



Wisconsin Electric POWER COMPANY
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 USNRC

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OFFICE OF SECRETARY
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 BRANCH

September 17, 1982

Office of the Secretary of the Commission
 U. S. Nuclear Regulatory Commission
 Washington, DC 20555

DOCKET NUMBER **PR-50**
 PROPOSED RULE **(47 FR 27371)**

(8)

Re: 10CFR Part 50
 Mandatory Property Insurance For
 Decontamination of Nuclear Reactors
 (Federal Register Vol. 47, No. 122, 27371
 June 24, 1982)

Dear Sirs:

The Wisconsin Electric Power Company wishes to comment on questions raised by the NRC relating to nuclear property insurance in its advance notice of proposed rulemaking which appeared in the Federal Register dated June 24, 1982. We have read the report of Dr. John D. Long on "Nuclear Property Insurance: Status and Outlook." We have also reviewed the drafts of responses on behalf of the Edison Electric Institute, Atomic Industrial Forum, Nuclear Mutual Limited and Nuclear Electric Insurance Limited and agree with the comments made by these groups on the Long report and in answer to the questions raised by the NRC. The impact of new rules relating to nuclear property insurance is of great concern, however, and, therefore, we feel our specific comments should be made.

We do not believe that the NRC should require a utility to carry any particular dollar amount of property insurance. The utility itself is well aware of its risk, but in addition the amount of insurance it procures will be further dictated by the financial markets, Public Service Commissions and other interested parties as well as the practice of the industry. Wisconsin Electric has no objection to submitting to the NRC a statement on the amount of insurance it carries, but we believe that as the amount increases a point will be reached where a particular utility may justify not buying the maximum available.

Dr. Long proposed in his report that Nuclear Mutual Limited and ANI-MAERP quota share. As a member of Nuclear Mutual Limited, we feel very strongly that the formation of the utility industry mutual insurance company has benefited all utilities through increased coverages, improved terms and conditions as well as lower costs. Wisconsin Electric has saved over one-third the cost of its primary nuclear property insurance since the inception of Nuclear Mutual Limited. The utilities that remained with ANI-MAERP also benefited through premium credits that were developed by the pools after Nuclear Mutual Limited became a competing market. We urge you to permit the present two markets to operate as they have in the past.

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September 17, 1982

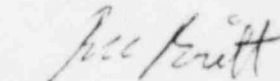
If the NRC does change its requirements for property insurance, we believe there must be special provisions for certain licensees. As you are aware, some utilities have already taken exception to the NRC rules relating to nuclear property insurance that were published in the Federal Register on March 29, 1982. As more insurance becomes available, which we feel certain it will, other utilities will reach a point where they may also be able to justify not buying all the coverages available.

The insurance and utility industry has over the years constantly worked to increase the nuclear insurance capacity and improve the terms and conditions of the insurance policies, and we think the results are commendable. We believe the insurance markets are sensitive to changes that might affect their ability to control the risks they are insuring. If the NRC were to become involved in the structure and terms and conditions of the insurance, we would expect that there would be greater reluctance by the insurers, and particularly the foreign reinsurers, to provide coverage.

In answer to your question of whether the NRC should require that all proceeds from property insurance be used to pay for decontamination before claims of creditors and owners are satisfied, we believe that there could be a very serious problem in connection with Wisconsin Electric's mortgage indenture and nuclear fuel lease if this were required by the primary insurance carriers, Nuclear Mutual Limited and ANI-MAERP. The steps being taken by Nuclear Electric Insurance Limited in its excess nuclear property insurance policy to provide for priority of recovery for decontamination costs appears to be the best approach to this matter.

You have also asked whether the NRC should become involved in the replacement power insurance and if this insurance is really necessary. Wisconsin Electric feels it is extremely important that this insurance be continued in its present form. We have no assurance that replacement power costs could be passed on to its customers through rates. The Wisconsin Legislature came within a few votes of removing the fuel adjustment clause at its last session so the future of this is certainly in doubt. Even if the fuel adjustment clause is retained in Wisconsin, there still is no guarantee that the Public Service Commission will allow the costs of replacement power to be recovered through it in the event of a serious accident at our nuclear facility.

