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April 17, 1980

William B. Schultz
 Alan B. Morrison
 Public Citizen Litigation Group
 Suite 700
 2000 P Street, N.W.
 Washington, D.C. 20036

Gentlemen:

This is in further response to your letter to Leonard Bickwit dated December 20, 1979 in which you requested that the Nuclear Regulatory Commission amend 10 CFR Part 140 to increase the amount of liability insurance required of persons licensed to operate large commercial nuclear power plants. Your request is being considered as a petition for rule making pursuant to 10 CFR §2.802 of the Commission's regulations. The petition has been docketed to recognize your request for amendment of the Commission's regulations and has been assigned Docket Number PRM-140-2. A notice of the petition and request for comments is being published in the Federal Register (copy enclosed).

As staff review progresses on your petition, it may be necessary to request additional information. Please reference the assigned docket number on any correspondence you may have concerning the petition. Upon expiration of the comment period we shall furnish you with copies of any comments which have been received in response to the notice of filing of petition for rule making.

Sincerely,

Original Signed by
 H. R. Denton

Harold R. Denton, Director
 Office of Nuclear Reactor
 Regulation

Enclosure:
 As stated

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NUCLEAR REGULATORY COMMISSION

[DOCKET NO. PRM-140-2]

Public Citizen Litigation Group

Filing Of Petition For Rule Making

AGENCY: U. S. Nuclear Regulatory Commission

ACTION: Publication of Petition for Rule Making from Public Citizen Litigation Group

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment, as a petition for rule making, a letter sent to the General Counsel of the Commission on December 20, 1979 by the Public Citizen Litigation Group. This petition, which has been assigned Docket No. PRM-140-2, requests that the Commission amend its regulations relating to "Financial Protection Requirements and Indemnity Agreements" to increase the amount of liability insurance required of persons licensed to operate large commercial nuclear power plants. The General Counsel's response to the letter is also summarized in this notice.

DATE: Comment period expires June 23, 1980.

ADDRESSES:

Copies of the petition for rule making and the General Counsel's response are available for public inspection in the Commission's Public Document

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Room, 1717 H Street, NW, Washington, DC. Copies of the petition and the General Counsel's response may be obtained by writing to the Division of Rules and Records, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555.

All persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Joseph M. Felton, Director, Division of Rules and Records, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-2711.

SUPPLEMENTARY INFORMATION: Representatives of the Public Citizen Litigation Group, by letter dated December 20, 1979 to Leonard Bickwit, Jr., General Counsel of the Nuclear Regulatory Commission (NRC), have requested that the NRC amend paragraph 10 CFR 140.11(a)(4) of its regulations, which, in part, presently requires persons licensed to operate large commercial nuclear power plants to purchase \$160 million in liability insurance to compensate the public in the event of a nuclear incident. Representatives of the Public Citizen Litigation Group state, "Since the insurance and the nuclear industries have the capacity to sell several hundred million dollars in additional liability insurance, the regulation is inconsistent with the direction of the Price-Anderson Act, 42 U.S.C.

§2210, et seq., that the NRC require nuclear utilities to purchase the 'maximum available insurance'."

The Commission has directed that the letter be treated as a petition for rule making filed in accordance with 10 CFR 2.802 of the Commission's regulations. The letter supports its request for rule making by stating, in relevant part, as follows:

... In our view, the NRC's regulation is deficient because the \$160 million liability insurance currently required is not the 'maximum insurance available,' as mandated by Congress. There are two facts which strongly suggest to us that at least several hundred million dollars in additional insurance could be made available for the protection of the public. First, the insurance industry currently sells reactor owners approximately \$300 million in insurance to cover the loss of the reactor. Adding this figure to the \$160 million sold for the protection of the public shows that the insurance industry has the capacity to sell \$460 million in liability insurance. The entire \$300 million could, and should by law, be purchased for the benefit of the public. We do not believe that there is any legitimate argument that the insurance industry has the capacity to sell this insurance only to utilities. In fact, we would think that the premiums for such insurance would be lower if it were sold as liability rather than property insurance. Any substantial nuclear accident will always involve substantial damage to the reactor, but not necessarily injury to the public.

