

PDR-016



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

November 13, 1981

Ms. Kimberly A. Armstrong  
Debevoise & Liberman  
1200 Seventeenth Street, N.W.  
Washington, DC 20036

IN RESPONSE REFER  
TO FOIA-81-413

Dear Ms. Armstrong:

This is in reply to your letter dated October 9, 1981 in which you requested, pursuant to the Freedom of Information Act, copies of SECY-80-468 and SECY-81-549.

In response to your request, copies of the documents listed on Appendix A hereto, are enclosed.

Sincerely,

J. M. Felton, Director  
Division of Rules and Records  
Office of Administration

Enclosures: As stated



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Appendix A

1. October 10, 1980      SECY-80-468, "Indemnification of Licensees Storing Spent Fuel at Sites Other Than the Sites Where the Fuel was Irradiated" (54 pages)
2. January 22, 1981      Memorandum for: W. J. Dircks, from: S. J. Chilk, subject: "Federal Register Notice on Extension of Financial Protection and Indemnity Requirements to West Valley and Morris (SECY-80-468)" (1 page)
3. September 15, 1981      SECY-81-549, "Indemnification of Licensees Storing Spent Fuel at Sites Other Than the Sites Where the Fuel was Irradiated" (28 pages)
4. October 27, 1981      Memorandum for: W. J. Dircks, from: S. J. Chilk, subject: "SECY-81-549 - Indemnification of Licensees Storing Spent Fuel at Sites Other Than the Sites Where the Fuel was Irradiated" (2 pages)

October 10, 1980

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

SECY-80-468

**CONSENT CALENDAR ITEM**

For: The Commissioners

From: Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

John G. Davis, Director  
Office of Nuclear Materials Safety  
and Safeguards *W. J. [Signature]*

Thru: Acting Executive Director for Operations

Subject: INDEMNIFICATION OF LICENSEES STORING SPENT FUEL  
AT SITES OTHER THAN THE SITES WHERE THE FUEL  
WAS IRRADIATED

Purpose: To obtain Commission approval for (1) publication of  
a notice of intent to modify a specific licensee's  
indemnity agreement to cover storage of spent fuel  
at a reactor site other than at the reactor site  
where the fuel was irradiated; (2) authorizing EDO  
to act on similar requests in the future; and (3)  
publication of a request for comments on the generic  
question of indemnifying licensees storing irradiated  
fuel at the West Valley and Morris sites.

Category: This paper covers a policy matter.

Background: Attachment "A" explains in some detail the background  
of the indemnification questions presented in this  
paper. SECY-78-607 discussed Duke Power Company's  
(Duke) indemnification request for storage of irradiated  
fuel from its Oconee Units 1, 2 and 3 reactors at  
the site of its McGuire Unit 1 reactor under the  
materials license issued for McGuire.

The Commission requested public comment on the  
proposed extension of Price-Anderson coverage through  
the exercise of its discretionary authority under  
Section 170(a) of the Atomic Energy Act of 1954, as

*8010270276*

Contact:  
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amended, in a FEDERAL REGISTER notice published on January 8, 1979. The Notice also sought comment on the advisability of extending Price-Anderson coverage to future situations involving the transfer of irradiated fuel to reactors other than those at which the fuel was irradiated. Sixteen comment letters were received. Comments received from utilities favored extending Price-Anderson coverage in the specific Duke request, and recommended extending coverage on a generic basis to all future storage of irradiated fuel at distant reactors. Four comment letters from organizations and persons opposed the Commission's proposed actions, but addressed the policy question of shipping irradiated fuel between reactor sites for purposes of storage rather than the issue of whether indemnity should be extended. The comments and staff responses are enclosed as Attachment "D".

Discussion:

Issue 1

Extend indemnity to licensees storing irradiated fuel at a reactor other than where fuel was irradiated before an operating license (OL) is issued for the storing reactor.

A decision by an Atomic Safety and Licensing Board to determine whether Duke should be allowed to transfer irradiated fuel from Oconee to McGuire is pending. If the hearing board authorizes issuance of a license amendment to permit the transfer, Duke plans to ship irradiated fuel from Oconee to McGuire as soon as possible. Duke proposes to store the Oconee irradiated fuel at the McGuire site under its present materials license (assuming the NRC authorizes amendment of the license to permit storage of irradiated fuel) which presently authorizes the storage of unirradiated fuel only.

The Commission must decide whether to extend indemnity coverage under the present McGuire indemnity agreement to the Oconee irradiated fuel to be stored at the McGuire reactor. The staff believes that since licensees storing unirradiated fuel are indemnified, licensees storing irradiated fuel at a reactor should likewise be indemnified. The staff believes that the public is entitled to rely on the protection

of Price-Anderson for nuclear incidents not only at an operating reactor, but also at a facility which the public perceives as a reactor even though no operating license has been issued for that facility.

However, if the Commission approves the Duke request to extend indemnity coverage, it must determine the appropriate level of financial protection for irradiated fuel storage at non-operating reactors. Presently, \$1 million in financial protection is required for storage of cold fuel and \$160 million is required as soon as an operating license is issued. The conclusions of an Oak Ridge National Laboratory study\* on postulated accidents at spent fuel storage facilities (although not at reactors) bear on this question since irradiated fuel is proposed to be stored at a reactor that has not operated and would be, in effect, a spent fuel storage facility. On the basis of the ORNL study and the NMSS evaluation of it, the staff does not believe that damages in excess of \$160 million would result from an accident involving irradiated fuel stored in a water basin.

Shipments from the storing reactor, however, would not be indemnified if, for some unexpected reason, the fuel had to be removed (although the transportation of the irradiated fuel from the first reactor to the storing reactor would be covered by the first reactor's indemnity agreement) and shipped to another unindemnified facility. Because specific accidents involving the transportation of irradiated fuel are postulated in the NMSS evaluation where consequences and costs would exceed \$160 million, the staff recommends that if indemnity coverage is extended to irradiated fuel stored at a reactor under a materials license, these licensees should be required to provide financial protection equal to the maximum amount of primary insurance available from the private insurers, currently \$160 million, and also participate in an industry retrospective insurance system currently providing \$350 million as

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\* This study (NUREG-CR/222) examined, among other things, economic loss resulting from postulated accidents at spent fuel storage facilities. A companion staff paper prepared by NMSS discusses and analyzes this study. (See SECY 80-467)

a secondary layer of financial protection. Duke, therefore, should be required to provide financial protection of \$510 million before an OL was issued rather than maintain its present financial protection level of \$1 million.

### Issue 2

Whether the Commission should approve an extension of indemnity coverage similar to Duke's on a generic basis or consider each request on a case-by-case basis.

