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August 23, 1982

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

Attn: Docketing and Service Branch

Re: Notice of Proposed Rulemaking  
Modification of Indemnity Agreements

Dear Sir:

On July 23, 1982, the Nuclear Regulatory Commission ("Commission") published in the Federal Register a notice of proposed rulemaking that would revise the procedures under which the Commission could enter into a nonstandard form indemnity agreement or could modify a standard form indemnity agreement. 47 Fed. Reg. 31887. The notice solicited written comments and suggestions on the proposed rule change. We are pleased to submit the following comments on behalf of Carolina Power & Light Company and The Cleveland Electric Illuminating Company.

The existing regulation at 10 C.F.R. § 140.9 presently requires the Commission to publish notice of its intent to enter into nonstandard indemnity agreements and to provide at least 15 days within which interested persons may file petitions for leave to intervene. The proposed rule change would continue the Commission's practice of giving advance notice of its intent to enter into a nonstandard indemnity agreement but would delete the requirement that the public be given an opportunity to intervene in the matter.

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Acknowledged by card

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PR-140  
(47 FR 31887)

Secretary of the Commission  
August 23, 1982  
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As the Commission's notice of proposed rulemaking correctly observes, the scope of relevant public comment on the terms of the nonstandard indemnity agreement is so narrow that the opportunity for public participation on that issue is unnecessary. Indeed, the underlying statutory directive authorizing the Commission to enter into indemnity agreements is quite broad in the discretion it confers on the Commission. In relevant part, the Atomic Energy Act provides that "[t]he agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the purposes of this section." Section 170(h), 42 U.S.C. § 2210(h). Thus, there is no doubt that the Commission has the express authority to enter into any form of an indemnity agreement which it "deems appropriate" to carry out the purposes of the Act. Providing an opportunity for public participation in such circumstances may only serve to mislead the public as to the scope of issues it may raise. We, therefore, support the Commission's policy decision to delete the opportunity for public intervention on such issues.

We suggest, however, that the Commission's proposed rule is too restricted and should go further. We see little need for encumbering the Commission's regulations (even the appendices) with a standard form indemnity agreement and believe that the Commission should delete these unnecessary appendices and conform the appropriate provisions of 10 C.F.R. Part 140 to delete the references to these appendices. Should the Commission nonetheless decide to retain the indemnity provisions as appendices, we question the need for the Commission to give prior notice of its intent to enter into a nonstandard indemnity agreement, as proposed in the rule change. We believe the public interest is fully protected by the Commission giving notice that it has taken such action. Thus, 10 C.F.R. § 140.9 could be amended to state that "[t]he Commission will publish in the Federal Register a notice of any action it has taken in entering into \* \* \*."

We appreciate the opportunity to comment on this proposed change in the Commission's regulations.

Respectfully submitted,

SHAW, PITTMAN, POTTS & TROWBRIDGE

By: 

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Dated: August 12, 1982