Very truly yours,



President

R. W. Britt

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September 17, 1982

Mr. Samuel J. Chilk
 Secretary
 U.S. Nuclear Regulatory Commission
 Washington, D.C. 20555

DOCKET NUMBER

PROPOSED RULE

PR-50

(47 FR 27371)

Re: Mandatory Property Insurance for Decontamination
 of Nuclear Reactors (47 Fed. Reg. 27371 (1982)).

Dear Mr. Chilk:

On June 24, 1982, the Nuclear Regulatory Commission ("NRC") published in the Federal Register an Advance Notice of Proposed Rulemaking entitled "Mandatory Property Insurance for Decontamination of Nuclear Reactors." Comments on a report entitled "Nuclear Property Insurance: Status and Outlook" (NUREG-0891) and on a series of questions posed in the Advance Notice were invited. In response to this invitation, Florida Power & Light Company ("FPL") respectfully submits the comments which follow.

FPL would also like to make the NRC aware that FPL concurs with the comments which it understands the law firm of Baker & McKenzie to be filing on behalf of Nuclear Mutual Limited and Nuclear Electric Insurance Limited, as well as the

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comments it understands the Edison Electric Institute to be filing on behalf of their members.

I. BACKGROUND ON FPL

FPL is an investor-owned utility providing electric service throughout a large portion of Florida. In 1981, it had an investment of approximately \$5.1 billion in utility operations, with operating income of approximately \$400 million. FPL owns three nuclear-powered generating units which are currently in operation, and has a fourth unit which it plans to put into operation in 1983. These four units will comprise approximately 25% of FPL's total investment in utility facilities. The output of these units is about 30% of FPL's total system electric output; in the event of outages at one or more of these nuclear units, FPL must replace the power with considerably more expensive oil-fired power. It is apparent that FPL has a substantial stake in its nuclear-powered facilities and, accordingly, is vitally interested in the subject of nuclear-related insurance, including property, liability, and replacement power.

FPL currently has a nuclear property insurance program which consists of the \$500 million of primary layer coverage available from Nuclear Mutual Limited ("NML") for each of its two nuclear sites (two units at each site), together with the

full amounts of available Nuclear Electric Insurance Limited ("NEIL") and American Nuclear Insurers/Mutual Atomic Energy Liability Underwriters ("ANI/MAELU") excess layer coverage for each site. The excess policies currently provide full coverage up through approximately \$908 million of total losses (the excess layer policies cover the \$500-908 million increment) and approximately 25% coverage of all losses between \$908 million and \$1 billion. The amount of this excess coverage has grown rapidly since it first became available (from NEIL) November 1981, and FPL anticipates continued growth until the total coverage limit reaches \$1 billion or more.

All of FPL's nuclear property insurance provides coverage for both property losses and expenses incurred in decontaminating the property. FPL understands the insurance, as presently written, to contain no priority as to payment of property losses or decontamination expenses; the insurers will pay such losses and expenses as they are proven, until the limits of the policies are reached. However, starting in November, 1982, FPL understands that the NEIL excess layer policy will contain a priority for decontamination expenses. As a practical matter, this will mean that, in the event of a covered loss, the bulk of FPL's excess layer coverage will be reserved for decontamination expenses unless and until it is clear there will be no such expenses, or that such expenses will be less than the amount of coverage.

Since the outset of FPL's involvement with nuclear-powered generation, it has attempted to maintain the maximum amount of nuclear property insurance available at reasonable cost. Moreover, FPL has actively participated both in encouraging existing insurers such as NML to increase their coverage limits and in participating in new insurers (e.g., NEIL) to supplement the available coverage. Up to reasonable limits, FPL intends to continue its involvement in arranging for, acquiring and maintaining whatever increased nuclear property insurance coverage becomes available at reasonable cost.