Most of those commenting on the Commission's Notice favored having the Commission extend its indemnity coverage on a generic basis for irradiated fuel stored at reactor locations away from the reactor facility at which the fuel was irradiated regardless of whether the storing reactor has received an OL. The Duke request is only the second that the Commission has received. While the staff presently is not aware of other formal requests of a similar nature, we anticipate them in the future. The staff recommends, however, that instead of the Commission extending its indemnity coverage on a generic basis, the Commission authorize EDO to grant or deny similar requests on a case-by-case basis with the Commission being informed of any action taken. This would allow a check on the specific circumstances of the proposed storage to determine that it presents no new indemnity policy questions not already considered by the Commission in the Duke and earlier situations.

### Issue 3

Whether indemnity should be extended under the Commission's discretionary authority to non-reactor spent fuel storage facilities.

Some commenters also suggested that the Commission now exercise its discretionary authority to extend indemnity to any sites where irradiated fuel is stored. The major elements of the nation's spent fuel storage policies have not yet been established,

and there are a number of different proposals for independent storage of irradiated fuel that will be receiving Congressional consideration. In view of the present uncertainty, the staff recommends that the Commission defer a decision on extension of its discretionary indemnity coverage to non-reactor storage by licensees of irradiated fuel at least until legislation has been enacted and implementing regulations are under consideration.

However, irradiated fuel is currently stored at two licensed non-reactor facilities, NFS-West Valley and GE-Morris. The licensee of the West Valley reprocessing plant is indemnified but only \$20 million in financial protection is required. The Morris licensee is not indemnified nor is any financial protection required (although GE does buy \$160 million in nuclear liability insurance).

The considerations for indemnifying licensees storing fuel at reactors would apply to some extent to West Valley and Morris (e.g., the risk to the public of transportation of irradiated fuel from a storage facility is the same whether the facility is a reactor, West Valley, or Morris).

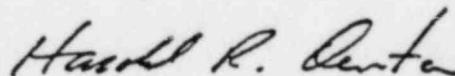
Since West Valley and Morris currently store irradiated fuel, there are at least three possible indemnity treatments for these facilities. First, they could be treated in the same manner as reactors where irradiated fuel is stored, and the Commission could establish the same requirement for indemnity and financial protection as apply to such reactors. Second, changes in the indemnity treatment for West Valley and Morris could be deferred until the question of generic coverage for independent spent fuel storage facilities is addressed following enactment of legislation (or if by some date, say the end of FY 1981, such legislation is not enacted, West Valley and Morris be reviewed specifically). Finally, the Commission could take action now with respect to fuel stored at reactor sites, defer action on fuel stored at future facilities but direct the staff to obtain public comment on possible actions that might be taken with respect to West Valley and Morris. The staff recommends the last alternative.

Recommendations: That the Commission

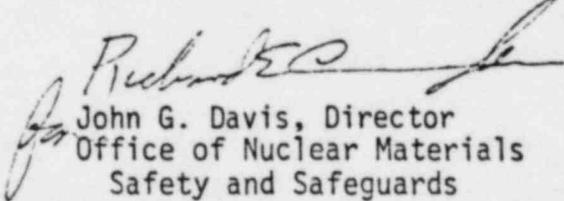
- (1) Approve publication of two Federal Register notices that would:
  - (a) announce the Commission's intent to modify Duke's indemnity agreement at McGuire to extend indemnity coverage to Ocone irradiated fuel stored at the McGuire reactor and require Duke Power to provide financial protection equal to the maximum insurance available under the primary and secondary insurance layers, currently \$510 million, (Attachment B);
  - (b) obtain public comment on extending financial protection and indemnity requirements to the Morris and West Valley fuel storage facilities, (Attachment C).
- (2) Agree to a policy authorizing EDO to handle similar requests on a case-by-case basis, with the Commission being informed of any action taken.
- (3) Note that the various Congressional subcommittees will be notified by letter (Attachment E) of actions taken by the Commission.

Coordination:

The Office of the Executive Legal Director has no legal objection.



Harold R. Denton, Director 9/17/80  
Office of Nuclear Reactor Regulation



John G. Davis, Director  
Office of Nuclear Materials  
Safety and Safeguards

Enclosures:

1. Attachment "A" - Background
2. Attachments "B" & "C" - Federal Register Notices
3. Attachment "D" - Abstracts of Comments  
and Staff Response
4. Attachment "E" - Draft letter to Congressional  
subcommittees.

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Tuesday, October 28, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT October 21, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for consideration at an Open/Closed meeting during the week of November 3, 1980. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific time and date.

DISTRIBUTION

Commissioners  
Commission Staff Offices  
Exec Dir for Operations  
ACRS

ATTACHMENT A

Background

Under the Price-Anderson Act (§ 170 of the Atomic Energy Act of 1954, as amended, (the Act)), financial protection and government indemnity are mandatory for production and utilization facilities (e.g., reactors and reprocessing plants) licensed by the Commission. This financial protection and indemnity covers the "licensed activity" which encompasses not only possession and operation of a reactor facility itself, but also certain ancillary activities including (1) possession of the new fuel (containing special nuclear material) being stored on-site for use in the reactor and (2) on-site storage of irradiated fuel following irradiation at that reactor. Possession of irradiated fuel away from the facility (and not in the course of transportation from the facility) where it was irradiated is not considered to be a part of the ancillary activity of possession and operation of the facility. Accordingly, under the requirements of the Act, the Commission need not require financial protection of, and extend indemnity to, reactor (and other production and utilization facility) licensees who possess and store this irradiated fuel. Thus, no indemnity protection would be afforded irradiated fuel stored away from the facility where it is produced or used, unless the Commission exercised its discretionary authority under the Act to require licensees to maintain financial protection and to execute indemnity agreements with the Commission.

Two requests to indemnify the storage of irradiated fuel at reactor sites away from the reactor at which the spent fuel was produced were discussed in SECY-78-607. The first request, from Duke Power Company, was for authorization to indemnify Duke's storage at its McGuire Unit 1 reactor of irradiated fuel discharged from its Oconee Units 1, 2 and 3 reactors. In the second request, Commonwealth Edison Company sought indemnity coverage for the storage of irradiated fuel among Dresden Units 2 and 3 and Quad-Cities Units 1 and 2. Commonwealth has since requested that the Commission defer action on its application.

On January 8, 1979, the Commission published a Notice in the FEDERAL REGISTER (44 F.R. 1751) which requested public comment on its proposal to exercise its discretionary authority and extend Price-Anderson coverage to the specific requests discussed in SECY-78-607. The Commission instructed the staff that the Notice should state that the Commission was making no judgment as to the merit of the particular storage requests, but only that the indemnity agreements should be modified if the licensing actions were authorized by the appropriate licensing boards. The Commission requested that the Notice seek comment on the question of whether it should approve a general extension of Price-Anderson coverage to any future requests to transfer irradiated fuel to reactors other than those at which the fuel was irradiated.

