



# Nebraska Public Power District

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June 13, 1990

U.S. Nuclear Regulatory Commission  
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Subject: Nuclear Energy Liability Insurance  
Cooper Nuclear Station  
NRC Docket No. 50-298, DPR-46

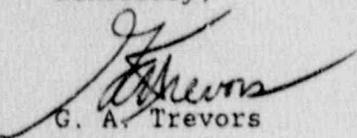
Gentlemen:

Enclosed, for your information and use, are two (2) copies of Endorsement Nos. 72, 73, 74, 75, 76, 77 and 78 to Mutual Atomic Energy Liability Underwriters Policy MF-70 and Endorsement Nos. 88, 89, 90, 91, 92, 93 and 94 to Nuclear Energy Liability Insurance Association Policy No. NF-200.

Endorsements 72, 73 and 74 to Policy MF-70 and Endorsements 88, 89 and 90 to Policy NF-200 reflect revisions to these policies to bring them into alignment with the August 20, 1988, renewal of the Price-Anderson Act. Endorsements 75, 76 and 77 to Policy MF-70 and Endorsements 91, 92 and 93 to Policy NF-200 are new environmental coverage endorsements. Endorsement 78 to Policy MF-70 and Endorsement 94 to NF-200 are endorsements which list the subscribing companies participating on these policies for calendar year 1990.

Should you have any questions or require additional information, please contact my office.

Sincerely,

  
G. A. Trevors  
Division Manager  
Nuclear Support

/rg  
Enclosures

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**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

WAIVER OF DEFENSES ENDORSEMENT  
(Extraordinary Nuclear Occurrence)

Effective August 20, 1988, the named insured, acting for himself and every other insured under the policy, and the members of Nuclear Energy Liability Insurance Association agree as follows:

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which
  - (a) arises out of or results from or occurs in the course of the construction, possession, or operation of the facility, or
  - (b) arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility,

the insureds and the companies agree to waive

- (1) any issue or defense as to the conduct of the claimant or the fault of the insureds, including but not limited to:
  - (i) negligence,
  - (ii) contributory negligence,
  - (iii) assumption of risk, and
  - (iv) unforeseeable intervening causes, whether involving the conduct of a third person, or an act of God,
- (2) any issue or defense as to charitable or governmental immunity, and
- (3) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1. above do not apply to

- (a) bodily injury or property damage which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
- (b) bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (c) any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under law.

3. The waivers set forth in paragraph 1. above shall be effective only with respect to bodily injury or property damage to which the policy applies under its terms other than this endorsement; provided, however, that with respect to bodily injury or property damage resulting from an extraordinary nuclear occurrence, Insuring Agreement IV, "Application of Policy", shall not operate to bar coverage for bodily injury or property damage (a) which is caused during the policy period by the nuclear energy hazard and (b) which is discovered and for which written claim is made against the insured not later than twenty (20) years after the date of the extraordinary nuclear occurrence.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under

- (a) the provisions of the policy applicable to the financial protection required of the named insured;
- (b) the agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to Section 170 of the Atomic Energy Act of 1954, as amended; and
- (c) the limit of liability provisions of Subsection 170e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1. above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because

of bodily injury or property damage to which the policy applies as proof of financial protection.

5. As used herein:

"extraordinary nuclear occurrence" means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.

"Financial protection" and "nuclear incident" have the meanings given them in the Atomic Energy Act of 1954, as amended.

"claimant" means the person or organization actually sustaining the bodily injury or property damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Policy Form) as described hereunder.

*J. S. Quattrone*  
John L. Quattrone, Vice President Underwriting  
American Nuclear Insurers

Effective Date of this Endorsement August 20, 1988 To form a part of Policy No. NF-200  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies  
By *[Signature]*  
President

Endorsement No. 88 Countersigned by *[Signature]*  
MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

SUPPLEMENTARY ENDORSEMENT  
WAIVER OF DEFENSES  
REACTOR CONSTRUCTION AT THE FACILITY

Effective August 20, 1988, it is agreed that in construing the application of paragraph 2(b) of the WAIVER OF DEFENSES ENDORSEMENT NE-33b with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

- (1) the claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and
- (2) no operating license has been issued by the Nuclear Regulatory Commission with respect to the nuclear reactor, and
- (3) the claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

*This is to certify that this is a true copy of the original  
Endorsement having the endorsement number and being made part  
of the Nuclear Energy Liability Policy (Facility Form) as des-  
cribed hereunder. No insurance is afforded hereunder.*

*J. S. [Signature]*  
John L. [Signature], Vice President-Underwriter  
American Nuclear Insurers

Effective Date of this Endorsement August 20, 1988 To form a part of Policy No. NF-200  
12:01 A. M. Standard time

Issued to Nebraska Public Power District

Date of Issue February 16, 1990 For the Subscribing Companies,  
by [Signature]  
President

Endorsement No. 89 Countersigned by [Signature]  
MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

Restriction of Companies Obligation to Defend,  
Investigate, Negotiate or Settle Any Claim or Suit  
(Section 170 O. of the Atomic Energy  
Act of 1954, as amended)

Effective August 20, 1988, it is agreed that whenever, pursuant to subsection 170 O. of the Atomic Energy Act of 1954, as amended, an appropriate U.S. District Court determines that liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subsection 170 e.(1) (A), (B) and (C) of the Atomic Energy Act of 1954, as amended, the companies obligations under Insuring Agreement I, to defend, investigate, negotiate or settle any claim or suit under the policy do not include any obligation that would necessitate or result in the companies incurring legal costs, including costs of initiating, prosecuting, investigating, settling, or defending claims or suits, which are not authorized for payment by a court pursuant to such subsection 170 O.

This is to certify that this is a true copy of the original  
Endorsement having the endorsement number and being made part  
of the Nuclear Energy Liability Policy (Facility Form) as des-  
ignated herein. No insurance is afforded hereunder.

