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Before the

NUCLEAR REGULATORY COMMISSION

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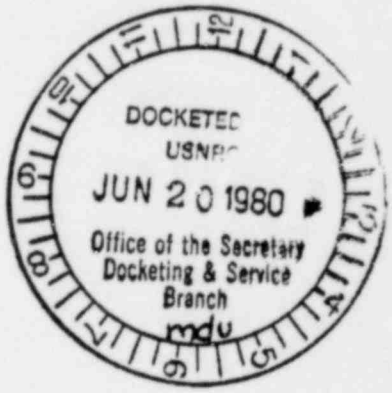

In Re	)	
	)	
Petition of Public Citizen Litigation	)	Comments on Petition
	)	
Group for Amendment of Price-Anderson	)	for Rulemaking
	)	
Regulations	)	Docket No. PR7-140-2

COMMENTS OF THE WASHINGTON LEGAL FOUNDATION

Submitted by
Daniel E. Bensing
Washington Legal Foundation
Assistant to Counsel
1612 K St., N.W.
Washington, D.C. 20006

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WASHINGTON LEGAL FOUNDATION
1612 K STREET, N. W.
SUITE 605
WASHINGTON, D. C. 20006
202-857-0240

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The Washington Legal Foundation (WLF) offers these comments on a petition for rulemaking submitted to the Nuclear Regulatory Commission (NRC) by the Public Citizen Litigation Group to amend 10 CFR Part 140, the regulations implementing the Price Anderson Act, 42 U.S.C. §2210, et seq. The petition requests the amendment of 10 CFR 140.11(a)(4) to increase the amount of liability insurance which persons licensed to operate large nuclear power reactors are required to carry. The amount is currently set at $160 million.

The Price-Anderson Act was enacted in 1957 in response to the need to develop some limit on the potentially enormous liability which a reactor operator could suffer in the event of a serious accident. The Act provided a rational method of allocating liability between the industry (and their insurers) and the government. This law opened the way for the substantial development of the American nuclear power industry which today provides 8% of the electric capacity in the country. Congress has reviewed the Price-Anderson Act numerous times since 1957 without altering the essential foundation of the legislation.

The Price-Anderson Act requires the operators of nuclear power plants to have such financial protection covering liability claims for personal injury and property damage as is set by the Commission. Nuclear reactors with a rated capacity of 100,000 electrical kilowatts are required to maintain $160,000,000 worth of insurance under current regulations. Smaller reactors

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1612 K STREET, N.W.
SUITE 605
WASHINGTON, D.C. 20006
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have lower liability requirements which vary with the amount of rated electrical capacity.

In addition to this primary layer of $160 million, operators of large reactors are required to jointly maintain an additional layer of protection. If damages from a nuclear incident exceed $160 million, each reactor operator will be assessed a prorated share of the damages in excess of the primary layer, but the maximum assessment for each reactor is not to exceed $5 million. With 67 power plants currently in operation, this total secondary layer will provide an additional $335 million of additional protection. The total insurance from primary sources therefore equals $495 million.

The federal government provides an additional $65 million in indemnity for liability bringing the total for all types of insurance to $560 million.* (42 U.S.C. 2210(e)). However, injuries sustained above this level would not necessarily be without recourse as is indicated by the next sentence of section 2210(e):

> Provided, That in the event of a nuclear incident involving damages in excess of that amount ($560 million) of aggregate liability, the Congress will thoroughly review the particular incident and take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude.

*Reactor operators are required to pay a fee to the Federal Government for this additional government guaranteed indemnity. See 10 CFR 140.7.

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SUITE 605
WASHINGTON, D. C. 20006
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The Price-Anderson Act assures that while nuclear reactor operators will maintain the maximum amount of insurance reasonably available, additional liability will be provided, either explicitly or implicitly by the Federal Government.

In addition, Price-Anderson provides an expedited and simplified method for handling emergency claims including a provision for the immediate payment of partial compensation without the need to sign a release. In 1966, the Act was amended to provide that in the event of an "extraordinary nuclear occurrences" (a term defined by NRC regulations) all defenses to liability would be waived and reactor operators would be absolutely liable. This too has simplified operation of the Price-Anderson Act and provided greater assurance of prompt recovery from an incident.

The Washington Legal Foundation is a non-profit, tax exempt corporation organized and existing under the laws of the District of Columbia for the purpose of engaging in litigation and the administrative process in matters affecting the broad public interest. The WLF has more than 75,000 members, contributors and supporters throughout the United States whose interests the Foundation represents.