Attachment "A"

Sixteen responses were received to the January 8, 1979 Notice (see Attachment "D"). The responses fall into two broad categories.

The basic position expressed in the twelve comments received from utilities, trade groups, and law firms representing utility clients favored extending Price-Anderson coverage in the specific Duke and Commonwealth requests, and also extending indemnity coverage on a generic basis (for the same reasons) to all future requests by licensees for the storage of irradiated fuel at distant reactors. Some of the commenters went further by proposing the extension of indemnity coverage to (1) the storage of irradiated fuel at facilities other than reactors; and (2) fuel stored at a reactor under a materials (Part 70) license before an operating license for the facility was issued. They stated that before the Administration's policy pronouncements on the cessation of fuel reprocessing, there would have been no "gaps" in Price-Anderson coverage of irradiated fuel, i.e., irradiated fuel would have been indemnified in its transportation to and from a reactor or a reprocessing plant as well as during storage at either of these facilities. Because of the deferral of reprocessing, however, a gap in the Price-Anderson coverage could arise if irradiated fuel were stored at a reactor other than the one at which the fuel was irradiated and indemnity was not extended to this storage. Both of the proposals to extend coverage are discussed below.

Attachment "A"

The four comments received from organizations and persons opposing the Commission's proposed actions addressed the policy question of shipping irradiated fuel between reactor sites for purposes of storage rather than the issue of whether indemnity should be extended to the storage. As was clearly stated in the FEDERAL REGISTER notice, the extension of indemnification would only be authorized if and when the other licensing actions were approved pursuant to Commission licensing procedures. Hence, the staff has not considered these comments pertinent to the issues presented in the FEDERAL REGISTER Notice and discussed in this paper.

#### Issue 1

In its request to the Commission to store Oconee irradiated fuel at its McGuire Unit 1 reactor, Duke Power sought an amendment to its Part 70 Materials License No. SNM-1773 (which authorized it to receive and store unirradiated fuel at the McGuire site) to permit the receipt and storage of Oconee irradiated fuel at the McGuire spent fuel pool and to extend indemnity under the McGuire indemnity agreement to the Oconee fuel stored at McGuire. The staff in SECY-78-607 addressed the indemnity question on the assumption that indemnity would be extended under the provisions of the McGuire operating license, which the staff expected would be issued prior to the need to ship any irradiated fuel from

Ocone to McGuire. It now appears, however, that an operating license for McGuire may not be issued prior to completion of the separate licensing action in which authority to make these shipments is sought. It was for this reason that Duke requested that the Commission considered amending Materials License SNM-1773, which presently authorizes the storage of unirradiated fuel at McGuire.

Although the Atomic Energy Act of 1954, as amended, requires holders of construction permits under section 185 to maintain financial protection and execute indemnity agreements, the Commission's regulations in 10 CFR 140.13 make this provision effective at the time unirradiated fuel is authorized to be stored at the reactor on the assumption that this is the first time that there is any possibility of a nuclear incident at the reactor site. The argument has been advanced by commenters that since the storage of unirradiated fuel at McGuire is indemnified under a materials license, the storage of irradiated fuel at the McGuire reactor should likewise be indemnified. While it is true that one of the principal arguments in support of the specific Duke request for indemnifying fuel stored at operating reactors (i.e., the complexities of differentiating which fuel was involved in an accident at the reactor) is not relevant in this case where the only irradiated fuel present (until fuel for McGuire itself is authorized for loading under a McGuire

Attachment "A"

OL) would be that which came from another reactor, the other basic argument is still valid. This contention is that the public is entitled to rely on the protection of Price-Anderson for nuclear incidents not only at an operating reactor, but also at a facility which is identified in the public mind as a reactor even if a license for operation has not been issued for that facility.

One problem that must be resolved, however, is the determination of an appropriate level of financial protection for irradiated fuel storage at a reactor that does not as yet have an operating license. In the present case where there already is an indemnity agreement in effect at a reactor under construction (i.e., where unirradiated fuel is brought on-site under a materials license as is the case with McGuire), this indemnity agreement could be modified to cover the storage of irradiated fuel from another reactor as well. Thus far, the amount of financial protection required for the McGuire facility, which has not received an operating license, is \$1 million to reflect the limited potential for damage associated with cold fuel at the facility. The storage of irradiated fuel at such a reactor, however, may very well require establishing a different level of financial protection. This level could be anywhere from the \$1 million level for storage of cold fuel to the \$160 million currently required as soon as an operating license is issued.

Attachment "A"

In the Oak Ridge National Laboratory (ORNL) study entitled "Economic Consequences of Accidental Releases from Fuel Fabrication and Radioisotope Processing Plants" (NUREG-CR/02222) basic data were presented to aid the staff in determining whether Price-Anderson should be extended to cover irradiated fuel storage as well as activities covered by other types of material licenses. The ORNL study was undertaken at the Commission's request to examine the desirability of extending Price-Anderson protection to materials licensees fabricating high enriched uranium, large byproduct materials sources, and licensees storing irradiated fuel. The question of the storage of irradiated fuel closely parallels the issues presented in this paper.

The NMSS staff contracted with ORNL to undertake a technical study to determine the quantities of certain radioactive materials which if released could cause damages exceeding \$140 million (the amount of financial protection available at the time of the study). The report examined, among other things, economic loss resulting from postulated accidents at spent fuel storage facilities. Although the study did not specifically consider accidents at reactors storing irradiated fuel under materials licenses, the staff believes that the conclusions as to postulated accidents at spent fuel storage facilities are relevant to the situation where irradiated fuel is stored at reactors which in effect are operating for a period of time as spent fuel storage facilities.

Attachment "A"

On the basis of the results of the ORNL study and the NMSS evaluation of the study, the staff concludes that damages in excess of \$160 million would not result from an accident involving irradiated fuel in a water basin.

It is in the transportation of irradiated fuel, however, that staff sponsored studies postulated specific accident scenarios in which the consequences and costs could exceed \$160 million. As indicated earlier, if Price-Anderson coverage were not extended to licensees storing irradiated fuel at a reactor where operation has not yet been authorized, shipments of this fuel would not be indemnified if, for some unexpected reason, the fuel had to be removed from the storing reactor (the transportation of the irradiated fuel from the first reactor to the storing reactor would be covered by the first reactor's indemnity agreement) and shipped to another unindemnified facility. By extending indemnity coverage to all licensees storing irradiated fuel at reactors, whether licensed to operate or not, a potential gap in Price-Anderson coverage that was opened when the reprocessing option was deferred, would be eliminated.