*J. S. Stracchi*  
John L. Stracchi, Vice President/Underwriter  
American Nuclear Insurers

Effective Date of this Endorsement August 20, 1988 To form a part of Policy No. NF-200  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies

By *[Signature]*  
**PRESIDENT**

Endorsement No. 90

Countersigned by *[Signature]*

MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

WAIVER OF DEFENSES ENDORSEMENT  
(Extraordinary Nuclear Occurrence)

The named insured, acting for himself and every other insured under the policy, and the members of Nuclear Energy Liability Insurance Association agree as follows:

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which
  - (a) arises out of or results from or occurs in the course of the construction, possession, or operation of the facility, or
  - (b) arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility.

the insureds and the companies agree to waive

- (1) any issue or defense as to the conduct of the claimant or the fault of the insureds, including but not limited to:
  - (i) negligence.
  - (ii) contributory negligence.
  - (iii) assumption of risk, and
  - (iv) unforeseeable intervening causes, whether involving the conduct of a third person, or an act of God.
- (2) any issue or defense as to charitable or governmental immunity, and
- (3) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1. above do not apply to
  - (a) bodily injury, property damage or environmental damage which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant:

- (b) bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (c) any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under law.
3. The waivers set forth in paragraph 1. above shall be effective only with respect to bodily injury, property damage or environmental damage to which the policy applies under its terms other than this endorsement; provided, however, that with respect to bodily injury, property damage or environmental damage resulting from an extraordinary nuclear occurrence, the provisions of COVERAGES A and C of the policy providing coverage for bodily injury, property damage or environmental damage caused during the policy period by the nuclear energy hazard and which is discovered and for which written claim is made against the insured not later than ten (10) years after the end of the policy period shall not operate to bar coverage for bodily injury, property damage or environmental damage (a) which is caused during the policy period by the nuclear energy hazard and (b) which is discovered and for which written claim is made against the insured not later than twenty (20) years after the date of the extraordinary nuclear occurrence.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under

- (a) the provisions of the policy applicable to the financial protection required of the named insured;
- (b) the agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to Section 170 of the Atomic Energy Act of 1954, as amended; and
- (c) the limit of liability provisions of Subsection 170e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1. above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because of bodily injury, property damage or environmental damage to which the policy applies as proof of financial protection.

5. As used herein:

"extraordinary nuclear occurrence" means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.

"Financial protection" and "nuclear incident" have the meanings given them in the Atomic Energy Act of 1954, as amended.

"claimant" means the person or organization actually sustaining the bodily injury, property damage or environmental damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Quality Form) as designated herein. No insurance is afforded hereunder.

*J. S. [Signature]*

John L. [Signature], Vice President-Underwriter  
American Nuclear Insurers

Effective Date of this Endorsement January 1, 1990 To form a part of Policy No. NF-200  
12:01 A. M. Standard time

Issued to Nebraska Public Power District

Date of Issue February 16, 1990  
For the Subscribing Companies,  
By [Signature]  
President

Endorsement No. 91  
Countersigned by [Signature]  
MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

**SUPPLEMENTARY ENDORSEMENT**  
**WAIVER OF DEFENSES**  
**REACTOR CONSTRUCTION AT THE FACILITY**

It is agreed that in construing the application of paragraph 2(b) of the WAIVER OF DEFENSES ENDORSEMENT NE-33c with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

- (1) the claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and
- (2) no operating license has been issued by the Nuclear Regulatory Commission with respect to the nuclear reactor, and
- (3) the claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as described herein. No insurance is afforded hereunder.

*J. S. [Signature]*  
John L. [Signature] Vice President-Underwriter  
American Nuclear Insurers

Effective Date of this Endorsement January 1, 1990 To form a part of Policy No. NF-200  
12:01 A. M. Standard time

Issued to Nebraska Public Power District

Date of Issue February 16, 1990 For the Subscribing Companies,  
By [Signature]  
President

Endorsement No. 92 Countersigned by [Signature]  
MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION**

**AMENDATORY ENDORSEMENT**  
**(Facility Form)**

It is agreed that:

1. INSURING AGREEMENT I is replaced by the following:

**I COVERAGE A - LIABILITY**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as covered damages because of bodily injury or property damage, or as covered environmental cleanup costs because of environmental damage. This Coverage applies only to bodily injury, property damage or environmental damage caused during the policy period by the nuclear energy hazard, and which is discovered and for which written claim is made against the insured, not later than ten (10) years after the end of the policy period.

The companies shall have the right and duty to defend any claim or suit against the insured alleging such injury or damage, and seeking damages or costs which are payable under the terms of this policy; but the companies may make such investigation, negotiation and settlement of the claim or suit as they deem expedient.

The companies' duty to defend shall be limited, as described in INSURING AGREEMENT IV, if the claim or suit also seeks any of the following, which in no event shall be construed as covered by this policy:

- (1) damages for on-site property damage;
- (2) recovery of on-site cleanup costs or any other cleanup costs except covered environmental cleanup costs;
- (3) performance of an insured's environmental protection obligations or on-site cleanup obligations; or
- (4) any other relief or recovery except payment of covered damages or covered environmental cleanup costs.

The companies' duty to defend claims or suits ends when the limit of their liability has been exhausted pursuant to CONDITION 3.

Subject to INSURING AGREEMENT IV, the companies shall pay, with respect to any claim or suit they defend, the costs incurred in the defense, including

- (1) costs taxed against the insured in any such suit and interest on any judgment therein;
- (2) premiums on appeal bonds and bonds to release attachments in any such suit, but without obligation to apply for or furnish such bonds;

- (3) reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request.

**COVERAGE B - DAMAGE TO PROPERTY OF AN INSURED AWAY FROM THE FACILITY**

With respect to property damage caused during the policy period by the nuclear energy hazard to the property of an insured which is away from the facility, to pay to such insured those sums which such insured would have been legally obligated to pay as covered damages therefor, had such property belonged to another.

**COVERAGE C - SUBROGATION - OFFSITE EMPLOYEES**

With respect to bodily injury caused during the policy period by the nuclear energy hazard to any employee of an insured, and which is discovered and for which written claim is made against the insured, not later than ten (10) years after the end of the policy period, to pay to the workmen's compensation carrier of such insured as follows:

All sums which such carrier would have been entitled to recover and retain as damages from another person or organization, had such person or organization alone been legally responsible for such bodily injury, by reason of the rights acquired by subrogation by the payment of the benefits required of such carrier under the applicable workmen's compensation or occupational disease law. An employer who is a duly qualified self-insurer under such law shall be deemed to be a workmen's compensation carrier within the meaning of this Coverage.

This Coverage does not apply to bodily injury to any person who is employed at and in connection with the facility; nor shall it constitute workmen's compensation insurance as required under the laws of any state.

2. INSURING AGREEMENT II is replaced by the following:

**II DEFINITION OF INSURED**

The unqualified word "insured" includes (a) the named insured and (b) any other person or organization with respect to his legal responsibility for covered damages or covered environmental cleanup costs because of bodily injury, property damage or environmental damage caused by the nuclear energy hazard.

Subdivision (b) above does not include as an insured the United States of America or any of its agencies, except the Tennessee Valley Authority.

Subject to CONDITION 3 and the other provisions of this policy, the insurance applies separately to each insured against whom claim is made or suit is brought.

3. INSURING AGREEMENT III is replaced by the following:

III DEFINITIONS Wherever used in this policy:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person.

"covered damages" means damages because of bodily injury or property damage to which this policy applies; but covered damages do not include environmental cleanup costs or on-site cleanup costs.

"covered environmental cleanup costs" means only those environmental cleanup costs which are incurred directly for monitoring, testing for, cleaning up, neutralizing or containing environmental damage as the result of an extraordinary nuclear occurrence or a transportation incident; but covered environmental cleanup costs do not include on-site cleanup costs.