WLF supports the development of nuclear power as an energy source to provide for America's needs and replace the current uncertain and expensive reliance on foreign oil. The Price-Anderson Act has been crucial in promoting the development of

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nuclear power and should continue to be administered by the NRC to moderate costs imposed on utilities and indirectly the consumer. We believe that the Commission should devote its efforts to encouraging the development of nuclear power as a secure and economical energy source (without of course, sacrificing public safety) rather than placing roadblocks in its path.

The petition of the Public Citizen Litigation Group (hereinafter PCLG) displays a fundamental misunderstanding of the nature of the nuclear industry and of the statutory directive of the Price-Anderson Act. The petition makes much of the language in 42 U.S.C. 2210(b) which directs the NRC to require licensees "to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources..." The PCLG then argues that since reactor operators have been able to procure substantial insurance for their property, it must be feasible for them to purchase less property insurance and increase their liability insurance. The full language of the statute however is considerably less favorable to the PCLG than the sentence fragment they quote in their petition:

> Provided, that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. (emphasis added)

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SUITE 605
WASHINGTON, D. C. 20006
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A careful analysis of the current capacity of the insurance industry to meet the needs of the nuclear operators (at reasonable cost) indicates that the statutory mandate is being complied with under the current NRC regulations.

The insurance companies who insure the nuclear industry operate through pools established to diversify risks. Capacity of the pools has risen from an initial $120 million (evenly split between liability and property coverage) to a current total of $460 million ($160 million for liability and $300 million for property coverage). For a variety of historical and economic reasons, property coverage is more popular with insurance companies than is liability coverage. In addition, about 50% of the pools participation is by foreign insurers, who have traditionally tended to specialize in property coverage and who place less emphasis on third party liability coverage than does America. Most other industrial establishments and activities do not provide any liability insurance. LNG tankers, for instance, are insured for $100,000,000 yet no liability coverage is provided despite estimates of 20,000 fatalities which would result from an explosion in a crowded port. The PCLG petition fails to recognize that the nuclear insurance pools cannot arbitrarily allocate capacity between property and liability coverage as directed by a federal regulatory agency. They can only provide the coverage private underwriters are willing to accept. Under current market conditions, $160 million

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1612 K STREET, N.W.
SUITE 605
WASHINGTON, D.C. 20006
202-857-0240

is the maximum amount of coverage available at reasonable market rates and conditions; no change in NRC regulations is necessary.

This proposal, if adopted, might possibly benefit the victims of a major nuclear accident, but it would without doubt substantially increase electricity costs to consumers. One estimate predicted that a major nuclear incident involving the deaths of at least 1,000 people would occur only once in a million years. While the insurance protection provided may never be needed, the costs of the petition would be direct and immediate. Utilities operating nuclear reactors would be able to include these higher insurance costs in their rate base for purposes of state public utility commission regulation. The Washington Legal Foundation does not believe that it is in the public interest for the NRC to adopt a regulation which will mandate higher electricity prices.

Nor should it be forgotten that in the 23 years that Price-Anderson has been in existence, Congress has never expressed any dissatisfaction with Commission regulations for nuclear liability insurance. The substantial amendments adopted to the Act in 1975 did not question the amount of liability insurance mandated by Commission regulations. The Supreme Court, in Duke Power Company v. Carolina Environmental Study Group, Inc. et al, 438 U.S. 59 (1978) also affirmed the validity and logic of the Price-Anderson Act as a rational limitation on liability. Nowhere in the Congress or in the courts can one find any support for the proposals

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SUITE 605
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set forth in this petition.

The nuclear industry should not be required to assume a major insurance liability when other industries with the same or greater potential for causing human injury and property damage. Hydroelectric powerplants and dams have just as great a potential for disaster as do nuclear reactors, yet no liability insurance is required to protect people living downstream from possible floods. In situations where there exists an extremely slight chance of enormous damage and injury, the Price-Anderson approach is best. Some insurance should be provided against low level threats while the federal government stands ready to step in with massive assistance in the event of a disaster. This preserves a necessary flexibility while minimizing costs to industry and consumers.

Respectfully submitted,

Daniel J. Popeo
General Counsel

Daniel Bensing
Assistant to Counsel

WASHINGTON LEGAL FOUNDATION
1612 K STREET, N. W.
SUITE 605
WASHINGTON, D. C. 20006
202-857-0240