If indemnity coverage were extended to licensees storing irradiated fuel at reactors under materials licenses, the staff further believes that these licensees should be required to provide the maximum amount of the basic layer of financial protection (currently \$160 million). Since a

Attachment "A"

transportation accident involving irradiated fuel could be postulated to cause damage in excess of \$160 million, establishing financial protection at less than \$160 million would be inconsistent with phasing out government indemnity where private insurance is available. In establishing the financial protection requirement for such storing reactors at the maximum amount of liability insurance available from private sources, the Commission would also require the licensees to purchase private liability insurance under an industry retrospective rating plan currently providing \$350 million as a second layer of financial protection. Duke would, of course, be paying an increased premium for maintaining \$160 million in primary insurance prior to the issuance of its operating license for McGuire.

## Issue 2

The request by Duke Power to store irradiated fuel at a reactor site away from the reactor at which the fuel was irradiated and to have the storage indemnified is the second such request that the Commission has received. The first request, by Carolina Power and Light, was approved by the Commission in August, 1977. While the staff presently is not aware of any other formal requests of a similar nature, they cannot be ruled out. In its January 8, 1979 FEDERAL REGISTER Notice, the Commission

Attachment "A"

did not specifically request public comment on whether it should exercise its discretionary authority to extend indemnity coverage on a generic basis for irradiated fuel stored at reactor locations away from the reactor facility at which it was irradiated regardless of whether the reactor is licensed to operate. Most of those commenting on the Commission Notice nevertheless indicated that they would favor such a generic extension of the Commission's discretionary authority. As noted earlier, the comments opposing the Commission's proposed action were based upon the commenter's opposition to the storage and transportation of spent fuel to sites other than where the fuel was irradiated rather than the indemnity actions that might be taken if such storage and transportation were authorized.

If the Commission chose to extend its indemnity authority on a generic basis, the mechanics for implementing this decision would be relatively straightforward. The definition of "radioactive material" in the standard form of indemnity agreement (in 10 CFR 140.92) executed by the NRC with large power reactor licensees could be modified to accomplish this, and the financial protection amount required would be raised to the maximum amount plus the retrospective premium. An amendment to 10 CFR 140.11 and 140.13 would be necessary to codify this change.

Attachment "A"

Rather than recommending that the Commission exercise its discretionary indemnity authority on a generic basis, the staff recommends that the Commission delegate to the Director, Office of Nuclear Reactor Regulation or the Director, Office of Nuclear Materials Safety and Safeguards, as appropriate, the authority to grant or deny similar requests on a case-by-case basis with the Commission being informed of any action taken. This would allow a check on the specific circumstances of the proposed storage to determine that it presents no new indemnity policy questions not already considered by the Commission in the Duke and earlier situations.

### Issue 3

To this point, this paper has addressed the extension of the Commission's discretionary indemnity authority to indemnify irradiated fuel stored away from the reactors at which the fuel was irradiated based on specific proposals of utilities for actions foreseeable in the near future. A number of commenters have suggested that the Commission also take other indemnity actions now (i.e., by exercising its discretionary authority to extend indemnity to any sites where irradiated fuel is stored) before the major elements of the nation's spent fuel storage policies have been established. These commenters argue that for consistency and to remove any "gap" introduced by the discontinuance of reprocessing (which would

Attachment "A"

have been indemnified) that the indemnity coverage be extended to cover the storage of irradiated fuel wherever it may take place. The staff is aware of a number of different proposals for independent storage of irradiated fuel that will be receiving Congressional consideration. Under some circumstances (e.g., fuel storage facilities owned by the government) the indemnity questions may present issues that cannot be settled by extrapolation from, or analogy to, current practices. The present uncertainty as to where, if at all, irradiated fuel will be authorized to be stored away from reactors makes it prudent for the staff to recommend that the Commission defer any decision on extension of its discretionary indemnity coverage to away from reactor storage of irradiated fuel at least until legislation has been enacted and implementing regulations are under consideration.

On the other hand, irradiated fuel is currently stored at two licensed facilities in the United States that are not reactors. The fuel stored at the Nuclear Fuel Service's West Valley reprocessing plant is indemnified but only \$20 million in financial protection is required. This level of financial protection, established over ten years ago, for the operation of a fuel reprocessing plant was reviewed by the Commission three years ago (SECY-76-444) when the Commission exercised its discretionary authority to require \$140 million (since raised to \$160 million) in

Attachment "A"

financial protection for plutonium processing and fuel fabrication plants. The Commission made no change in that financial protection level on the basis of the review.

The fuel stored at the General Electric Company's facility at Morris, Illinois is not indemnified nor is any financial protection required (nuclear liability insurance of \$160 million is purchased by GE for this facility as an exercise of business judgment). For a brief time the GE facility was indemnified for fuel storage prior to the issuance of an operating license as a reprocessing plant. However, when the production facility license was terminated and the facility became a storage facility, the requirement for providing financial protection ended and the indemnity coverage was terminated.

The considerations favoring extending indemnity to irradiated fuel stored at reactors and requiring the maximum amount of financial protection would be applicable to the West Valley and Morris facilities. The possible risk to the public of transportation of irradiated fuel is the same whether the facility is a reactor being used for storage or the West Valley or Morris facilities.

The current use of West Valley and Morris to store irradiated fuel away from reactors suggests at least three possible indemnity treatments.

Attachment "A"

First, these facilities could be treated in the same manner as reactors where spent fuel is stored, and the Commission could establish the same requirement for indemnity and financial protection as reactors. Second, further indemnity treatment for the West Valley and Morris facilities could be deferred until the question of generic coverage for independent spent fuel storage facilities is addressed following enactment of legislation (or if by some date, say the end of FY 1981, such legislation is not enacted, West Valley and Morris be reviewed specifically). Finally, the Commission could take action now with respect to fuel stored at reactor sites, defer action on fuel stored at future facilities, if any, to be determined by pending legislation, but direct the staff to obtain public comment on possible actions that might be taken with respect to these two specific facilities where fuel is currently stored that are not covered in either of the other two generic situations. The staff recommends the last alternative.

Attachment "A"

ATTACHMENT B

NUCLEAR REGULATORY COMMISSION

DOCKET NOS. 50-269, 50-270, 50-287, 50-369, AND 50-370

DUKE POWER COMPANY (OCONEE UNIT NOS. 1, 2, AND 3; MCGUIRE UNIT NO. 1)

INTENT TO MODIFY INDEMNITY AGREEMENT NO. B-83

The Commission has been requested by Duke Power Company to authorize the storage of reactor fuel irradiated at its Oconee Unit 1, 2 and 3 reactors at its McGuire Unit 1 reactor and to indemnify Duke for the storage of such fuel at McGuire. The Commission published the Duke requests and relevant background information in previous Federal Register notices (43 FR 32905, July 28, 1978, and 44 FR 1751, January 8, 1979).