"disposal site" means any structure, basin, excavation, premises or place prepared as a dump or site for the disposal of waste materials of a general nature, but which may also be used for the disposal of waste materials containing small amounts of nuclear material.

"environment" includes land, the atmosphere, and all watercourses, bodies of water and natural resources, whether on, above or below the surface of the ground.

"environmental cleanup costs" include all loss, cost or expense arising out of any governmental decree, order or directive (other than an award of covered damages in an action at law) requiring or requesting a person or organization to undertake or pay for monitoring, testing for, cleaning up, neutralizing or containing contamination of the environment, whether the contamination is on, above or below the surface of the ground.

"environmental damage" means contamination of the environment by nuclear material.

"environmental protection obligations" include all obligations of any person or organization

- (1) relating to the protection of the environment from contamination or imminent danger of contamination, and
- (2) imposed by any governmental laws, regulations or ordinances.

"extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as

defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"governmental" refers to federal, state and local governments and authorities, including courts, agencies and political subdivisions thereof.

"indemnified nuclear facility" means

- (1) "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, or
- (2) any other nuclear facility.

if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat.

"insured shipment" means a shipment of source material, special nuclear material, spent fuel, waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, herein called "material,"

- (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or
- (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

"nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material, but only if

- (1) the nuclear material is at the facility or has been discharged or dispersed therefrom without intent to relinquish possession or custody thereof to any other person or organization, or
- (2) the nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto, within
  - (a) the territorial limits of the United States of America, its territories or possessions, or Puerto Rico; or
  - (b) international waters or airspace, provided that the nuclear material is in the course of transportation between two points located within

the territorial limits described in (a) above and there is no deviation in the course of the transportation for the purpose of going to any other country, state or nation, except for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

"nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters. The term "nuclear facility" also means

- (1) any nuclear reactor.
- (2) any equipment or device designed or used for
  - (a) separating the isotopes of uranium or plutonium,
  - (b) processing or utilizing spent fuel, or
  - (c) handling, processing or packaging waste.
- (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"nuclear material" means source material, special nuclear material or byproduct material.

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission or a self-sustaining chain reaction or to contain a critical mass of fissionable material.

"on-site cleanup costs" include all loss, cost or expense arising out of on-site cleanup obligations.

"on-site cleanup obligations" include all obligations of any person or organization, imposed by common law or otherwise, to undertake or pay for monitoring, testing for, cleaning up, neutralizing or containing contamination by nuclear material at the facility, whether the material is on, above or below the surface of the ground.

"on-site property damage" includes all property damage to any property at the facility, whether the property is on, above or below the surface of the ground, other than aircraft, watercraft or vehicles licensed for highway use.

provided such aircraft, watercraft or vehicles are not used in connection with the operation of the facility.

"property damage" means physical injury to or destruction or radioactive contamination of property, and 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 contamination.

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor.

"the facility" means the facility described in the declarations and includes the location designated in Item 3 of the declarations and all property and operations at such location.

"transportation incident" means a discharge or dispersal of nuclear material from an insured shipment caused by collision or upset of the transporting conveyance, or an accident that breaks open, punctures or ruptures the shipping containers or containment thereon; but only if both the discharge or dispersal and the collision, upset or accident take place away from any nuclear facility and away from any disposal site, and both occur in the course of the transportation, including handling and temporary storage incidental thereto.

"waste" means any waste material

- (1) containing byproduct material and
- (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof.

4. INSURING AGREEMENT IV is replaced by the following and INSURING AGREEMENT IV-A added by the "Amendment of Coverage Endorsement for Workers Claims (Facility Form)" continues to apply:

#### IV LIMITED DEFENSE OF PARTIALLY COVERED CLAIMS OR SUITS

The following provisions apply with respect to any partially covered claim or suit for which the companies' duty to defend has been limited by INSURING AGREEMENT I:

- (1) The companies will defend the claim or suit unless the companies and the first named insured mutually agree on a different defense arrangement. By making

such a defense, the companies shall not be considered as having waived their rights under this policy to deny payment or reimbursement of the items not covered.

- (2) As soon as practicable, the first named insured, acting on behalf of all insureds, and the companies shall endeavor to reach an equitable arrangement for handling the defense and sharing the costs thereof.
  - (3) The companies' share of defense costs shall not exceed the portion of the total defense costs that represents the costs which would be reasonably and necessarily incurred in the defense of the claim or suit in the absence of any claim or demand for the items not covered.
  - (4) The companies shall have a right to contribution from the first named insured for all defense costs as they are incurred in excess of the amount of the companies' share, including reimbursement by the first named insured of all such excess costs paid by the companies.
  - (5) If the companies and the first named insured cannot agree on the companies' share of defense costs, the dispute shall be submitted, as a condition precedent to any right of recovery on this policy, to arbitration for a final and binding resolution, as provided in Condition 19.
5. In EXCLUSIONS (d) and (e), and in all endorsements to this policy relating thereto, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  6. EXCLUSION (f) is replaced by the following exclusion:  
[This policy does not apply:]  
(f) to on-site property damage:
  7. In CONDITION 3, and in all endorsements to this policy modifying the dollar amount of the limit of liability stated in Item 4 of the declarations, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  8. In CONDITION 4, and in all endorsements to this policy modifying the dollar amount of the total aggregate liability of the companies with respect to a common occurrence:
    - (a) the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage"; and
    - (b) the words "bodily injury and property damage" are replaced by "bodily injury, property damage and environmental damage."

9. In CONDITIONS 5, 11, 15 and 18, and in all endorsements to this policy relating thereto, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
10. CONDITION 19, DECLARATIONS, is renumbered CONDITION 20.
11. The following CONDITION is added to the policy:

19 ARBITRATION OF DISPUTES RELATING TO THE APPLICATION OF INSURING AGREEMENT IV

All such disputes subject to paragraph (5) of INSURING AGREEMENT IV shall be submitted to a Board of Arbitration (the "Board") for a final and binding resolution of the dispute.

There shall be two parties to the arbitration: the first named insured, acting on behalf of all insureds as their duly authorized representative, and Nuclear Energy Liability Insurance Association, acting on behalf of the companies as their duly authorized representative.

