STATEMENT

OF

ERIC J. FYGI

ACTING GENERAL COUNSEL

U.S. DEPARTMENT OF ENERGY

BEFORE THE

COMMITTEE ON ENERGY

AND NATURAL RESOURCES

UNITED STATES SENATE

MAY 24, 2001

Thank you, Mr. Chairman and members of the Committee, for the opportunity to discuss renewal of the Price-Anderson Act (Act) to provide liability coverage for Department of Energy nuclear activities. This is an opportune time to discuss renewal of this important indemnification scheme in light of the recommendation in the Report of the National Energy Policy Development Group that the Price-Anderson Act be extended. The Administration welcomes your attention to this important issue for the future of nuclear energy in the United States and looks forward to working with you to finish work on it this year.

In response to a question from the Chairman of this Committee during confirmation hearings, Secretary Spencer Abraham stated that he agreed with the recommendations in the *Department of Energy Report to Congress on the Price-Anderson Act* (DOE Price-Anderson Report) (1999) that supported continued coverage of DOE nuclear activities under the Price-Anderson Act without any substantial changes. Secretary Abraham stated that indemnification of DOE contractors under the Price-Anderson Act was essential to the achievement of DOE's statutory missions in the areas of national security, energy policy, science and technology, and environmental management. Further, he indicated that he looked forward to working closely with members of both parties and with individuals from inside and outside government to secure the early renewal of the Price-Anderson Act.

Based upon over 40 years of experience, DOE believes that renewal of the Price-Anderson Act is in the best interests of the government, its covered contractors, subcontractors and suppliers, and the public. In 1957, Congress enacted the Price-Anderson Act as an amendment to the Atomic Energy Act of 1954 to encourage the development of the nuclear industry and to ensure prompt and equitable compensation in the event of a nuclear incident. Specifically, the Price-

Anderson Act established a system of financial protection for persons who may be injured by a nuclear incident by cutting through tort defenses of the intermediary licensees and contractors. With respect to activities conducted for DOE, the Price-Anderson Act achieves these objectives by requiring DOE to include an indemnification in each contract that involves the risk of a nuclear incident. This DOE indemnification: (1) provides omnibus coverage of all persons who might be legally liable; (2) indemnifies fully all legal liability up to the statutory limit on such liability (currently $9.43 billion for a nuclear incident in the United States); (3) covers all DOE contractual activity that might result in a nuclear incident in the United States; (4) is not subject to the usual threshold limitation on the availability of appropriated funds; and (5) is mandatory and exclusive. Through these means the public is afforded a streamlined means of compensation for any injury from a nuclear incident.

DOE is convinced that the indemnification provisions applicable to its activities should be continued without any substantial change because it is essential to DOE's ability to fulfill its statutory missions involving defense, national security and other nuclear activities; it provides proper protection for members of the public that might be affected by DOE's nuclear activities; it is cost-effective; and there are no satisfactory alternatives.

Elimination of the DOE indemnification would have a serious effect on the ability of DOE to perform its missions. Without indemnification, DOE believes that it would be difficult to obtain responsible, competent contractors, subcontractors, suppliers and other entities to carry out work involving nuclear materials. Other means of indemnification have practical and legal limitations, do not provide automatic protection and depend on cumbersome contractual arrangements.

Private insurance generally would not be available for many DOE activities. Even when available, it would be extremely expensive, limited, and restricted. Because the DOE indemnification operates as a form of self-insurance for claims resulting from nuclear incidents, DOE incurs no out-of-pocket costs for insurance. Moreover, thus far, it has not paid out significant amounts for claims pursuant to its indemnification authority.

With respect to the three bills pending before the Senate to renew the Price-Anderson Act, their provisions are very similar – they would continue to provide indemnification for DOE nuclear activities without substantial change. We have reviewed the following bills in light of the five recommendations in the 1999 DOE Price-Anderson Report:

- S. 388, National Energy Security Act of 2001, introduced by Chairman Murkowski
- S. 597, Comprehensive and Balanced Energy Policy Act of 2001, introduced by Senator Bingaman; and
- S. 472, Nuclear Energy Electricity Assurance Act of 2001, introduced by Senator Domenici.

DOE Price-Anderson Report Recommendation 1. The DOE indemnification should be continued without any substantial change.