In the January, 1979 notice, the Commission requested public comments on its proposal to exercise its discretionary authority under Section 170(a) of the Atomic Energy Act of 1954, as amended, to extend Price-Anderson coverage in accord with the Duke request.<sup>1/</sup> That notice stated that the Commission was making no judgment as to the merits of the particular storage request (which is pending before an Atomic Safety and Licensing Board), but was instead seeking comment on the indemnification request described above. The Commission also requested public comment

<sup>1/</sup> The notice also requested comments on a similar request by Commonwealth Edison Company. However, Commonwealth Edison subsequently requested the Commission to defer action on its request.

on the generic issue of whether it should approve a general extension of Price-Anderson coverage to future requests for transfer and storage of irradiated fuel at reactors other than those at which the fuel was irradiated.

Sixteen responses to the Notice were received. The twelve comment letters received from utilities, trade groups, and law firms representing utility clients generally favor extending Price-Anderson coverage to the specific Duke situation, and also favor extending indemnity coverage on a generic basis to all future storage of irradiated fuel at distant reactors. Some of the commenters also propose extending indemnity coverage to (1) the storage of irradiated fuel at facilities other than reactors; and (2) fuel stored at a reactor under a special nuclear materials (Part 70) license before an operating license for the facility is issued. (The Commission is seeking comment on these issues by separate FEDERAL REGISTER notice published today, see Table of Contents.) The four comments received from organizations and persons opposing the Commission's proposed actions address the policy question of shipping irradiated fuel between reactor sites for purposes of storage rather than the issue of whether indemnity should be extended to the storage. As the Notice clearly stated, the extension of indemnification would only be authorized if and when other required licensing actions authorizing such shipment were approved pursuant to Commission licensing procedures.

Attachment "B"

In its request to the Commission to authorize the storage of Oconee-irradiated fuel at its McGuire Unit 1 reactor, Duke Power sought an amendment to its Part 70 Materials License No. SNM-1773 to permit the receipt and storage of Oconee irradiated fuel at the McGuire spent fuel pool. The present materials license authorizes Duke to receive and store only unirradiated fuel at the McGuire site. Duke also sought indemnification for the Oconee fuel to be stored at McGuire. The staff originally addressed the indemnity question on the assumption that indemnity would be extended under the provisions of the McGuire operating license, which the staff expected would be issued prior to the need to ship any irradiated fuel from Oconee to McGuire. It now appears, however, that an operating license for McGuire may not be issued prior to the completion of the separate licensing action in which authority to make these shipments is sought. It was for this reason that the Commission considered amending materials license SNM-1773, which presently authorizes the storage of unirradiated fuel at McGuire.

For the reasons set forth below, the Commission has decided to exercise its discretionary authority under Section 170 of the Atomic Energy Act and intends to modify Duke's indemnity agreement at the McGuire facility to permit the storage of Oconee-irradiated fuel at McGuire prior to the

Attachment "B"

issuance of an OL for McGuire.<sup>2/</sup> The Commission has also determined that an appropriate level of financial protection for irradiated fuel storage at a reactor that does not as yet have an operating license is the maximum amount available through private insurers, currently \$160 million in primary coverage and an additional \$350 million in secondary coverage. Since the McGuire facility has not received an operating license but the licensee is permitted to store unirradiated fuel on site under its material license, Duke has an indemnity agreement but is required to have only \$1 million in financial protection. This reflects the limited potential for damage associated with cold fuel at the facility and is consistent with the requirements of 10 CFR 140.13 of the Commission's regulations. The storage of irradiated fuel at such a reactor, however, warrants a higher level of financial protection because of the potential consequences of postulated transportation accidents involving spent fuel. This level could be anywhere from the \$1 million level for storage of cold fuel to the \$160 million currently required as soon as an operating license is issued.

Based on an evaluation of a study conducted for it by the Oak Ridge National Laboratory (ORNL) and staff analysis of the ORNL study and other studies in related areas, the Commission has decided to require Duke to obtain a primary level of financial protection at the \$160

<sup>2/</sup> Of course, if the Commission does not authorize the shipment of irradiated fuel from Oconee to McGuire in the proceeding now before an Atomic Safety and Licensing Board, this action will be of no consequence.

million maximum. The ORNL report<sup>3/</sup> examined, among other things, economic loss resulting from postulated accidents at spent fuel storage facilities. Although the study did not specifically consider accidents at reactors storing irradiated fuel under materials licenses, the Commission believes that the conclusions as to postulated accidents at spent fuel storage facilities are relevant to the situation where irradiated fuel is stored in a reactor which in effect is operating for a period of time as a spent fuel storage facility. Although the ORNL study shows that there is virtually no likelihood that damage in excess of \$160 million would result from an accident involving irradiated fuel stored at a reactor under a materials license, the ORNL study showed that accident scenarios involving the transportation of irradiated fuel could be postulated in which the consequences and costs could exceed \$160 million. If Price-Anderson coverage were not extended to the storage of irradiated fuel at a reactor where operation has not yet been authorized, licensees would not be indemnified if, for some unexpected reason, the fuel had to be removed from the storing reactor.<sup>4/</sup>

<sup>3/</sup> "Economic Consequences of Accidental Releases from Fuel Fabrication and Radioisotope Processing Plants," NUREG/CR-0222, January, 1979.

<sup>4/</sup> The transportation of the irradiated fuel from the first reactor to the storing reactor would be covered by the first reactor's indemnity agreement.

Since a transportation accident involving irradiated fuel could be postulated to cause damage in excess of \$160 million, a level of financial protection of less than \$160 million would be inconsistent with phasing out government indemnity where private insurance is available. Similar considerations move the Commission to also require licensees of storing reactors to purchase private liability insurance in an amount equal to the maximum available under an industry retrospective rating plan as a secondary layer of financial protection, currently an additional \$350 million.

As required in 10 CFR 140.9, the Commission is publishing this notice of intent to amend Indemnity Agreement B-83 covering the McGuire Unit No. 1 to allow indemnity coverage for the on-site storage at that facility of irradiated fuel from Oconee Unit Nos. 1, 2, and 3. The amendment would redefine the term "the radioactive material" in Article I, paragraph 9 in the McGuire indemnity agreement B-83 to read as follows:

"The radioactive material" means source, special nuclear, and byproduct material which: (1) is presently licensed under SNM-1773, or (2) was used in, or was irradiated in the nuclear reactors licensed under DPR-38, DRP-47, and DRP-55 and subsequently is transported to the McGuire site and is stored under SNM-1773.

Duke Power Company shall also obtain primary financial protection in an amount of \$160 million and secondary protection in an additional amount of \$350 million.

Attachment "B"

Any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the issuance of this amendment to the subject facility indemnity agreement. Petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Section, by [15 days after publication in the Federal Register]. Such petitions must be filed in accordance with the provisions of §2.714 of the Commission's "Rules of Practice for Domestic Licensing Proceedings," 10 CFR Part 2. A copy of the petitions and/or request for a hearing should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Debevoise & Liberman, 1200 17th Street, NW, Washington, DC 20036, counsel for the licensee.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d) neither an environmental impact statement nor a negative declaration and environmental impact appraisal need be prepared in connection with issuance of this amendment.