Except to the extent the parties mutually agree otherwise, the following principles will apply:

- (a) The arbitration will take place in New York, New York, and will be governed by the laws of the State of New York.
- (b) Either party may begin the process of arbitration by giving notice to the other party in writing of its intention to do so and the name of the arbitrator that it has appointed.
- (c) The other party shall then appoint in writing an arbitrator, and the arbitrators shall appoint in writing an umpire before they begin the arbitration. The umpire shall act as chairman of the Board.
- (d) If a party fails to name its arbitrator within thirty (30) days of the other party's written request that it do so, the requesting party may appoint an arbitrator for the party in default.
- (e) If the two arbitrators fail to agree on the selection of an umpire within thirty (30) days after they have both been appointed, each of them shall name two, of whom the other shall decline one. The choice shall be made by drawing lots.
- (f) The arbitrators and umpire shall be executive officers or former executive officers of insurance companies licensed to do business in the United States or of organizations designated as the first named insured under a Nuclear Energy Liability Policy issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters; provided that the current employees of the following shall not be eligible for service without the consent of both parties:

- (1) any party or likely party to the underlying claim or suit;
  - (2) American Nuclear Insurers, NAERP Reinsurance Association or their members; or
  - (3) any other insurer or reinsurer which has casualty insurance or reinsurance in force on any of the foregoing which may be materially affected by the Board's decision.
- (g) Within thirty (30) days after the appointment of the umpire, each party shall submit its case in writing to the Board.
- (h) The Board shall determine its rules of procedure, and the nature and extent of any discovery, testimony, examination or cross-examination of witnesses and oral argument permitted. The decision of any two members of the Board shall be final and binding on all parties. All discovery, submissions of evidence, hearing of witnesses and argument shall be completed within sixty (60) days of the appointment of the umpire, provided the Board may grant one extension of thirty (30) days.
- (i) The arbitrators and the umpire are not to be bound by any strict rules of legal procedure, evidence or legal precedents. They shall, however, be governed by the terms of this policy, and shall have no power to add to or change its provisions. Subject to this admonition, they shall interpret the relevant provisions of this policy as an honorable business agreement, and shall be entitled to decide, in accordance with such provisions together with the other materials submitted to them, what they think is the fair and right thing to be done between the parties from a business point of view, without favoring the interest of either party.
- (j) The Board shall make its award in writing within thirty (30) days after the close of the period, including any extension granted, described in paragraph (h) above.
- (k) If the Board fails to make an award within the time prescribed by paragraph (j) above, then unless an extension is agreed to by the parties, a new arbitration shall be commenced and completed in accordance with the procedure set out in paragraphs (a) through (j) above.
- (l) The award of the Board signed by any two members shall be final, not subject to appeal and binding on all parties, including all insurers subscribing the policy and all insureds thereunder. The award shall be treated as a matter involving interstate commerce, and may be filed or confirmed in any court of competent jurisdiction, state or federal, and judgment thereon entered and enforced, in accordance with the law and practice of the forum.

- (m) Unless the Board decides otherwise, each party shall pay the expenses of the arbitrator appointed by or for it and one half of the other costs of arbitration.
- (n) If an arbitrator or umpire is unable or unwilling to act, a new arbitrator or umpire, as the case may be, shall be appointed to act in his or her place, in accordance with the provisions set forth above.
- (o) All materials relevant to the arbitration shall be submitted to the Board in triplicate and the filing party shall send simultaneously a copy thereof to the opposing party.

12. This endorsement applies to all claims for damages, costs, expenses or other relief or recovery for which coverage is sought under this policy, and which are first made in writing against any insured on or after the effective date of this endorsement stated below.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as designated hereon. No insurance is afforded hereunder.

*J. S. Swartz*  
 John L. Swartz, Vice President Underwriting  
 American Nuclear Insurers

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Effective Date of this Endorsement January 1, 1990 To form a part of Policy No NF-200  
 12:01 A.M. Standard Time

Issued to Nebraska Public Power District

Date of Issue February 16, 1990 For the subscribing companies

By *James E. Johnson*  
 PRESIDENT

Endorsement No 93

Countersigned by *James E. Johnson*  
 MO Insurance Countersignature

NE-71 (1/1/90)

# Nuclear Energy Liability Insurance

## NUCLEAR ENERGY LIABILITY INSURANCE ASSOCIATION

CHANGES IN SUBSCRIBING COMPANIES AND IN THEIR PROPORTIONATE LIABILITY ENDORSEMENT  
CALENDAR YEAR 1990

1. It is agreed that with respect to bodily injury, property damage or environmental damage caused, during the effective period of this endorsement, by the nuclear energy hazard:
  - a. The word "companies" wherever used in the policy means the subscribing companies listed below.
  - b. The policy shall be binding on such companies only.
  - c. Each such company shall be liable for its proportion of any obligation assumed or expense incurred under the policy because of such bodily injury, property damage or environmental damage as designated below.
  
2. It is agreed that the effective period of this endorsement is from the beginning of the effective date of this endorsement stated below to the close of December 31, 1990, or to the time of the termination or cancellation of the policy, if sooner.

Aetna Casualty & Surety Co.	12.917337%
Allianz Insurance Company	1.515634%
Allstate Insurance Company	5.535510%
American Home Assurance Co.	0.692369%
Continental Casualty Company	5.341750%
Continental Insurance Company	10.333870%
Federal Insurance Company	2.755699%
General Ins. Co. of America	1.722312%
Hanover Insurance Company	0.595059%
Hartford Fire Insurance Co.	10.333870%
Highlands Insurance Company	0.344462%
Home Indemnity Company	1.614667%
Ins. Co. of North America	7.750403%
Motors Insurance Corporation	0.430578%
Ohio Casualty Insurance Co.	0.172231%
Providence Washington Ins. Co.	0.193760%
Reliance Insurance Company	0.516694%
Royal Ins. Co. of America	3.616855%
St. Paul Fire & Marine Ins. Co.	5.991922%
State Farm Fire & Casualty Co.	0.861156%
Tokio Marine & Fire Ins. Co.	0.516694%
Transamerica Insurance Co.	0.861156%
Travelers Indemnity Company	12.856195%
U. S. Fire Insurance Company	2.325121%
U.S. Fidelity & Guaranty Co.	8.611558%
Universal Underwriters Ins. Co.	0.172231%
Zurich Insurance Company	1.420907%
Total	<u>100.000000%</u>

NE-90

Effective Date of  
this Endorsement

January 1, 1990

To form a part of Policy No. NE-200

12:01 A. M. Standard time

Issued to Nebraska Public Power District

Date of Issue April 1, 1990

For the Subscribing Companies,

By [Signature]  
President

Endorsement No. 94 Countersigned by [Signature]

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as designated herein. No Insurance is recorded hereunder.

[Signature]  
John J. Quastrock, Vice President-Underwriting  
American Nuclear Insurers

**Nuclear Energy Liability Insurance**  
**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

WAIVER OF DEFENSES ENDORSEMENT  
(Extraordinary Nuclear Occurrence)

Effective August 20, 1988, the named insured, acting for himself and every other insured under the policy, and the members of Nuclear Energy Liability Insurance Association agree as follows:

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which
  - (a) arises out of or results from or occurs in the course of the construction, possession, or operation of the facility, or
  - (b) arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility,

the insureds and the companies agree to waive

- (1) any issue or defense as to the conduct of the claimant or the fault of the insureds, including but not limited to:
  - (i) negligence,
  - (ii) contributory negligence,
  - (iii) assumption of risk, and
  - (iv) unforeseeable intervening causes, whether involving the conduct of a third person, or an act of God,
- (2) any issue or defense as to charitable or governmental immunity, and
- (3) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1. above do not apply to

- (a) bodily injury or property damage which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
- (b) bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (c) any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under law.

