AMERICAN NUCLEAR INSURERS

MAELU

Mutual Atomic Energy Liability Underwriters

July 14, 1980

Jerome Saltzman, Chief
Antitrust and Indemnity Group
Office of Nuclear Reactor Regulation
United States Regulatory Commission
Washington, D.C. 20555

Dear Mr. Saltzman:

This is in response to your letter dated April 15, 1980. Because of the complexities of this matter, we have asked our Law Committee to review it carefully.

Your letter raises the question whether the terms of the secondary financial protection policy which the Pools have submitted to the Nuclear Regulatory Commission should follow the Pools' underlying policies of primary financial protection or the Commission's indemnity agreements.

We are somewhat surprised by the suggestion that there is or may be either a deficiency in the scope of our underlying policies or a gap in protection between the primary (and secondary) layer of financial protection and Government indemnity.

Apparently the focal point of the question is the definitions of bodily injury and property damage in our policies and the definition of public liability in the Atomic Energy Act.

As you know, there have always been some differences in wording between the Commission's indemnity agreements and our policies. The Atomic Energy Act does not spell out details of the required financial protection or Government indemnity. The Commission has recognized that it has authority to flesh out the statutes and clarify ambiguities. It has for more than 20 years accepted our nuclear energy liability policies as meeting the requirements for financial protection under the Act.

A great deal of care was taken to mesh the two sources of protection to the public. This is detailed in the Atomic Energy Commission's study of the Price-Anderson Act of February 15, 1965. Neither this study nor the Atomic Energy Commission staff study of the Price-Anderson Act done in January, 1974 mentions any concern in this area.

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Actually, the definition of "public liability" in the Atomic Energy Act is not the sole provision which bears on this matter. That definition is merely introductory. One must also consider the Act's definition of "nuclear incident" to which "public liability" refers. "Nuclear incident" is basically defined as ". . .any occurrence . . . causing . . . bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive or other hazardous properties or sources, special nuclear, or by-product material . . ."

Our Nuclear Energy Liability policies define "bodily injury" as ". . . bodily injury, sickness or disease, including death resulting therefrom, sustained by any person . . ." The term "property damage" is defined as " . . . physical injury to or destruction or radioactive contamination of property, or loss of use of property so injured, destroyed or contaminated, and loss of use of property while evacuated or withdrawn from use because possibly so contaminated or because of imminent danger of such contamination."

Finally, the term "nuclear energy hazard" is defined in essence as "the radioactive, toxic, explosive, or other hazardous properties of nuclear material . . . "

It is also perhaps worthwhile mentioning that our basic insuring agreement applies to "all sums which the insured shall become legally obligated to pay as damages because of (emphasis added) bodily injury or property damage caused by the nuclear energy hazard . . ." There is always a question of the extent of legal liability for so-called consequential damages. These, however, are matters for a court to determine under the circumstances, and in the case at hand, under the purpose and scope of the governing statute or the Price-Anderson Act. We cannot solve these problems by contractual language.

An area in which the legislative history is clear is that there was no intention on the part of Congress to cover diminution in property values because of the presence of a nuclear reactor in the vicinity or the threat of a nuclear incident. Our definition of property damage is intended to support this limitation. We expect that there would be a harmonious interpretation of the corresponding provisions in the Commission's indemnity agreement.

We believe that taken together the definitions of "bodily injury", "property damage", and "nuclear energy hazard" in our primary and secondary policies are fully in accordance with the scope of public liability from a nuclear incident as those concepts are used in the Act.

There is in addition a strong practical reason why the terms of the secondary financial policy should follow exactly the terms of the primary policy. The Pools are responsible for the investigation, settlement and defense of all claims arising under both layers. It would create uncertainties and excess legal costs to apply provisions to some claims within the scope of private financial protection which differ from those that would apply to others. We have learned from the Three Mile Island accident that one of the most substantial factors in control of legal expenses is to minimize conflicts of interest concerning coverage for the multiple insureds. These complications would be greatly aggravated if a new dimension was added concerning controversies of coverage for certain classes of claimants at certain levels of coverage.

As presently structured, there is no conflict of interest which impairs the Pools' ability to implement the first and second layers of the reparations program. Should there be questions of coverage, the questions would be the same for both layers of financial protection and the answers would be the same.

We do not have to face the problem of whether a claim or a portion of a claim is rightfully charged against the primary layer of coverage for which insurers have a substantial risk, or against the secondary layer where the risk is borne primarily by the policyholders. To alter the structure would create a conflict of interest for insurers which would impair their ability to fairly and equitably provide reparations under both layers of financial protection.

As we have indicated, no problems have arisen in connection with this particular difference in wording between our coverage and the Government's indemnity agreements. Nor does the difference in wording, in our judgment, produce substantive results. We therefore are at a loss to see how any "problem" can become more aggravated as the Government's role is phased out and that of the private sector is increased. If anything, all differences will disappear when the Government's indemnity obligations come to an end, which is likely to occur in the very near future.

We trust that this will enable the Commission to proceed with its consideration of the secondary financial protection policy which has been submitted to you.

Very truly yours,

Burt C. Proom
President, ANI

Ambrose Kelly
Manager, MAELU

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