FOR THE NUCLEAR REGULATORY COMMISSION

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Harold R. Denton, Director  
Office of Nuclear Reactor Regulation

Dated at Bethesda, MD  
this            day of            1980.

Attachment "B"

ATTACHMENT C

NUCLEAR REGULATORY COMMISSION  
[10 CFR Part 140]  
FINANCIAL PROTECTION REQUIREMENTS AND  
INDEMNITY AGREEMENTS

AGENCY: U. S. Nuclear Regulatory Commission

ACTION: Request for public comment.

SUMMARY: The Commission requests comment on the policy question of whether to indemnify licensees storing irradiated fuel at two licensed facilities that are not reactors. In a companion FEDERAL REGISTER Notice published today (see Table of Contents) the Nuclear Regulatory Commission (NRC) has indicated its intent to exercise its discretionary statutory authority under the Price-Anderson Act to extend Government indemnity to a licensee storing fuel irradiated at one reactor at another reactor location.

DATE: The public comment period expires [60 days from date of publication].

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Utility Finance Branch,  
Division of Engineering, Office of Nuclear Reactor Regulation, U.S.  
Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301)  
492-8562.

SUPPLEMENTARY INFORMATION: The Commission published a Notice in the FEDERAL REGISTER on January 8, 1979 (44 F.R. 1751) which requested public comments on its proposal to exercise its discretionary authority to extend Price-Anderson coverage to Duke Power Company's storage at the McGuire Unit 1 reactor of fuel irradiated at the Oconee Unit 1, 2, and 3 reactors. A companion Federal Register notice published today discusses that question (see Table of Contents).

A number of those commenting on the January, 1979 Notice suggested that the Commission take additional indemnity actions now by exercising its discretionary authority under Section 170(a) of the Atomic Energy Act of 1954, as amended, to extend indemnity to any sites where irradiated fuel is stored before the major elements of the nation's spent fuel storage policies have been established. These commenters recommend that to be consistent and to remove any "gap" introduced by the discontinuance of reprocessing (which would have been indemnified) indemnity coverage should be extended to cover the storage of irradiated fuel wherever it may take place. The Commission is aware of a number of different proposals for independent storage of spent fuel that will be receiving Congressional consideration. Under some circumstances (e.g., at fuel storage facilities owned by the government) indemnity questions may present issues that cannot be settled by extrapolation from, or analogy to, current practices. Given the present uncertainty as to where, and whether, away from reactor

Attachment "C"

storage of irradiated fuel will be authorized, the Commission deems it prudent to defer any generic decision on extending its discretionary indemnity authority to non-reactor storage of irradiated fuel, at least until legislation has been enacted and implementing regulations are under consideration.

However, irradiated fuel is currently being stored at two licensed facilities in the United States that are not reactors. Spent fuel is stored at Nuclear Fuel Service's West Valley reprocessing plant. NFS has an indemnification agreement but only \$20 million in financial protection is required. The General Electric Company has no indemnity agreement for fuel stored at its Morris, Illinois facility nor is any financial protection required (GE has purchased \$160 million of nuclear liability insurance for this facility as an exercise of business judgment). GE did have an indemnity agreement for fuel storage for a brief period prior to the time it was issued an operating license as a reprocessing plant. However, when the production facility license was terminated and the facility became a storage facility under a materials license rather than a reprocessing facility, the requirement for providing financial protection ended and the indemnity coverage was terminated.

Considerations for indemnifying licensees for fuel stored at reactors as discussed in the companion Notice published today would appear to apply equally to West Valley and Morris (e.g., the risk to the public of

transportation of irradiated fuel from a storing facility is similar whether the facility is a reactor, West Valley or Morris). Therefore, the Commission has decided to invite public comment on possible actions that might be taken with respect to requiring financial protection covering irradiated fuel currently stored at the West Valley and Morris facilities.

Comments should be sent to the Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attn: Chief, Utility Finance Branch. The comment period expires - [60 days from the date of publication in the Federal Register]. Copies of all comments received will be available for examination in the Commission's Public Document Room, 1717 H Street, N. W., Washington, D.C.

FOR THE NUCLEAR REGULATORY COMMISSION

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Samuel Chilk  
Secretary of the Commission

Dated at Washington, DC,  
this                    day of                    1980.

Attachment "C"

ATTACHMENT D

## ABSTRACTS OF COMMENTS AND STAFF RESPONSE

## 1. Steven R. McGee, Oglethorpe Power Corporation

"We favor the extension of Government indemnity to spent reactor fuel stored at a reactor site different than the one where it was generated in the situations given in your discussion. We understand that the Commission has decided to exercise its discretionary statutory authority under the Price-Anderson Act to accomplish such a decision in this general policy question. We believe that spent reactor fuel must be covered by Government indemnity in the event of a nuclear incident at a site where this spent fuel was stored."

STAFF RESPONSE None

## 2. Charles R. Bardes, American Nuclear Insurers (ANI)

"The Commission's proposed extension of indemnity agreements entered into with Duke Power and Commonwealth Edison in order to extend indemnity and financial protection requirements to spent fuel created at one power reactor while stored at another power reactor site is in keeping with the purpose of the Price-Anderson legislation. It appears to ANI to be appropriate that the Commission exercise its authority on a generic basis to extend indemnity coverage of spent fuel generated at the reactor but stored at the site of a

second operating reactor upon the request of reactor licensees, and that authority to make such decisions be delegated except for special circumstances that may present themselves in individual applications for the extension of such indemnity."

STAFF RESPONSE None

3. Anthony Z. Roisman, Natural Resources Defense Council, Inc.

"Regardless of the wisdom of Price-Anderson and the possible merit in the Commission requiring more complete coverage than Price-Anderson provides (i.e., without a limited liability), we believe that the premise upon which the need to exercise discretionary authority is based is incorrect. The effort to create a distinction here, where none exists, provides impetus to the false premise that a utility has less connection with and responsibility for nuclear wastes which have left the immediate vicinity of the nuclear reactor which generated those wastes. The Commission should not give support to that false premise by basing its action here on erroneous analysis."

STAFF RESPONSE.

The staff believes that its position as stated in the Federal Register notice whereby possession of spent fuel away from the facility where it is generated is not a part of the ancillary

activity of possession and operation of the facility is the correct interpretation. Therefore, possession of this spent fuel must be licensed under other provisions of the Atomic Energy Act of 1954, as amended, which authorize licenses for possession and use of the special nuclear and byproduct material. After being transferred from the reactor site where it was generated to some other site this spent fuel would not be subject to the mandatory indemnity requirements of the Act providing that the Commission require financial protection of and indemnify reactor licensees.