3. The waivers set forth in paragraph 1. above shall be effective only with respect to bodily injury or property damage to which the policy applies under its terms other than this endorsement; provided, however, that with respect to bodily injury or property damage resulting from an extraordinary nuclear occurrence, Insuring Agreement IV, "Application of Policy", shall not operate to bar coverage for bodily injury or property damage (a) which is caused during the policy period by the nuclear energy hazard and (b) which is discovered and for which written claim is made against the insured not later than twenty (20) years after the date of the extraordinary nuclear occurrence.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under

- (a) the provisions of the policy applicable to the financial protection required of the named insured;
- (b) the agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to Section 170 of the Atomic Energy Act of 1954, as amended; and
- (c) the limit of liability provisions of Subsection 170e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1. above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because of bodily injury or property damage to which the policy applies as proof of financial protection.

5. As used herein:

"extraordinary nuclear occurrence" means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.

"Financial protection" and "nuclear incident" have the meanings given them in the Atomic Energy Act of 1954, as amended.

"claimant" means the person or organization actually sustaining the bodily injury or property damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as designated herein. No insurance is afforded hereunder.

*J. S. Santolucito*  
John L. Santolucito, Vice President-Underwriting  
American Nuclear Insurers

Effective Date of this Endorsement August 20, 1988 To form a part of Policy No. MF-70  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies

**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

By *J. S. Santolucito*

Endorsement No. 72

Countersigned by *James E. Johnson*

MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

SUPPLEMENTARY ENDORSEMENT  
WAIVER OF DEFENSES  
REACTOR CONSTRUCTION AT THE FACILITY

Effective August 20, 1988, it is agreed that in construing the application of paragraph 2(b) of the WAIVER OF DEFENSES ENDORSEMENT ME-33b with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

- (1) the claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and
- (2) no operating license has been issued by the Nuclear Regulatory Commission with respect to the nuclear reactor, and
- (3) the claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as designated herein. No insurance is afforded hereunder.

*J. S. DeWitt*  
John L. DeWitt, Vice President-Underwriting  
American Nuclear Insurers

Effective Date of this Endorsement August 20, 1988 To form a part of Policy No. MF-70  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies

**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

By *J. S. DeWitt*

Endorsement No. 73

Countersigned by *James E. Johnson*

ME-39b

MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

Restriction of Companies Obligation to Defend,  
Investigate, Negotiate or Settle Any Claim or Suit  
(Section 170 O. of the Atomic Energy  
Act of 1954, as amended)

Effective August 20, 1988, it is agreed that whenever, pursuant to subsection 170 O. of the Atomic Energy Act of 1954, as amended, an appropriate U.S. District Court determines that liability from a single nuclear incident may exceed the limit of liability under the applicable limit of liability under subsection 170 e.(1) (A), (B) and (C) of the Atomic Energy Act of 1954, as amended, the companies obligations under Insuring Agreement I, to defend, investigate, negotiate or settle any claim or suit under the policy do not include any obligation that would necessitate or result in the companies incurring legal costs, including costs of initiating, prosecuting, investigating, settling, or defending claims or suits, which are not authorized for payment by a court pursuant to such subsection 170 O.

This is to certify that this is a true copy of the original  
Endorsement having the endorsement number and being made part  
of the Nuclear Energy Liability Policy (Facility Form) as des-  
ignated hereon. No Insurance is afforded hereunder.

John L. ... Vice President  
American Nuclear Insurers

Effective Date of this Endorsement August 20, 1988 To form a part of Policy No. MF-70  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies

**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

By

Endorsement No. 74

Countersigned by   
MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

**WAIVER OF DEFENSES ENDORSEMENT**  
**(Extraordinary Nuclear Occurrence)**

The named insured, acting for himself and every other insured under the policy, and the members of Nuclear Energy Liability Insurance Association agree as follows:

1. With respect to any extraordinary nuclear occurrence to which the policy applies as proof of financial protection and which
  - (a) arises out of or results from or occurs in the course of the construction, possession, or operation of the facility, or
  - (b) arises out of or results from or occurs in the course of the transportation of nuclear material to or from the facility,

the insureds and the companies agree to waive

- (1) any issue or defense as to the conduct of the claimant or the fault of the insureds, including but not limited to:
  - (i) negligence,
  - (ii) contributory negligence,
  - (iii) assumption of risk, and
  - (iv) unforeseeable intervening causes, whether involving the conduct of a third person, or an act of God,
- (2) any issue or defense as to charitable or governmental immunity, and
- (3) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his bodily injury or property damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action.

2. The waivers set forth in paragraph 1. above do not apply to
  - (a) bodily injury, property damage or environmental damage which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

- (b) bodily injury sustained by any claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
  - (c) any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under law.
3. The waivers set forth in paragraph 1. above shall be effective only with respect to bodily injury, property damage or environmental damage to which the policy applies under its terms other than this endorsement; provided, however, that with respect to bodily injury, property damage or environmental damage resulting from an extraordinary nuclear occurrence, the provisions of COVERAGES A and C of the policy providing coverage for bodily injury, property damage or environmental damage caused during the policy period by the nuclear energy hazard and which is discovered and for which written claim is made against the insured not later than ten (10) years after the end of the policy period shall not operate to bar coverage for bodily injury, property damage or environmental damage (a) which is caused during the policy period by the nuclear energy hazard and (b) which is discovered and for which written claim is made against the insured not later than twenty (20) years after the date of the extraordinary nuclear occurrence.

Such waivers shall not apply to, or prejudice the prosecution or defense of any claim or portion of claim which is not within the protection afforded under

- (a) the provisions of the policy applicable to the financial protection required of the named insured;
- (b) the agreement of indemnification between the named insured and the Nuclear Regulatory Commission made pursuant to Section 170 of the Atomic Energy Act of 1954, as amended; and
- (c) the limit of liability provisions of Subsection 170e. of the Atomic Energy Act of 1954, as amended.

Such waivers shall not preclude a defense based upon the failure of the claimant to take reasonable steps to mitigate damages.

- 4. Subject to all of the limitations stated in this endorsement and in the Atomic Energy Act of 1954, as amended, the waivers set forth in paragraph 1. above shall be judicially enforceable in accordance with their terms against any insured in an action to recover damages because of bodily injury, property damage or environmental damage to which the policy applies as proof of financial protection.
- 5. As used herein:
  - "extraordinary nuclear occurrence" means an event which the Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as defined in the Atomic Energy Act of 1954, as amended.
  - "Financial protection" and "nuclear incident" have the meanings given them in the Atomic Energy Act of 1954, as amended.
  - "claimant" means the person or organization actually sustaining the bodily injury, property damage or environmental damage and also includes his assignees, legal representatives and other persons or organizations entitled to bring an action for damages on account of such injury or damage.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Mutual Atomic Energy Liability Policy (Facility Form) as designated in the policy and hereunder.

