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June 13, 1980

DOCKET NUMBER
 Secretary PETITION RULE PRM-140-2⁽²⁾
 (45 FR 26973)
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555



Attention: Docketing and Service Branch
 Docket No. PRM-140-2

Dear Sir:

Commonwealth Edison Company (Commonwealth) hereby submits its comments on the letter sent to the General Counsel of the Commission by the Public Citizen Litigation Group on December 20, 1979.

We endorse the response of the General Counsel to the Group with respect to the propriety of existing 10 CFR 140.11. Unlike the General Counsel, however, we do not believe that the petition raises policy issues deserving more detailed consideration by the NRC. The relevant policy considerations were thoroughly explored and the Congressional decision with respect to them reflected in the Price-Anderson Act and the amendments thereto, particularly the 1975 amendments resulting from the 1974-1975 Congressional review referred to in the General Counsel's letter.

The Price-Anderson Act from its inception has dealt only with "the amount of liability insurance available from private sources". (Atomic Energy Act, Section 170b, emphasis supplied.) Nothing in the Act compels, or gives the Commission power to compel, insurance companies to write insurance policies of any kind or to establish any specific policy limits. All that the Act requires is that utilities buy the liability insurance that is made available by the insurers.

Property insurance on nuclear property has been written at least as long as liability insurance, and Congress has certainly been aware of its existence. (See, for example, Hearings Before the Joint Committee on Atomic Energy, Ninety Third Congress, Second Session, Phase I: Review at p. 94.) In none of the successive legislative reviews has there been a suggestion that Congress intended the existence of such property insurance to have any bearing whatever on the "amount of liability insurance" that licensees are required to purchase. This history confirms that the NRC has no authority to take into account other types of insurance in determining how much liability insurance is available. And there is certainly no statutory support for the idea that the NRC has the power to direct a transfer of insuring capacity from property or other types of insurance coverage to liability coverage.

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Moreover, to increase the amount of liability insurance available at the expense of insurance coverage for other risks would clearly increase the exposure of the utilities in the case of an accident. The issue of the extent of that exposure has been repeatedly contested in the Congress and it was specifically and carefully dealt with by the 1975 amendments. Those amendments directed an increase in the collective exposure of licensees through the retrospective premium mechanism then established; they gave the Commission a limited discretion with respect to the size of the exposure. Expansion of that discretion requires further Congressional action. Any relevant policy issues, therefore, are for exploration by the Congress not for consideration in a rulemaking by the Commission.

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

By

Hubert H. Nexon
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