4. Robert E. Uhrig, Florida Power & Light Company

"Florida Power and Light Company fully supports Price-Anderson indemnification of spent nuclear fuel, whether it is stored at the irradiation site or at another storage facility. The proposed extension is consistent with the nature of the fuel and provides continuity of protection."

STAFF RESPONSE. None

5. Carl Walske, Atomic Industrial Forum, Inc.

- a. "We support use of NRC's discretionary authority to indemnify spent fuel stored away from the generating reactor site...  
Assuming acceptance of the proposed policy, it would appear to be a sound exercise of regulatory efficiency for this relatively uncomplicated and likely to recur situation to be handled by the Commission on a generic basis, with authority to be delegated.
  
- b. "First, it is not apparent why extension of indemnity for away from reactor stored fuel is limited to storage at the site of another operating reactor. Second, the notice does not expressly contemplate protection of the stored spent fuel during its eventual shipment following storage at the away from reactor site..."

STAFF RESPONSE.

Although the January 8 Federal Register notice addresses the issue of storing spent fuel at operating reactors, the Commission may very well consider both extending Price-Anderson authority to fuel stored at facilities other than operating reactors as well as the question of indemnifying the spent fuel being shipped from a storage facility. Of course, if indemnity were extended to spent fuel stored at an operating reactor, this fuel would also be indemnified during its eventual shipment following storage at the operating reactor storage site.

6. Mary Sinclair, Great Lakes Energy Alliance

"To ship waste from one reactor to another will only postpone the day when we have come to grips with the nuclear waste issue. The economic costs will increase because shuffling wastes from one reactor to another only means that the shipments will have to take place again and again as new dodges to the problem of nuclear waste are planned by the industry and the NRC. Every spent fuel shipment will give a radiation dose to the population it passes as much as a half mile away. The truck drivers and handlers will, of course, get higher doses."

STAFF RESPONSE.

Since Mrs. Sinclair's comments address the policy question of shipping of spent fuel between reactor sites and not the issue of extending Government indemnity to the spent fuel, the staff has no comment.

7. John F. Doherty, Texas Public Interest Research Group

"Indemnity should be denied to utilities who seek to place spent fuel at other atomic plant locations. The reasons relate to the dangers of having fuel which is someone else's responsibility on licensee's premises. The new indemnity will:

- (a) Encourage movement of hazardous materials which increases the possibility of disposal to the environment.
- (b) As a natural result of (a) increase the danger of accidents because of handling mishap.
- (c) Create a second class of spent fuel on some sites, to wit, some will be "ours" and some "theirs" when one utility or licensee has spent fuel from a different utility or licensee."

STAFF RESPONSE.

Before the Commission exercises its authority to extend Government indemnity to spent fuel stored at an operating reactor different than the one in which the fuel was produced, safety and environments must first be addressed. The extension of Government indemnity would not be made prior to a decision by an appropriate licensing board or other body to allow the spent fuel to be transferred. In any case, assuming a utility were to decide to transfer spent fuel to another operating reactor in accordance with the Commission's approval and it was decided not to indemnify the spent fuel stored at a different reactor site, the transportation of the fuel would still be indemnified under an existing indemnity agreement.

By extending indemnity to all of the spent fuel stored at an operating reactor, whether or not the fuel was produced at that reactor, the problem envisioned by Mr. Doherty of identification of the spent fuel is eliminated. This was one of very reasons that the Commission staff believed it desirable to recommend extension of indemnity in this situation.

8. Joseph B. Knotts, Debevoise and Liberman

- a. "Price-Anderson coverage should be extended to the proposed storage of spent fuel from the Oconee Nuclear Station at the spent fuel pools of the McGuire Nuclear Station. As the notice inviting comments suggests, members of the public are entitled to count on the protection Price-Anderson affords. The public would be rightly confounded if artificial distinctions were made between batches of spent fuel in a single fuel pool because some came from a reactor other than the one with which the pool is associated.
  
- b. "It appears that NRC has not formally reached the question of extending Price-Anderson coverage during such period as spent fuel may be stored at a production or utilization facility under an appropriate materials license prior to the issuance of an operating license for the facility. At least from the time cold (unirradiated) fuel is shipped to a reactor under

construction for preoperational storage under a materials license, the present regulations (10 CFR Part 140) provide that financial protection must be maintained and that an indemnity agreement must be executed.

"While storage of spent fuel is an activity involving quite a low hazard potential, it is nonetheless, on a comparative basis, a more hazardous activity than is cold fuel storage. Therefore, it would make more sense and better carry out the purposes of Price-Anderson to require coverage of spent fuel storage under a materials license at a facility under construction than to cover cold fuel while not covering spent fuel.

- c. "Duke believes that it is appropriate for NRC to establish a general policy with regard to indemnification of spent fuel at facilities other than the one at which such was used. Because of the indefinite deferral of commercial reprocessing... it is quite possible that there will be a number of additional purposes for receipt and storage of spent fuel at facilities other than the one at which it was originally used. It is appropriate for the Commission, rather than treating each of these on a case-by-case basis insofar as Price-Anderson coverage is concerned, to announce and implement a policy of general applicability."

STAFF RESPONSE.

a. No comment.

b&c Because the staff assumed that the McGuire operating license would be issued before any spent fuel would be shipped to McGuire, the question of storing fuel under a materials license although examined was not fully considered. This specific question, as well as whether it is appropriate for the Commission to establish a general policy of extending indemnity so spent fuel stored at an operating reactor other than the one at which the fuel was used should be indemnified, is discussed in detail in the Commission paper.

9. John J. Kearney, Edison Electric Institute

"The Edison Electric Institute concurs with the decision of the Nuclear Regulatory Commission to extend Government indemnity to spent reactor fuel stored at a reactor site different than the one where it was generated... While the decision of NRC applies only to the two specific situations, NRC is encouraged to address the policy issued on a generic basis for extending the ruling to all similar situations and to any private spent fuel storage facility whether located contiguous with a power reactor, at reactor sites or a separate location. The low level of risk for spent fuel storage facilities should be recognized and a reasonable level of financial protection specified."

STAFF RESPONSE. None

10. David Berick, Environmental Policy Institute

"It is not clear to us that spent fuel transfers to a second spent fuel would not be covered under Price-Anderson as the Commission has stated in the notice. Spent fuel transfers appear to us to either represent a special operating condition warranting special licensing provisions including Price-Anderson changes, or they are merely ongoing reactor operations which do not require modification of licensing and indemnification requirements."

STAFF RESPONSE.

