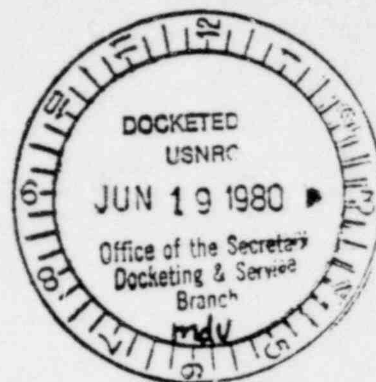
THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK
42 WEST 44TH STREET
NEW YORK 10036

COMMITTEE ON NUCLEAR TECHNOLOGY AND LAW



DOCKET NUMBER
PETITION RULE PRM -140-2 (4)
(45 FR 26973)

June 18, 1980

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attention: Docketing & Service Branch Docket No. PRM-140-2

Dear Mr. Secretary:

By means of this letter we wish to comment on the petition for rule making (Docket No. PRM-140-2) relating to the Commission's regulations on Financial Protection Requirements and Indemnity Agreements.

The Price-Anderson Act (the "Act") requires that licensees have and maintain financial protection of such type and in such amounts as the Commission may require to cover public liability claims. The Act further provides that the "amount of financial protection required shall be the amount of liability insurance available from private sources," provided that, for large reactors, the amount shall be the "maximum amount available at reasonable cost and on reasonable terms." In determining this maximum amount, the Commission is directed to include liability insurance available under an industry retrospective rating plan.

The regulations implementing the Act require licensees to maintain financial protection in an amount equal to $160 million, in addition to the amount available under the industry

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retrospective rating plan (presently $5 million per reactor for an aggregate of some $350 million). The petitioner argues that the existence of $300 million capacity for property insurance, and the potential capacity for insurance of replacement power costs, indicates that the $160 million prescribed by the Commission is not the "maximum amount available" required by the Act. The petitioner requests that the regulations be amended to increase the amount of financial protection required.

There are two aspects of the petition which, in the Committee's view, cause significant concern. The first involves the misconception inherent in the suggestion that insurance capacity beyond that which is afforded by the nuclear liability insurance pool is "available." The second is the assumption that if it were possible to divert other forms of coverage to the liability risk, it would be in the public interest to do so.

As to the first, it is clear that Congress did not intend that the capacity used for property insurance be included as part of the "amount available" for liability insurance. As early as 1957, the Joint Committee on Atomic Energy showed awareness that insurance would be available for both property and liability risks, but noted that the property insurers were "not concerned" with the financial protection requirements of the Act. See Senate Report No. 296, 85th Cong. 1st Sess., reprinted in [1957] U.S. Code Cong. & Ad. News 1803, 1811. We

agree with the Commission's General Counsel that the subsequent legislative history does not indicate any Congressional dissatisfaction with the Commission's implementation of the Act. On the contrary, the Joint Committee's reference to the amount provided by the nuclear liability insurance pools as the "maximum available from private sources" suggests Congressional approval of the Commission's implementation. See Senate Report No. 94-454, 94th Cong., 1st Sess., reprinted in [1975] U.S. Code Cong. & Ad. News 2251, 2256.

The Congressional differentiation of the types of insurance has a sound basis. To assume that property insurance capacity, for example, is "available" for liability risks establishes a concept of fungibility which is not supportable. The divisions between various lines of insurance are not merely semantic distinctions. The risks assumed, and the resources, experience and underwriting skills required, in writing one class of insurance differ from those of another. The decision of an insurer to write coverage in one area of risk cannot sensibly be taken as an expression of willingness or ability to insure <u>all</u> classes of risk.

At present there is no general mechanism available under our laws to compel any insurer to sell a form of insurance it does not seek to, or to cover a risk it is not capable of handling. The Commission has no power to create one. The

plain and simple fact is that this is the maximum coverage for this risk made "available" by the insurance industry. There is no additional insurance available.

In the instant case, even were a forced diversion of all insurance capacity toward liability coverage permissible, it does not appear workable. Existing nuclear insurance capacity is international in scope. All insurers of nuclear risks in the United States, be these insurers of property or liability risks, depend heavily on the support of foreign insurers to provide, through reinsurance, the resources needed to attain the levels of insurance presently available. If the ability to compel a United States insurer to write a given risk is questionable, it is non-existent vis-a-vis a foreign insurer.

Our second concern is that the suggestion advanced in the petitioner's letter, were it implemented, would have an adverse impact on the public interest. As with any complex technology, generating electricity with nuclear reactors presents a spectrum of risks. There are risks of injury to persons, to the property of the facility operator and others, and to the financial viability of the facility operator in the event of accident which stops the flow of revenues from operations. To provide insurance against only one of these risks, to the exclusion of the others, jeopardizes nuclear power, and may create unexpected new risks.

Third party liability insurance is, of course, of prime importance in protecting the public and is, appropriately, mandated by law. Insurance against damage to the property of the facility owner is voluntary, but serves two vital interests: It is an essential pre-condition to obtaining the external financing without which no nuclear unit can be built. Absent property insurance, the lenders' security in physical plant and equipment is substantially reduced. Property insurance also may well be critically important in providing the funds required safely to repair, or decontaminate, a nuclear unit suffering an accident. The recent utility proposal to establish an insurer writing coverage against the extra expense of purchasing replacement power, in the event of accidental outage, serves similar needs.

If the Commission wishes to explore whether "the facts now justify an increase in the primary financial protection layer", no present insurer of risks related to nuclear facilities, save the nuclear liability pools, is properly included in determining the amount of insurance available.

Respectfully submitted,

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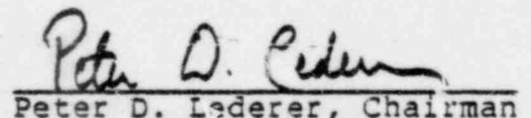
By: 
Peter D. Lederer, Chairman