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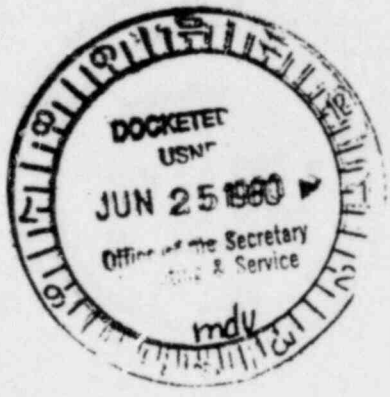
DOCKET NUMBER
PETITION RULE PRM-140-2 (7)

Carl Walske
President

(45 FR 26973)



June 23, 1980

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

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

Dear Sir:

The Atomic Industrial Forum appreciates the opportunity to comment on the Commission's Federal Register notice of April 22, 1980 concerning financial protection requirements set out in 10 CFR 140.11. Our comments have been prepared in consultation with AIF's Committee on Insurance and Indemnity.

We agree with the thrust of the NRC General Counsel's response to petitioners that the Commission's present regulations concerning liability insurance comply with the requirements of the Price-Anderson Act and reflect the clear intent of Congress in Price-Anderson's enactment and renewal. The amount of financial protection required by statute is expressed as the "amount of liability insurance available from private sources", 42 U.S.C. 2210 b. Since Price-Anderson's inception private sources have also been making a substantial amount of nuclear property insurance available. (This history is explained in detail in the response to NRC in this docket number from American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters, which we endorse.) Yet, there has been no indication in statutory language or legislative history that Congress intended the amount of property insurance being offered to have any impact on the amount of liability insurance which licensees were required to maintain. Moreover, in 1975 Congress specifically enlarged the definition of maximum amount of liability insurance available from private sources to include retrospective payments from utility operators in certain circumstances. Had Congress intended that other kinds of available insurance should also be included in the enlargement, it would surely have said so when focusing on that issue.

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Since its enactment, and particularly during its renewal in the 1974-75 period, Congress has scrutinized Price-Anderson and the Commission's implementation of it. In this latter period, critics actively sought to modify it. In the face of this history, the legislative silence pertaining to the manner in which petitioners now seek to modify section 170 is compelling evidence that the section should continue to be given the reading which the Commission has long applied and which Congress obviously intended. Thus the Commission's existing interpretation of 10 CFR 140.11 is valid.

We are, however, unable to agree with the General Counsel's further conclusion that the petitioners have nonetheless raised policy issues which merit more detailed NRC rulemaking consideration. In the first place, we see nothing in the Act or its legislative history which even suggests that NRC has been given authority to require insurance companies to somehow convert property policies or capacity into liability policies or capacity. Certainly, NRC cannot compel insurance companies to make nuclear insurance available, and as the American Nuclear Insurers' response demonstrates, certain property capacity "directed" to convert to liability capacity would probably disappear instead.

Secondly, as the pools and others have indicated, conversion of property insurance to liability insurance would obviously not protect the public in certain accident scenarios more likely to occur than the catastrophe which petitioners seem to fear--for example, where property damage occurs to the operating plant but no personal injuries result. Here, the distortion of insurance coverage which petitioners seek would penalize ratepayers as well as utility investors. It has been clear to both NRC and Congress that no major private enterprise can function without the benefit of protection of a variety of insurance coverages. Thus, to call for mandatory conversion of property insurance to liability insurance is plainly irresponsible.

Finally, the Commission is undoubtedly aware that Congress this year, in the aftermath and experience of TMI, is addressing itself to nuclear "reform" legislation, a portion of which would modify the Price-Anderson system. While we are not convinced that any legislative changes in Price-Anderson are necessary at this time, it is clear that Congress is again taking a look at the system with the

public interest in mind. Concomitantly, it must consider what is a reasonable insurance burden to place on nuclear utilities. Industry has already testified to its willingness to support a raising of the liability ceiling through a reasonable increase in retrospective payments, a separate but related issue. Thus, putting aside questions of authority, this would appear to be a particularly inappropriate time for NRC to devote scarce resources to this rulemaking request.

In conclusion, we believe that the results sought by the petitioners are beyond the Commission's authority, unworkable and unwise, and that the Commission, in fulfilling its obligation to protect the public, should find more constructive ways to utilize its resources. The petition should be denied.

Sincerely,

Carl Walske

CW/pcs