeed authorized: 10 CFR 170.12 states that "(t)he Commission may, upon application by an interested person...grant such exemptions from the requirements of this part as are authorized by law and are otherwise in the public interest." Title V of the Independent Offices Appropriation Act of 1952 provides that if an agency chooses to charge fees, they must be fair and based inter alia on the value of the service to the recipient and on the public policy or interest served. The inordinate fees that would be charged the TMI-2 Recovery Program do not bear a direct relation to the value of the service to Licensee.

Moreover, in view of recent expressions of concern by the Commission relating to the adequacy of funding and the current pace of TMI-2 recovery activities, imposition of substantially increased administrative fees for the NRC support of the recovery effort appears to be inconsistent with attaining the common objectives of a safe and expeditious cleanup of TMI-2. Exemption from the provisions of 10 CFR Part 170 would make additional funds, which otherwise would be necessarily diverted to fees, available for actual cleanup operations and would facilitate more expeditious accomplishment of cleanup, in a manner which best serves the public interest.

Your prompt consideration of this request will be greatly appreciated.

Sincerely,



B. K. Kanga
Director, TMI-2

BKK/jep

cc: Chairman - NRC, Mr. N. J. Palladino
Commissioner, Mr. J. K. Asselstine
Commissioner, Mr. F. M. Bernthal
Commissioner, Mr. T. M. Roberts
Commissioner, Mr. L. W. Zech, Jr.
Director - Office of Nuclear Reactor Regulation, Mr. H. R. Denton
Program Director - TMI Program Office, Dr. B. J. Snyder
Acting Deputy Program Director - TMI Program Office, Mr. P. J. Grant

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bcc: President - GPU Nuclear Corporation, P. R. Clark
Executive Vice President - GPU Nuclear Corporation, E. E. Kintner
Deputy Director, TMI-2, J. J. Barton
Director, Licensing and Nuclear Safety, R. E. Rogan
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Manager, Program Controls, L. G. Santee
F. Standerfer