FDCH TESTIMONY
Sept. 6, 2001

Nuclear Liability Issues (Price-Anderson Act)

CQ ABSTRACT SCHEDULED WITNESSES TESTIMONY

Committee Holding Hearing:

House Energy and Commerce Committee - Subcommittee on Energy and Air Quality

CQ Abstract:

Energy and Air Quality Subcommittee (Chairman Barton, R-Texas) of House Energy and Commerce Committee held a hearing on the reauthorization of the Price-Anderson Act, which caps liabilities for the **nuclear≥ ≤power≥** industry and provides federal compensation to the public in case of a nuclear disaster at a private or public nuclear facility.

Scheduled Witnesses:

:
Francis Blake - deputy secretary of Energy

Testimony:

Rep. Joe Barton, chairman of the House Energy and Air Quality Subcommittee

September 6, 2001

Prepared Statement of Representative Joe Barton

Reauthorization of the Price-Anderson Act

Subcommittee on Energy and Air Quality

Today's hearing will focus on part of the Price-Anderson Act, which is due for reauthorization during this Congress. In a previous hearing, we discussed coverage for nuclear reactors with a representative of the Department of Energy. Today, we will hear from the Department concerning indemnification of DOE contractors.

Later this fall, this Subcommittee will mark-up legislation reauthorizing the Price-Anderson Act. I look forward to working with all Members, including Congressman Dingell and Congressman Boucher, on a bipartisan bill.

Operators of future nuclear reactors need to be granted the same protections and given the same responsibilities that Price- Anderson gives the current reactors. We should determine whether the Act is well suited for a future of smaller, modular reactors. We should determine whether the schedule of payouts of retroactive premiums is still proper, even though it has not been indexed for inflation. We should also consider whether the civil penalties amendments added to the Act in 1988 are sufficiently influencing the behavior of DOE contractors.

Earlier this year, the full Energy & Commerce Committee reported H.R.723 in a bipartisan vote. This legislation brings non-profit contractors under the civil penalties umbrella. All contractors should be liable for civil penalties under the Act, and H.R.723 does that.

I would like to welcome Deputy Secretary Blake to the Subcommittee. Thank you for coming. I appreciate your flexibility and that of the Department as we have rescheduled this hearing several times. I look forward to hearing the Department's perspective on the Act as it pertains to DOE contractors.

I greatly appreciate the leadership of the President and the Department of Energy on Price-Anderson reauthorization. Passing legislation will do more than send a signal to those concerning ≤**nuclear**≥ ≤**energy**≥ investments. It will also keep Americans protected in the unlikely event of nuclear accidents and ensure that cleanups continue uninterrupted at DOE facilities.

Francis Blake, deputy secretary, U.S. Department of Energy

September 6, 2001

Statement of Representative Francis Blake Deputy Secretary U.S. Department of Energy

Before The

Committee on Energy and Commerce Subcommittee on Energy and Air Quality

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 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.

In the 1999 DOE Price-Anderson Report, DOE recommended that the Act continue to provide indemnification for DOE nuclear activities without substantial change. DOE made five recommendations:

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

DOE primarily recommended that the Act be renewed without substantial change. The Act should 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.

DOE recommended in its report that this Act should not 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. DOE also recommended that the amount of indemnification for nuclear incidents outside of the United States be increased 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.

DOE recommended that the Act 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.

DOE recommended that the Act continue DOE's authority to impose civil penalties for violations of nuclear safety requirements and that nonprofit entities should remain exempt from civil penalties.

During the debates preceding the1988 Amendments, there was considerable discussion concerning proposals to make DOE contractors more accountable for their actions by not indemnifying a contractor to the extent a nuclear incident resulted from its gross negligence or willful misconduct. These proposals raised serious questions concerning their potential effect on DOE's ability to secure contractors to assist in the performance of its missions and on the assurance of prompt and equitable compensation in the event of a nuclear incident. The 1988 Amendments did not include any of these proposed changes in the DOE indemnification.

In this renewal effort, DOE does not support the inclusion of any provisions to withhold indemnification from DOE contractors based on gross negligence or willful misconduct. Such provisions would not provide additional compensation to victims. Instead, they would jeopardize the availability of competent contractors to operate our facilities and would, in fact, discourage contractors from commencing or continuing their work for DOE. I do not think that protracted litigation between DOE and its contractors is the best way to ensure accountability and the prevention of nuclear incidents in the first place. I am committed to a strong enforcement effort to ensure that our contractors do work in a safe manner. It is far preferable to prevent nuclear incidents from happening rather than to litigate over fault after the fact, including differing interpretations of the terms willful misconduct and gross negligence. The threat of government-instituted lawsuits would force contractors into the difficult position of providing services in the national interests only at a risk of significant financial liability to themselves.

As an alternative to such provision in 1988, Congress granted DOE authority to impose civil penalties on its indemnified contractors for violations of nuclear safety requirements. DOE's experience since the enactment of the 1988 Amendments has confirmed the Congressional judgment that civil penalty authority is a preferable alternative to possible changes in the DOE indemnification. The authority to impose civil penalties has proven to be a valuable tool for increasing the emphasis on nuclear safety in connection with DOE activities that involve the risk of a nuclear incident. This authority has served as a catalyst both for identifying appropriate nuclear safety requirements and for enhancing contractors' responsibility and accountability for complying with these requirements.

Concerning the exemption of nonprofit entities from civil penalties, 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. Should this concept be pursued there are a number of concerns that should be addressed in crafting the legislative implementation.

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. 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. 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.

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.

Rep. Billy Tauzin, R-La.

September 6, 2001

Prepared Statement of Representative Billy Tauzin

Reauthorization of the Price-Anderson Act

Subcommittee on Energy and Air Quality

Mr. Chairman, thank you for holding today's hearing. This is the second hearing held by this

Subcommittee to help us prepare to reauthorize the Price-Anderson Act. At the first hearing this past June, we learned how Price Anderson has encouraged the development of the nuclear industry, while protecting the public by assuring that funds are available to compensate victims in the event of a nuclear accident.

At our June hearing, the Energy Contractors Price-Anderson Group told us that, and I quote "there would be strong reluctance to do nuclear business with the Department if authority to enter into Price-Anderson indemnity agreements were discontinued." Thus, if Congress fails to reauthorize Price-Anderson, we risk losing some of the best contractors that DOE relies on. And this would have a direct impact on major DOE projects.

In fact, the last time this Act was due to expire, in August of 1987, Congress made a big mistake and allowed Price Anderson authorities to lapse for an entire year without reauthorization. During that one-year period at least one major contractor -- The General Electric Company -- refused to accept a contract on a major DOE project because the Department could not offer full Price Anderson coverage.

I do not want Congress to make that mistake again. Price-Anderson clearly works, and it needs to be reauthorized soon -- and well before its August 2002 expiration -- without significant changes.

I would also like to point out that I am particularly pleased that the AFL-CIO has come out in strong support of Price Anderson reauthorization. Also, the Energy Communities Alliance - a group which represents local governments around DOE sites -- has come out in strong support of reauthorization without substantial changes to the law. It seems that just about everyone thinks Price Anderson is working, and should be reauthorized.

Mr. Chairman, I look forward to today's testimony from the Department of Energy, and I look forward to working with you on Price Anderson reauthorization. Thank you.