*J. S. DiStasio*  
 John L. DiStasio, Vice President-Underwriting  
 American Nuclear Insurers

Effective Date of this Endorsement January 1, 1990 To form a part of Policy No. MF-70  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies

**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

Endorsement No. 75 By *J. S. DiStasio*  
 Countersigned by *James E. Johnson*

**Nuclear Energy Liability Insurance**  
**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

**SUPPLEMENTARY ENDORSEMENT**  
**WAIVER OF DEFENSES**  
**REACTOR CONSTRUCTION AT THE FACILITY**

It is agreed that in construing the application of paragraph 2(b) of the WAIVER OF DEFENSES ENDORSEMENT NE-33c with respect to an extraordinary nuclear occurrence occurring at the facility, a claimant who is employed at the facility in connection with the construction of a nuclear reactor with respect to which no operating license has been issued by the Nuclear Regulatory Commission shall not be considered as employed in connection with the activity where the extraordinary nuclear occurrence takes place if:

- (1) the claimant is employed exclusively in connection with the construction of a nuclear reactor, including all related equipment and installations at the facility, and
- (2) no operating license has been issued by the Nuclear Regulatory Commission with respect to the nuclear reactor, and
- (3) the claimant is not employed in connection with the possession, storage, use or transfer of nuclear material at the facility.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as designated hereon. No insurance is afforded hereunder.

*J. S. Deutch*  
John L. Deutch, Vice President-Underwriting  
American Nuclear Insurers

Effective Date of this Endorsement January 1, 1990 To form a part of Policy No. MF-70  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue February 16, 1990 For the Subscribing Companies

**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

By *J. S. Deutch*

Endorsement No. 76

Countersigned by *James E. Johnson*

ME-39c (1/1/90)

MO Insurance Countersignature

**Nuclear Energy Liability Insurance**  
**MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS**

**AMENDATORY ENDORSEMENT**  
**(Facility Form)**

It is agreed that:

1. INSURING AGREEMENT I is replaced by the following:

**I COVERAGE A - LIABILITY**

To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as covered damages because of bodily injury or property damage, or as covered environmental cleanup costs because of environmental damage. This Coverage applies only to bodily injury, property damage or environmental damage caused during the policy period by the nuclear energy hazard, and which is discovered and for which written claim is made against the insured, not later than ten (10) years after the end of the policy period.

The companies shall have the right and duty to defend any claim or suit against the insured alleging such injury or damage, and seeking damages or costs which are payable under the terms of this policy; but the companies may make such investigation, negotiation and settlement of the claim or suit as they deem expedient.

The companies' duty to defend shall be limited, as described in INSURING AGREEMENT IV, if the claim or suit also seeks any of the following, which in no event shall be construed as covered by this policy:

- (1) damages for on-site property damage;
- (2) recovery of on-site cleanup costs or any other cleanup costs except covered environmental cleanup costs;
- (3) performance of an insured's environmental protection obligations or on-site cleanup obligations; or
- (4) any other relief or recovery except payment of covered damages or covered environmental cleanup costs.

The companies' duty to defend claims or suits ends when the limit of their liability has been exhausted pursuant to CONDITION 3.

Subject to INSURING AGREEMENT IV, the companies shall pay, with respect to any claim or suit they defend, the costs incurred in the defense, including

- (1) costs taxed against the insured in any such suit and interest on any judgment therein;
- (2) premiums on appeal bonds and bonds to release attachments in any such suit, but without obligation to apply for or furnish such bonds;

- (3) reasonable expenses, other than loss of earnings, incurred by the insured at the companies' request.

**COVERAGE B - DAMAGE TO PROPERTY OF AN INSURED AWAY FROM THE FACILITY**

With respect to property damage caused during the policy period by the nuclear energy hazard to the property of an insured which is away from the facility, to pay to such insured those sums which such insured would have been legally obligated to pay as covered damages therefor, had such property belonged to another.

**COVERAGE C - SUBROGATION - OFFSITE EMPLOYEES**

With respect to bodily injury caused during the policy period by the nuclear energy hazard to any employee of an insured, and which is discovered and for which written claim is made against the insured, not later than ten (10) years after the end of the policy period, to pay to the workmen's compensation carrier of such insured as follows:

All sums which such carrier would have been entitled to recover and retain as damages from another person or organization, had such person or organization alone been legally responsible for such bodily injury, by reason of the rights acquired by subrogation by the payment of the benefits required of such carrier under the applicable workmen's compensation or occupational disease law. An employer who is a duly qualified self-insurer under such law shall be deemed to be a workmen's compensation carrier within the meaning of this Coverage.

This Coverage does not apply to bodily injury to any person who is employed at and in connection with the facility; nor shall it constitute workmen's compensation insurance as required under the laws of any state.

2. INSURING AGREEMENT II is replaced by the following:

**II DEFINITION OF INSURED**

The unqualified word "insured" includes (a) the named insured and (b) any other person or organization with respect to his legal responsibility for covered damages or covered environmental cleanup costs because of bodily injury, property damage or environmental damage caused by the nuclear energy hazard.

Subdivision (b) above does not include as an insured the United States of America or any of its agencies, except the Tennessee Valley Authority.

Subject to CONDITION 3 and the other provisions of this policy, the insurance applies separately to each insured against whom claim is made or suit is brought.

3. INSURING AGREEMENT III is replaced by the following:

III DEFINITIONS Where used in this policy:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person.

"covered damages" means damages because of bodily injury or property damage to which this policy applies; but covered damages do not include environmental cleanup costs or on-site cleanup costs.

"covered environmental cleanup costs" means only those environmental cleanup costs which are incurred directly for monitoring, testing for, cleaning up, neutralizing or containing environmental damage as the result of an extraordinary nuclear occurrence or a transportation incident; but covered environmental cleanup costs do not include on-site cleanup costs.

"disposal site" means any structure, basin, excavation, premises or place prepared as a dump or site for the disposal of waste materials of a general nature, but which may also be used for the disposal of waste materials containing small amounts of nuclear material.

"environment" includes land, the atmosphere, and all watercourses, bodies of water and natural resources, whether on, above or below the surface of the ground.

"environmental cleanup costs" include all loss, cost or expense arising out of any governmental decree, order or directive (other than an award of covered damages in an action at law) requiring or requesting a person or organization to undertake or pay for monitoring, testing for, cleaning up, neutralizing or containing contamination of the environment, whether the contamination is on, above or below the surface of the ground.

"environmental damage" means contamination of the environment by nuclear material.