The bills are consistent with DOE's primary recommendation that the Act be renewed without substantial change. They extend DOE's responsibility to indemnify its contractors as well as extend the NRC's authority to indemnify its licensees. Under the current Act, the authority of DOE and the NRC to indemnify is scheduled to expire on August 1, 2002.

DOE Price-Anderson Report Recommendation 2. The amount of the DOE indemnification should not be decreased.

The bills establish a flat amount of $10 billion for DOE indemnification and requires DOE to adjust this amount for inflation every five years. These provisions are consistent with the recommendation of the report not to decrease the DOE amount of indemnification below the current amount of $9.43 billion. In the current Act, DOE's indemnity amount is pegged to the NRC aggregate amount and to the NRC inflation adjustment of that amount. DOE believes the continuation of an amount at least this high is essential to assure the public that prompt and equitable compensation will be available in the event of a nuclear incident and its consequences, as well as a precautionary evacuation. Further, the bills increase the amount of indemnification for nuclear incidents outside of the United States from $100 million to $500 million.

DOE Price-Anderson Report Recommendation 3. The DOE indemnification should continue to provide broad and mandatory coverage of activities conducted under contract for DOE.

These bills continue to provide broad and mandatory coverage of contractual activities conducted for DOE. The protection afforded by the DOE indemnification should not be dependent on factors, some of them predictive, such as whether an activity (1) involves the risk of a substantial nuclear incident, (2) takes place under a procurement contract (as opposed to some other contractual relationship that might not be so denominated), or (3) is undertaken by a DOE contractor pursuant to a license from the Nuclear Regulatory Commission (NRC). Limitations based on such factors would likely render uncertainty as to public protection and be

cumbersome to administer without achieving any significant cost savings.

DOE Price-Anderson Report Recommendation 4. DOE should continue to have authority to impose civil penalties for violations of nuclear safety requirements by for-profit contractors, subcontractors and suppliers.

These bills continue DOE's authority to impose civil penalties for violations of nuclear safety requirements. They modify, however, DOE's conclusion that nonprofit entities should remain exempt from civil penalties. Instead, the bills make DOE nonprofit contractors subject to civil penalties capped by the amount of fee paid under each contract.

Concerning the exemption of nonprofit entities from civil penalties in these bills, we recently testified on similar provisions found in H.R. 723. On March 22, 2001, we testified before the Subcommittee on Energy, Committee on Science, U.S. House of Representatives. In this testimony, we stated that the Department could generally support in concept the limitation of the nonprofit exemption up to the amount of the contractor's or subcontractor's fee paid. I pointed out several concerns raised by the provisions of H.R. 723, including the definition of a contractor's fee, the time period over which the fee is paid, the effective date of application to contracts entered into after the date of enactment, and the repeal of the automatic remission. Should this concept be pursued these concerns should be addressed carefully in crafting a legislative implementation of them.

I also noted in my testimony that in the information security area, Congress decided, following

issuance of the DOE Price-Anderson Report, to impose potential liability for civil penalties on nonprofit organizations in a manner similar to that proposed by H.R. 723. For violations of regulations relating to the safeguarding and security of Restricted Data, the National Defense Authorization Act for Fiscal Year 2000 made nonprofit contractors, subcontractors, and suppliers subject to civil penalties not to exceed the total amount of fees paid by the DOE to each such entity in a fiscal year. I stated that a similar limitation of the exemption, up to the amount of the contractor's or subcontractor's fee paid, also would be a feasible approach for violations of DOE's nuclear safety regulations. The limitations in this legislation, however, should be structured to yield uniform standards for decision.

While the Senate bills differ in certain ways from each other on the nonprofit exemption issue, the concerns I raised in my testimony before the House may also be relevant to their companion provisions in the Senate bills.

Recommendation 5. The Convention on Supplementary Compensation for Nuclear Damage should be ratified and conforming amendments to the Price-Anderson Act should be adopted.

DOE has examined the potential effects on the Price-Anderson Act of the Convention on Supplementary Compensation for Nuclear Damage and has concluded ratification of the convention would not necessitate any substantive changes in the Price-Anderson Act. Nonetheless were this convention to be submitted and ratified by the Senate, it is conceivable that some technical and conforming changes to the Price-Anderson Act might be desirable, such as provisions to make clear the geographic jurisdictional bounds of each legal regime.

This concludes my prepared statement. I will be pleased to respond to any questions the Committee may have.