

ARIZONA



PUBLIC SERVICE COMPANY

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June 20, 1980

T. G. WOODS, JR.
EXECUTIVE VICE PRESIDENT

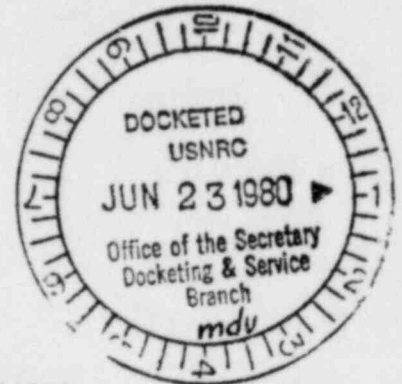
DOCKET NUMBER

PETITION RULE PRM-140-2(6)
(45 FR 26973)

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Subject: 10 CFR Part 140 (Docket No. PRM-140-2) 45-FR26973
Public Citizen Litigation Group



Gentlemen:

Arizona Public Service Company opposes this change to Section 170b of the Price-Anderson Act of the NRC Regulation (42 USC 2210 (b)) implementing that Section. The nuclear liability insurance available from the American Nuclear Insurers (ANI) is the maximum amount available from private sources at reasonable costs and on reasonable terms.

The amount of nuclear liability insurance available is now \$160 million. There is an additional \$300 million for nuclear property coverage. These two coverages are an indication of the growth and support by the insurance industry for the developing nuclear energy business. The insurance capacity developed by the insurance pools is an aggregate capacity subscribed to by most domestic insurers and many foreign insurance companies. Although such subscription to the nuclear pools often allow pool allocation to the liability and property line, many companies give direction on the proration of their subscription. Therefore, contrary to the petitioner's allegation, there is not a total capacity of \$460 million available for nuclear liability insurance.

The "second indication" that the insurance industry has greater capacity available for the protection of the public is also erroneous. The formation of an Industry Mutual insurance company to mitigate the cost of replacement power for the benefit of their ratepayer and stockholder is entirely a utility self-help pooling of resources with no insurance company involvement.

The \$300 million property insurance coverage and the \$156 million cost of replacement power program are an assignment of financial resources by the insurance industry and utilities to the areas of the maximum

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Letter to Secretary of the Commission
U. S. Nuclear Regulatory Commission
June 20, 1980

most probable loss and public impact that might result from a nuclear incident. The Three Mile Island accident clearly prioritizes the needs of these financial resources. There were no bodily injuries as a result of TMI, but there are significant costs to decontaminate the nuclear facility and replace the power from the damaged unit. The effect of these costs, on the utility ratepayer, stockholder, employee, as well as the local government, and general public, are of major importance and are being appropriately addressed by the utilities and the nuclear insurance industry.

In the area of nuclear liability insurance, there is \$510 million coverage from the insurance industry and the utilities, with an additional \$50 million of government indemnity. There is no validity to assign the current property insurance to the liability area. This action would considerably reduce the amount of insurance capacity subscribed by the insurance industry and divert the financial resources of the insurance industry and the utilities from an area of reasonable and obvious need to liability insurance capacity for a theoretically postulated worst consequence type accident.

The May 1977 study "Catastrophic Events Leading to De Facto Limits on Liability" by K. A. Solomon and David Okrent (Chemical, Nuclear and Thermal Engineering Department, School of Engineering and Applied Science, University of California, Los Angeles, California 90024; UCLA-Eng-7732) addresses very well this issue. The Abstract of the study follows:

Abstract

"The purpose of this study is to take an overview of large technological systems in society to ascertain the prevalence, if any, of situations that can lead to catastrophic effects where the resultant liabilities far exceed the insurances or assets subject to suit in court, thereby imposing de facto limits on liability. In part, interest in this topic is spurred by the continuing discussion and controversy over the Price-Anderson Act which requires operators of nuclear plants to waive certain defenses and which limits the combined liability of the operator and the government to an amount less than the maximum potential public cost of a major nuclear reactor accident.

Several different potential situations, including dam rupture, aircraft crash into a sports stadium, chemical plant accident, shipping disaster, and a toxic drug disaster are examined. All these events are estimated to have probabilities per year similar to or

Letter to Secretary of the Commission
U. S. Nuclear Regulatory Commission
June 20, 1980

larger than a major nuclear accident. All these events are found to involve potential liability far exceeding the available resources, whether they be insurance, corporation assets, or government revenues.

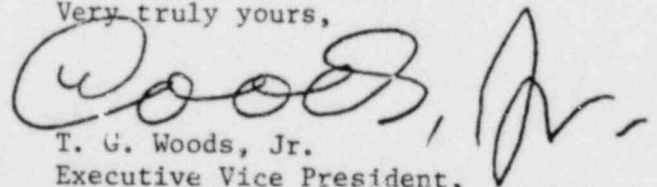
The presence of severe de facto limits on liability appears to be part of the fabric of our society. If limits on liability represent an important problem for society, the problem is a general one and should be dealt with in that perspective."

It is obvious in the technological society in which we live that nuclear incident is not the only type of occurrence where the liability associated with a postulated accident could exceed the de facto limits of liability. Solomon and Okrent outline similar situations in the aircraft manufacturing and airlines industry, as well as other industries including chemical, mining, drug and shipping with the most likely event to greatly exceed the de facto limit of liability being a gross dam failure.

The airline crashes in Turkey, Tenerife, Chicago, San Diego; the chemical incidents involving chlorine evacuations in Florida and Canada, Kapone, Agent Orange, Serveso, Italy, Love Canal; the frequency of mine accidents and the impact of Black Lung and asbestos on the work force, the results of thalidomide, and the Swine Flu vaccine; the disastrous Titanic, Texas City and Florida ship-bridge accidents; and the recent dam failures in Idaho and Florida all emphasize the statement by Solomon and Okrent that severe de facto limits of liability are a part of our society, and if that is an important problem to society, it must be approached on a generic basis for the good of the society and not as a tool to hinder or impede a particular industry within that society, such as nuclear power.

The Price-Anderson Act as amended in 1975 adequately addresses the nuclear liability insurance issue and provides for a continual increase in financial responsibility by the industry for the protection of the public. The changes in the "Financial Protection Requirements and Indemnity Agreements" requested by the Public Citizen Litigation Group Petition should be rejected in the rule making process.

Very truly yours,



T. G. Woods, Jr.
Executive Vice President,
Operations

TGW:Jr:LKM:NC:mc