"environmental protection obligations" include all obligations of any person or organization

- (1) relating to the protection of the environment from contamination or imminent danger of contamination, and
- (2) imposed by any governmental laws, regulations or ordinances.

"extraordinary nuclear occurrence" means an event which the United States Nuclear Regulatory Commission has determined to be an extraordinary nuclear occurrence as

defined in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"governmental" refers to federal, state and local governments and authorities, including courts, agencies and political subdivisions thereof.

"indemnified nuclear facility" means

- (1) "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, or
- (2) any other nuclear facility,

if financial protection is required pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, with respect to any activities or operations conducted thereat.

"insured shipment" means a shipment of source material, special nuclear material, spent fuel, waste, or tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, herein called "material,"

- (1) to the facility from any location except an indemnified nuclear facility, but only if the transportation of the material is not by predetermination to be interrupted by removal of the material from a transporting conveyance for any purpose other than the continuation of its transportation, or
- (2) from the facility to any other location, but only until the material is removed from a transporting conveyance for any purpose other than the continuation of its transportation.

"nuclear energy hazard" means the radioactive, toxic, explosive or other hazardous properties of nuclear material, but only if

- (1) the nuclear material is at the facility or has been discharged or dispersed therefrom without intent to relinquish possession or custody thereof to any other person or organization, or
- (2) the nuclear material is in an insured shipment which is away from any other nuclear facility and is in the course of transportation, including handling and temporary storage incidental thereto, within
  - (a) the territorial limits of the United States of America, its territories or possessions, or Puerto Rico; or
  - (b) international waters or airspace, provided that the nuclear material is in the course of transportation between two points located within

the territorial limits described in (a) above and there is no deviation in the course of the transportation for the purpose of going to any other country, state or nation, except for the purpose of going to or returning from a port or place of refuge as the result of an emergency.

"nuclear facility" means "the facility" as defined in any Nuclear Energy Liability Policy (Facility Form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters. The term "nuclear facility" also means

- (1) any nuclear reactor.
- (2) any equipment or device designed or used for
  - (a) separating the isotopes of uranium or plutonium,
  - (b) processing or utilizing spent fuel, or
  - (c) handling, processing or packaging waste,
- (3) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (4) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"nuclear material" means source material, special nuclear material or byproduct material.

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission or a self-sustaining chain reaction or to contain a critical mass of fissionable material.

"on-site cleanup costs" include all loss, cost or expense arising out of on-site cleanup obligations.

"on-site cleanup obligations" include all obligations of any person or organization, imposed by common law or otherwise, to undertake or pay for monitoring, testing for, cleaning up, neutralizing or containing contamination by nuclear material at the facility, whether the material is on, above or below the surface of the ground.

"on-site property damage" includes all property damage to any property at the facility, whether the property is on, above or below the surface of the ground, other than aircraft, watercraft or vehicles licensed for highway use.

provided such aircraft, watercraft or vehicles are not used in connection with the operation of the facility.

"property damage" means physical injury to or destruction or radioactive contamination of property, and 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 contamination.

"source material," "special nuclear material," and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954, or in any law amendatory thereof.

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in any nuclear reactor.

"the facility" means the facility described in the declarations and includes the location designated in Item 3 of the declarations and all property and operations at such location.

"transportation incident" means a discharge or dispersal of nuclear material from an insured shipment caused by collision or upset of the transporting conveyance, or an accident that breaks open, punctures or ruptures the shipping containers or containment thereon; but only if both the discharge or dispersal and the collision, upset or accident take place away from any nuclear facility and away from any disposal site, and both occur in the course of the transportation, including handling and temporary storage incidental thereto.

"waste" means any waste material

- (1) containing byproduct material and
- (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof.

4. INSURING AGREEMENT IV is replaced by the following and INSURING AGREEMENT IV-A added by the "Amendment of Coverage Endorsement for Workers Claims (Facility Form)" continues to apply:

#### IV LIMITED DEFENSE OF PARTIALLY COVERED CLAIMS OR SUITS

The following provisions apply with respect to any partially covered claim or suit for which the companies' duty to defend has been limited by INSURING AGREEMENT I:

- (1) The companies will defend the claim or suit unless the companies and the first named insured mutually agree on a different defense arrangement. By making

such a defense, the companies shall not be considered as having waived their rights under this policy to deny payment or reimbursement of the items not covered.

- (2) As soon as practicable, the first named insured, acting on behalf of all insureds, and the companies shall endeavor to reach an equitable arrangement for handling the defense and sharing the costs thereof.
  - (3) The companies' share of defense costs shall not exceed the portion of the total defense costs that represents the costs which would be reasonably and necessarily incurred in the defense of the claim or suit in the absence of any claim or demand for the items not covered.
  - (4) The companies shall have a right to contribution from the first named insured for all defense costs as they are incurred in excess of the amount of the companies' share, including reimbursement by the first named insured of all such excess costs paid by the companies.
  - (5) If the companies and the first named insured cannot agree on the companies' share of defense costs, the dispute shall be submitted, as a condition precedent to any right of recovery on this policy, to arbitration for a final and binding resolution, as provided in Condition 19.
5. In EXCLUSIONS (d) and (e), and in all endorsements to this policy relating thereto, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  6. EXCLUSION (f) is replaced by the following exclusion:  
[This policy does not apply:]  
(f) to on-site property damage:
  7. In CONDITION 3, and in all endorsements to this policy modifying the dollar amount of the limit of liability stated in Item 4 of the declarations, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
  8. In CONDITION 4, and in all endorsements to this policy modifying the dollar amount of the total aggregate liability of the companies with respect to a common occurrence:
    - (a) the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage"; and
    - (b) the words "bodily injury and property damage" are replaced by "bodily injury, property damage and environmental damage."

9. In CONDITIONS 5, 11, 15 and 18, and in all endorsements to this policy relating thereto, the words "bodily injury or property damage" are replaced by "bodily injury, property damage or environmental damage."
10. CONDITION 19, DECLARATIONS, and CONDITION 20, MUTUAL POLICY CONDITION, are renumbered CONDITIONS 20 and 21.
11. The following CONDITION is added to the policy:

19 ARBITRATION OF DISPUTES RELATING TO THE APPLICATION OF INSURING AGREEMENT IV

All such disputes subject to paragraph (5) of INSURING AGREEMENT IV shall be submitted to a Board of Arbitration (the "Board") for a final and binding resolution of the dispute.

There shall be two parties to the arbitration: the first named insured, acting on behalf of all insureds as their duly authorized representative, and Nuclear Energy Liability Insurance Association, acting on behalf of the companies as their duly authorized representative.