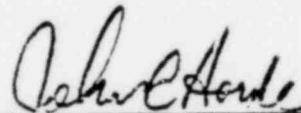
... The second indication that the insurance industry has a greater capacity to issue insurance to protect the public is the plan currently being devised to insure utilities against protracted replacement power costs which would arise from future accidents such as that which occurred at Three Mile Island. According to a recent article in the Washington Star (attached), 'the accident at Three Mile Island may cost the utility between \$678 million and \$1.1 billion for replacement power.' Responding to this risk, electric utilities are apparently in the final stages of preparing a new private system which would insure against such losses. It is unclear whether such insurance would be underwritten by private insurance companies or by the utilities themselves. But in either event, the additional capacity must be made available to the public because the Act states that the financial protection required by the NRC may include 'private insurance' and 'self-insurance.' 42 U.S.C. §2210(b). Therefore, this newly created system establishes beyond doubt that there is a vast, untapped capacity within the nuclear industry and within the insurance industry to provide liability insurance against a catastrophic nuclear accident....

In a letter dated February 19, 1980, the General Counsel responded to the petitioners by stating, in relevant part, as follows:

...NRC regulations implementing Section 170b of the Price-Anderson Act [42 U.S.C. §2210(b)] have historically adopted the amount provided by the nuclear liability insurance pools as the 'maximum amount available' from private sources at reasonable cost and on reasonable terms. ... During this twenty-year period, the Price-Anderson Act has twice been thoroughly re-examined by Congress, which was aware of the Commission's implementation of this section. We have been unable to locate any legislative history indicating Congressional dissatisfaction with the insurance program then in effect. Particularly during the 1974-1975 review, when the 'secondary layer' of retrospective premiums was developed, this matter was under close Congressional scrutiny. Nevertheless, Congress did not amend Section 170b as to primary insurance, nor did it require the Commission to alter its regulations implementing that section.

It is therefore our view that 10 CFR 140.11 was validly promulgated by the Commission. Your letter, however, presents certain policy issues which deserve more detailed consideration. ... Whether the facts now justify an increase in the primary financial protection layer can be appropriately explored in the rule making context. ...

FOR THE NUCLEAR REGULATORY COMMISSION



JOHN C. HOYLE
Acting Secretary of the Commission

Dated at Washington, DC this
16th day of April, 1980.

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|--|--------|---|---|--|
| FROM: William B. Schultz/Alan B. Morrison Public Citizen Litigation Group Washington, D. C. | | ACTION CONTROL | DATES | CONTROL NO. |
| TO: Leonard Bickwit (referred to EDO by memo from Chik 3/6/80) | | COMPL DEADLINE | 3/27/80 | 08516 |
| | | ACKNOWLEDGMENT | | DATE OF DOCUMENT |
| | | INTERIM REPLY | | 2/20/79 |
| | | FINAL REPLY | | PREPARE FOR SIGNATURE OF: |
| | | FILE LOCATION | | <input type="checkbox"/> CHAIRMAN <input type="checkbox"/> EXECUTIVE DIRECTOR OTHER: <u>Denton</u> |
| DESCRIPTION <input type="checkbox"/> LETTER <input type="checkbox"/> MEMO <input type="checkbox"/> REPORT <input type="checkbox"/> OTHER | | SPECIAL INSTRUCTIONS OR REMARKS | | |
| Requests amendment to NRC's regulations on insurance requirements under the Price-Anderson Act | | <p style="text-align: center;"><i>do - please handle with EDO J.</i></p> | | |
| Encl: Cy ltr from Bickwit to Schultz & Morrison | | | | |
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| <u>Denton</u> | 3/7/80 | Shapar Denton Case Berrow/Russell Muller Ross | ASSIGNED TO: <u>Mattson</u> <u>Eisenhut</u> | NO LEGAL OBJECTIONS NOTIFY: <input type="checkbox"/> EDO ADMIN & CORRES BR EXT. _____ COMMENTS, NOTIFY: EXT. _____ |
| | | | JCAE NOTIFICATION RECOMMENDED: | <input type="checkbox"/> YES <input type="checkbox"/> NO |

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