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August 22, 2001

The Honorable John D. Dingell, Ranking Member
Committee on Energy and Commerce
United State House of Representatives
Washington, D.C. 20515

Dear Congressman Dingell:

I am responding to your letter of August 3, 2001, concerning the potential reauthorization of the Price-Anderson Act. Our responses to your specific questions are enclosed.

If you have any additional questions, please do not hesitate to let me know.

Sincerely,

IRA

Richard A. Meserve

Enclosure: As stated

cc: The Honorable W.J. "Billy" Tauzin
The Honorable Joe Barton
The Honorable Rick Boucher

LL/B (10)

QUESTION 1: With respect to the contents of Mr. Rathbun's July 26, 2001, letter to Senator Bingaman:

(a) Do the policy and legislative recommendations contained therein represent a formal Commission proposal, or technical assistance provided by Commission staff?

ANSWER:

The legislative language that was included in the response letter to Senator Bingaman was intended to provide drafting assistance to the Congress as to how it might amend the Atomic Energy Act (AEA) if Congress were to decide that multiple modular reactors at a single site should be treated as a single facility for Price-Anderson purposes. Questions previously submitted to the NRC from Senator Murkowski on the same subject specifically requested such a proposal and, therefore, the same response was provided to Senator Bingaman. If Congress were to make the decision to treat multiple modular reactors at a single site as a single facility under the Price-Anderson Act, NRC's draft legislative language provides some adjustment of the burden that the existing scheme would impose for multiple modular units at a single site, without interfering with existing indemnification amounts or obligations.

QUESTION 1: (Continued)

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(b) If the letter's recommendations represent a Commission proposal, please explain the process by which they were developed.

ANSWER:

A draft answer was prepared by the Office of the General Counsel and was circulated to the Commission for review and approval for submission in response to Senator Murkowski's request.

QUESTION 2: The July 26, 2001, letter includes a number of suggestions as to topics

Congress should consider regarding modular reactors and reauthorization of the Price-Anderson Act. In order to assist Congress in its deliberations, it would be helpful to know the Commission's position on topics raised in the letter.

(a) Should Congress amend the Price-Anderson Act to treat multiple modular reactor units at a single site as a single facility for Price-Anderson purposes?

ANSWER:

As Congress has made clear, the Price-Anderson Act "had the dual purpose of protect[ing] the public and . . . encourag[ing] the development of the atomic energy industry." Duke Power Co. v. Carolina Environmental Study Group, Inc. et al., 438 U.S. 59, 64 (1978); see 42 U.S.C. 2012(i). Under the Energy Reorganization Act of 1974, only the first purpose, protecting public health and safety, falls under the mission assigned to the Nuclear Regulatory Commission. The responsibility for encouraging the development of the atomic energy industry was assigned to the Department of Energy (originally, the Energy Research and Development Administration). Because the answer to the question involves weighing both purposes, the Commission has no position on whether Congress should amend the Price-Anderson Act to provide special treatment for multiple modular reactor units at a single site. The Commission believes that this involves a fundamental national energy policy question inherently in the domain of Congress.

(b) Your letter suggests Congress "might consider the need to trigger the maximum insurance and retrospective assessment provisions against the impact and equity of such requirements on multiple modular units and on existing plants."

(i) Please identify and explain the "impact and equity requirements" to which the letter refers.

ANSWER:

A modification of the AEA to treat multiple modular units at a single site as a single facility for Price-Anderson purposes could have a significant impact on the existing indemnification scheme. Under the existing indemnification scheme each unit at a multiple unit site is treated as a separate facility for purposes of assessing liability coverage. Depending on how thresholds for Price-Anderson coverage are modified, the proposal could have the result of reducing the total number of facilities and accordingly the total funds otherwise available to meet claims arising from a nuclear incident. In its draft provision, the Commission chose the 950 MWe threshold at which the modular unit facility would be required to pay a second retrospective premium assessment (i.e., it would be treated for Price-Anderson purposes as two "facilities") in part because 950 MWe is the median power level for the existing reactor fleet, and in part to avoid reducing the total funds available today to meet claims arising from a nuclear incident. (There is an existing dual unit plant with a 970 MWe total rated capacity.)

On the other hand, continuation of the existing scheme might be seen by industry as resulting in the potential imposition of such substantial costs on a site with multiple modular units in the

event of a nuclear incident as to reduce commercial interest in possible construction of multiple modular units. For example, in the event of a nuclear incident, a site with 6 small modular units (each unit having a rated capacity of, for instance, 120 MWe) would be assessed 6 separate retrospective premiums. In contrast, a site with one large unit capable of producing more megawatts of electricity than the 6 small modular units combined would be assessed one premium.

The modification of the AEA to treat multiple modular units at a single site as a single facility would also affect the allocation of the burdens arising from the Price-Anderson Act among various licensees. The modification would serve to enable licensees at a future site with multiple modular units to bear liability as if the site had only one unit if the total rated capacity were below 950 MWe. However, as under the existing scheme, licensees at existing sites with multiple units would continue to bear liability for each unit. The question of the equity of such a statutory modification on multiple modular units and on existing plants, is a matter that is in Congress' (rather than NRC's) purview.

(b)(ii) What is the Commission's recommendation on how Congress should weigh these considerations?

ANSWER:

The Commission believes that the various factors above might be pertinent for consideration by the Congress as it evaluates whether to amend the AEA to treat multiple modular units at a single site as a single facility. However, the Commission would not purport to advise the Congress as to how it should weigh such policy matters and balance both purposes of the Price-Anderson Act.

QUESTION 3: Assuming the amendment set forth in the July 26, 2001, letter (to section 170(b)(1) of the Atomic Energy Act) were adopted, how would a single modular reactor be treated for purposes of the financial protection requirements of the Price-Anderson Act?

ANSWER:

Under current provisions and under the NRC's draft provision, a single modular reactor with a rated capacity of 100 MWe or more would be treated as a single facility and assessed a single retrospective premium.