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December 20, 1979

Leonard Bickwit, Jr., Esq.
General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Re: NRC's Regulations on Insurance Requirements
Under the Price-Anderson Act

Dear Mr. Bickwit:

We hereby request that your office take immediate steps to amend the Nuclear Regulatory Commission's regulation, 42 C.F.R. § 144.11(a)(4), as amended, which requires utilities to purchase only $160 million in liability insurance to compensate the public in the event of a catastrophic nuclear accident. 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 Price-Anderson Act limits the liability of all possibly responsible persons in the event of a catastrophic nuclear accident to $560 million. If there were such an accident today, the $560 million would be paid from three sources. First, $160 million would be covered by the private insurance industry from insurance purchased by the responsible facility. That level of insurance is prescribed by the NRC in 42 C.F.R. § 144.11(a)(4), as amended, under the standard established by the Price-Anderson Act, 42 U.S.C. § 2210(b).

The second layer of protection required is the so-called "retrospective premium," which would be a $5 million payment per reactor for each reactor currently operating. Since there are approximately 67 reactors operating today, the second layer would generate $335 million dollars to compensate the public. The third layer is paid by the government, and currently would be the $65 million necessary to create a total compensation of $560 million. The important point about the third layer is that the federal government's share will decrease as the insurance industry's payments under the first layer are increased. In addition, after the total of the first two layers equals $560 million, every additional dollar in private insurance which the

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Attachment 1

NRC requires the utilities to purchase would raise the limit by an equal amount, and thus provide more funds to compensate injured members of the public.

In order to minimize the potential liability of the United States and to maximize the public's protection, the Price-Anderson Act specifies that the "amount of financial protection required shall be the amount of liability which is available from private sources," except in certain instances not applicable to large commercial reactors. In addition, the Act directs the NRC "[i]n prescribing such terms and conditions for licensees" to require those licensees "to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources" (emphasis added). 42 U.S.C. § 2210(b).

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.

In our view, there is something wrong with a system which allocates about two-thirds of the insurance available to compensate the owner of the nuclear plant, whose liability is limited regardless of fault, and only one-third to compensate wholly innocent members of the public. This is aggravated by the fact that currently insurance companies refuse to sell homeowners property insurance against the risk of nuclear accident. The reason often given is that, under the Price-Anderson Act, insurance companies are required to sell all available insurance to nuclear companies. In any event, the current regulations which allow two-thirds of the insurance industry's capacity to be allocated towards the property of the utility is flatly inconsistent with the Price-Anderson Act which requires that the "maximum" insurance be made available to protect 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. Since the Price-Anderson Act requires the NRC to require nuclear utilities to buy "the maximum available" insurance, we urge you to investigate the matter and we ask the Commission to amend its regulations to conform to the Price-Anderson Act.

Sincerely yours,

William B. Schultz

William B. Schultz

Alan B. Morrison

Alan B. Morrison

cc: Senator Gary Hart
Congressman Morris Udall

Utilities Draw Up Plan To Insure and Regulate Nuclear Power Plants

By John Fialka
Washington Star Staff Writer

U.S. electric utilities are in the final stages of planning a new, private system of regulating nuclear plants, designed around the financial power of an insurance company which, for legal reasons, will be located in Bermuda.

The system, which will be put into place early next year, is intended to cope with the enormous financial risks of a nuclear accident — exposed by Three Mile Island, which resulted in between $1 billion and $1.8 billion in losses as the result of a few hours of inept operation and malfunctioning equipment on the morning of March 28.

What one utility executive called the "financial clout" of the system will be an as-yet-unnamed insurance company set up to protect nuclear plant owners against the substantial costs of buying replacement power if their plant becomes immobilized by a prolonged accident.

The second part of the system will be a new entity, the Institute of Nuclear Power Operations (INPO), a $10 million-a-year corporation designed to establish industry-wide standards for operator training and plant operation — standards that go beyond those presently enforced by the federal government.

William Lee, chief executive officer of North Carolina's Duke Power Co., heads the industry steering committee forming INPO. As he explains it, there is widespread agreement in the industry that some form of new protection is needed against the risks exposed by Three Mile Island, which may cost the utility involved between $678 million and $1.1 billion for replacement power alone, according to the President's Commission that investigated the accident.

To control the risks being insured, the steering committee has decided that the insured companies should meet minimum "benchmarks" being established by INPO. "If they do not meet the benchmarks and until they do," Lee explained, "the clout will be their insurability."

Companies that do meet the benchmarks will be eligible to buy insurance from the company, which will agree to pay about 90 percent of the cost of replacement power if a nuclear accident shuts down a plant for more than six months. Hubert Nexon, another official working on the project, said.

Nexon, senior vice president of Chicago's Commonwealth Edison Co., said that the insurance company will have to be offshore because it will not have enough cash reserves to meet the minimum requirements of insurance laws in various states.

"We are already a very capital-short industry and we don't want to have to put up that kind of money if we can legitimately avoid it," Nexon explained. To make up for the lack of reserves, he said, utilities buying the insurance also will have to sign contracts agreeing to pay substantially more than their normal monthly premium if the company has to pay a sizable claim.

To protect themselves against charges that they were conspiring to violate U.S. laws, executives representing a broad range of U.S. utilities met in Toronto last month to approve the idea in principle. A steering committee formed at that meeting held another meeting in Toronto to settle details of the plan on Nov. 16.

Jack Kearney, senior vice president for the Edison Electric Institute, an industry trade association, said the insurance company will probably be set up in a corporate shell, the "Energy Mutual Liability Ltd." of Bermuda, established several years ago by the trade association for another purpose.

While the interaction between the standards of INPO and the financial protections afforded by the insurance company could be "very powerful," according to Nexon, the legality of the arrangement is not entirely clear.

Offshore insurance companies are legal for other purposes — providing libel insurance to newspapers is one example. However, a contract by a utility promising to pay unspecified larger-than-normal premiums in the event of an accident may not pass the scrutiny of state public utility commissions, which must authorize the cost if it is to be allowed as part of a utility's rate base.

Denial of the insurance to companies that don't meet the approval of INPO may also pose antitrust problems which also are being explored by utility lawyers.

Nevertheless, the idea "has had enthusiastic approval throughout the industry" said Kearney, who added that the executives who came up with the plan were among those who went to Three Mile Island to help the utility involved, Metropolitan Edison, regain control of the stricken plant.

There are 70 operating nuclear power plants in the United States and if utilities owning a substantial number of them sign up, the cost of insurance could run around $1.7 million a year per plant, Kearney said.