Except to the extent the parties mutually agree otherwise, the following principles will apply:

- (a) The arbitration will take place in New York, New York, and will be governed by the laws of the State of New York.
- (b) Either party may begin the process of arbitration by giving notice to the other party in writing of its intention to do so and the name of the arbitrator that it has appointed.
- (c) The other party shall then appoint in writing an arbitrator, and the arbitrators shall appoint in writing an umpire before they begin the arbitration. The umpire shall act as chairman of the Board.
- (d) If a party fails to name its arbitrator within thirty (30) days of the other party's written request that it do so, the requesting party may appoint an arbitrator for the party in default.
- (e) If the two arbitrators fail to agree on the selection of an umpire within thirty (30) days after they have both been appointed, each of them shall name two, of whom the other shall decline one. The choice shall be made by drawing lots.
- (f) The arbitrators and umpire shall be executive officers or former executive officers of insurance companies licensed to do business in the United States or of organizations designated as the first named insured under a Nuclear Energy Liability Policy issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters; provided that the current employees of the following shall not be eligible for service

without the consent of both parties:

- (1) any party or likely party to the underlying claim or suit;
  - (2) American Nuclear Insurers, MAERP Reinsurance Association or their members; or
  - (3) any other insurer or reinsurer which has casualty insurance or reinsurance in force on any of the foregoing which may be materially affected by the Board's decision.
- (g) Within thirty (30) days after the appointment of the umpire, each party shall submit its case in writing to the Board.
- (h) The Board shall determine its rules of procedure, and the nature and extent of any discovery, testimony, examination or cross-examination of witnesses and oral argument permitted. The decision of any two members of the Board shall be final and binding on all parties. All discovery, submissions of evidence, hearing of witnesses and argument shall be completed within sixty (60) days of the appointment of the umpire, provided the Board may grant one extension of thirty (30) days.
- (i) The arbitrators and the umpire are not to be bound by any strict rules of legal procedure, evidence or legal precedents. They shall, however, be governed by the terms of this policy, and shall have no power to add to or change its provisions. Subject to this admonition, they shall interpret the relevant provisions of this policy as an honorable business agreement, and shall be entitled to decide, in accordance with such provisions together with the other materials submitted to them, what they think is the fair and right thing to be done between the parties from a business point of view, without favoring the interest of either party.
- (j) The Board shall make its award in writing within thirty (30) days after the close of the period, including any extension granted, described in paragraph (h) above.
- (k) If the Board fails to make an award within the time prescribed by paragraph (j) above, then unless an extension is agreed to by the parties, a new arbitration shall be commenced and completed in accordance with the procedure set out in paragraphs (a) through (j) above.
- (l) The award of the Board signed by any two members shall be final, not subject to appeal and binding on all parties, including all insurers subscribing the policy and all insureds thereunder. The award shall be treated as a matter involving interstate commerce, and may be filed or confirmed in any court of competent jurisdiction, state or federal, and judgment thereon entered and enforced, in accordance with the law and practice of the forum.

- (m) Unless the Board decides otherwise, each party shall pay the expenses of the arbitrator appointed by or for it and one half of the other costs of arbitration.
- (n) If an arbitrator or umpire is unable or unwilling to act, a new arbitrator or umpire, as the case may be, shall be appointed to act in his or her place, in accordance with the provisions set forth above.
- (o) All materials relevant to the arbitration shall be submitted to the Board in triplicate and the filing party shall send simultaneously a copy thereof to the opposing party.

12. This endorsement applies to all claims for damages, costs, expenses or other relief or recovery for which coverage is sought under this policy, and which are first made in writing against any insured on or after the effective date of this endorsement stated below.

This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made part of the Nuclear Energy Liability Policy (Facility Form) as designated herein. No insurance is afforded hereunder.

*J.S. DeMatteis*

John L. DeMatteis, Vice President-Underwriting  
American Nuclear Insurers

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Effective Date of this Endorsement January 1, 1990 To form a part of Policy No. MF-70

Issued to Nebraska Public Power District

Date of Issue February 16, 1990

For the Subscribing Companies

MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS

By *J.S. DeMatteis*

Countersigned by *[Signature]*  
Authorized Representative

Endorsement No. 77

ME-71 (1/1/90)

MO Insurance Countersignature

# Nuclear Energy Liability Insurance

## MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS

CHANGES IN SUBSCRIBING COMPANIES AND IN THEIR PROPORTIONATE LIABILITY ENDORSEMENT  
CALENDAR YEAR 1990

1. It is agreed that with respect to bodily injury, property damage or environmental damage caused, during the effective period of this endorsement, by the nuclear energy hazard:
  - a. The word "companies" wherever used in the policy means the subscribing companies listed below.
  - b. The policy shall be binding on such companies only.
  - c. Each such company shall be liable for its proportion, as designated below, of any obligation assumed or expense incurred under the policy because of such bodily injury, property damage or environmental damage.

It is agreed that the effective period of this endorsement is from the beginning of the effective date of this endorsement stated below to the effective date that another "Changes In Subscribing Companies And In Their Proportionate Liability Endorsement" changes the Companies and/or their proportions as listed in this endorsement, or to the time of the termination or cancellation of the policy, if sooner.

Arkwright Mutual Insurance Company	21%
Employers Insurance of Wausau, A Mutual Company	21%
Liberty Mutual Insurance Company	28%
Lumbermens Mutual Casualty Company	30%

### NOTICE OF ANNUAL MEETINGS

The annual meetings of Arkwright Insurance Mutual Company are held at its home office in Waltham, Massachusetts, on the second Wednesday of March in each year, at ten-thirty o'clock in the morning.

The annual meetings of Employers Insurance of Wausau A Mutual Company, are held at its home office in Wausau, Wisconsin, on the fourth Friday of May in each year, at nine o'clock in the morning.

The annual meetings of Liberty Mutual Insurance Company are held at its home office in Boston, Massachusetts, on the third Wednesday of April in each year, at ten o'clock in the morning.

The annual meetings of Lumbermens Mutual Casualty Company are held at its home office in Long Grove Illinois, on the third Tuesday of May in each year, at eleven o'clock in the morning.

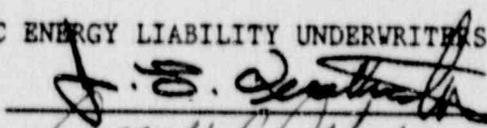
This is to certify that this is a true copy of the original Endorsement having the endorsement number and being made a part of the Nuclear Energy Liability Policy (Facility Form) as designated herein. No Insurance is provided hereunder.  
  
 J. S. Deutch, Vice President-Underwriting  
 American Nuclear Insurers

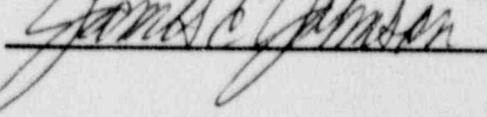
Effective Date of this Endorsement January 1, 1990 To form a part of Policy No. MF-70  
12:01 A.M. Standard time

Issued to Nebraska Public Power District

Date of issue April 1, 1990 For the Subscribing Companies

MUTUAL ATOMIC ENERGY LIABILITY UNDERWRITERS

By 

Countersigned by 

Endorsement No. 78