Possession of spent fuel away from the facility where it is generated, i.e., at a location where it is not used in connection with the operation of the facility, is not a part of the ancillary activity of possession and operation of the facility. After being transferred from the reactor site where it was generated to some other site, this spent fuel would not be subject to the mandatory indemnity requirements of the Act which provide that the Commission require financial protection of and indemnity reactor (and other production and utilization facility) licensees. Accordingly, no indemnity protection automatically would be afforded irradiated fuel stored away from the facility where it is irradiated. To indemnify this spent fuel, the Commission must require such licensees to maintain financial protection and to be indemnified by exercising its discretionary authority under § 170 of the Act.

11. Gordon Pearce, San Diego Gas and Electric

"We urge the Commission to exercise, on a generic basis, its discretionary authority under the Price-Anderson Act to extend government indemnity to storage of spent fuel at a reactor site different than that at which it was generated, including transportation to and from such sites. We also support approval of the specific requests of Commonwealth Edison Company and Duke Power Company."

STAFF RESPONSE. None

12. William J. Cahill, Jr., Con Edison

"Con Edison believes that the Nuclear Regulatory Commission's (Commission) decision to extend government indemnity to spent reactor fuel stored at a reactor site different than the one where it was generated in the two specific situations (Duke Power Company and Commonwealth Edison Company) is a proper exercise of the Commission's discretionary authority. In addition, Con Edison believes that the Commission should exercise its authority on a generic basis to extend indemnity coverage to all spent fuel generated at one reactor but stored at the site of another reactor upon the issuance of Commission approval of the transfer of spent fuel. Con Edison respectfully suggests that the Commission should also give consideration to extending indemnity coverage to all licensed storage facilities, whether or not at a reactor site."

STAFF RESPONSE. None

13. Maurice Axelrad, Lowenstein, Newman, Reis, Axelrad & Toll

"We urge the Commission to extend coverage under the Price-Anderson Act not only in the two instances requested by Duke Power Company and Commonwealth Edison Company but also on a generic basis to all

other instances involving approved storage of spent reactor fuel at a site other than where it has been generated. We urge that the Commission similarly provide for the applicability of Government indemnification as soon as spent fuel is received at a reactor site, whether under an operating license or a materials license."

STAFF RESPONSE.

Although the January 8, 1979 Federal Register notice addresses the specific issue of storing spent fuel at operating reactors, the Commission paper also considers the questions of extending Price-Anderson authority to fuel stored at facilities other than operating reactors, indemnifying the spent fuel being shipped from a storage facility, and extending indemnity to fuel stored at a reactor site whether or not an operating license has been issued.

14. Hubert H. Nexon, Commonwealth Edison Company

"We strongly urge, therefore, that the Commission exercise its authority on a generic basis to extend the indemnity coverage. We further endorse the Commission's plan to rely upon any such generic policy decision in considering modifications to specific indemnity agreements. Since the proposed policy has been noticed for comment, the Commission has clear authority to make its determinations binding in particular proceedings."

STAFF RESPONSE. None

15. E. E. Van Brunt, Jr., Arizona Public Service Company

"We support the Commission's proposed action to extend Price-Anderson indemnity protection to spent fuel stored at a reactor site different than the one where it was generated in each of the two specific situations cited in the Commission's published notice (44 FR 1751),... We are also of the opinion that the considerations favoring the amendment of the Duke and Commonwealth indemnity agreements apply equally to the question whether the Commission should, on a generic basis, extend indemnity coverage to spent fuel generated at one reactor but stored at the site of another operating reactor. Since any storage of fuel not generated at that site can only occur in conformance with licensing restrictions, the presence of the fuel will not result in risks significantly different from those covered in the basic indemnity agreement for the facility."

STAFF RESPONSE. None

16. T. M. Anderson, Westinghouse Electric Corporation

"Westinghouse strongly endorses the Commission's decision to provide Price-Anderson indemnity protection for spent reactor fuel to be stored at a reactor site other than the one at which it was generated."

Attachment "D"

Furthermore, the need for storing the spent fuel at another reactor location stems from unresolved issues beyond the control of utilities who are operating nuclear reactors and requiring action by the federal government for their resolution. We do not take issue with the Commission on its strict interpretation of the Act and Commission regulations except to say that in light of the legislative intent we believe the Act can be reasonably interpreted to mandate indemnification for spent fuel stored at another reactor site where both sites are the responsibility of the same licensee. As we read the Act, indemnification of the licensee for liability which might arise from or in connection with all of his licensed facilities and activities is mandated.

STAFF RESPONSE.

None.

Attachment "D"

ATTACHMENT E

The Honorable Morris K. Udall, Chairman  
Subcommittee on Energy and the Environment  
Committee on Interior and Insular Affairs  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Commission is publishing two notices in the Federal Register concerning several aspects of the indemnity and financial protection provisions under the Price-Anderson Act (Section 170 of the Atomic Energy Act of 1954, as amended) as these provisions are applied to indemnification of licensees that store irradiated fuel at sites other than the site where the fuel was irradiated.

The first notice explains that the Commission will exercise its discretionary authority under Section 170 of the Act to require financial protection of and extend Government indemnity to Duke Power Company for the storage of irradiated fuel produced at its Oconee Units 1, 2 and 3 reactors at its McGuire Unit 1 reactor. Since an operating license for the McGuire facility has not been issued, Duke proposes to store irradiated fuel at McGuire under an amendment to its special nuclear materials license for that facility. A decision by an Atomic Safety and Licensing Board on the materials license amendment is pending. The Commission will require Duke to obtain financial protection for the McGuire site at the maximum amount available from private sources, currently \$510 million.

Attachment "E"

The second notice invites public comment on possible indemnity actions that might be taken with respect to storage of spent fuel at two facilities which are not reactors: the West Valley fuel reprocessing plant in New York and General Electric's facility in Morris, Illinois. However, the Commission has deferred a decision on the generic question of whether it should extend its discretionary indemnity authority to away-from-reactor storage of irradiated fuel at least until legislation concerning such facilities has been enacted and implementing regulations are under consideration.

Copies of the two Federal Register notices are provided for your information.

Sincerely,

William J. Dircks  
Acting Executive Director  
For Operations

Enclosure:  
Federal Register Notices

cc: Rep. Steven Symms

Identical letters sent to:

The Honorable John D. Dingell, Chairman  
Subcommittee on Energy and Power  
Committee on Interstate and Foreign  
Commerce  
United States House of Representatives  
Washington, DC 20515  
cc: Rep. Clarence J. Brown

The Honorable Toby Moffett, Chairman  
Subcommittee on Environment, Energy and  
Natural Resources  
Committee on Government Operations  
United States House of Representatives  
Washington, DC 20515  
cc: Rep. Paul N. McCloskey, Jr.

The Honorable Gary Hart, Chairman  
Subcommittee on Nuclear Regulation  
Committee on Environment and  
Public Works  
United States Senate  
Washington, DC 20510  
cc: Sen. Alan Simpson

Attachment "E"