II. COMMENTS

A. Comments on Specific NRC Questions.

FPL has included in Section II.B., which follows, fairly extensive general comments on the proposals and recommendations contained in NUREG-C991; these comprise the main discussion of FPL's position on the basic issues raised by that report and the NRC's Advance Notice. However, for the sake of clarity, we are presenting here FPL's views on each of the specific questions raised by the NRC in the Advance Notice. In many instances, reference will be made to Section II.B. for further explanation of these views.

1. What dollar limits of property insurance should the NRC require?

FPL does not believe that either specific dollar limits or a requirement that all available insurance must be purchased

are appropriate. As discussed in Section II.B.1, below, FPL believes that the competitive nuclear property insurance market, including the assessable mutuals, has responded adequately to the nuclear unit owners' property insurance needs. Moreover, as described in Section II.B.2. below, intervention by the NRC to attempt to force up the level of available coverage is likely to create opportunities for insurers to demand unreasonable sums for small increments in coverage. Finally, FPL believes that the nuclear insureds have responded well to the market and other pressures on them to be adequately insured against property loss. Further inducement from the NRC is unnecessary.

1(a). Should the NRC revise its reporting requirements relating to property insurance?

The NRC's current reporting requirements, both as to the extent and frequency of disclosure, are adequate to protect all interested parties and should not be revised. Licensees currently must report the level and source of their insurance yearly. This information is available for public inspection through the NRC. Moreover, FPL discloses the extent of its nuclear property insurance in various Securities Exchange Commission filings, and keeps the Florida Public Service Commission apprised of this insurance regularly. FPL cannot see how further disclosure would serve to protect its investors, ratepayers or other interested parties.

- 1(b). Should the amount of insurance required be based on TMI-type accident recovery cost estimates or on some other technical basis?

FPL strongly urges the NRC to not establish particular coverage requirements. Consequently, it believes that this question is not relevant and does not comment on it other than to note that, if a limit were established, the TMI incident costs represent what FPL believes is an outside maximum of the level of costs which would be incurred. Any limit established should recognize this, as well as the fact that a utility's own resources conceivably could handle adequately a significant share of the costs.

2. Should recognition be given to licensee's special circumstances?

FPL does not believe it would fall within any of the special categories envisioned by the NRC, except for that relating to multiple unit sites, and does not comment on the questions related to those special circumstances inapplicable to it.

- 2(a). Should utilities with multiple-reactor sites be required to obtain coverage for each unit separately or is site coverage sufficient?

The NRC should not require unit-specific coverage at multiple-unit sites. FPL is unaware of any circumstances in

which the use of unit-specific policies has resulted in a significant increase in total site coverage, and knows of only very few instances of this type of unit-specific coverage being employed at all. FPL believes the provisions in policies such as NML's for automatic reinstatement of coverage limits after a loss has been incurred, protect adequately against the concern of having undamaged units at a site uninsured; unit-specific coverage would probably contribute little in this regard. Moreover, mandated unit-specific coverage could increase significantly the cost of nuclear insurance without corresponding benefit, as discussed in Section II.B.2.b. below.

3. To what extent, if any, should the NRC become involved with the structure and terms and conditions of the property insurance offered?

For the reasons set out in Section II.B.2.b. below, FPL does not believe the NRC should become involved in regulating the nuclear property insurance market. It seems doubtful to FPL that the NRC has the authority or expertise to regulate the insurers directly. Even if the NRC had this authority or expertise, such regulation could well conflict with the requirements imposed by existing insurance regulatory bodies. On the other hand, indirect regulation of insurers through the imposition of requirements on the insured would hamper the insureds' ability to negotiate reasonable rates for coverage with the required terms and conditions. Finally, as discussed

in Sections II.B.1 and II.B.2. below, FPL does not believe that there is sufficient evidence of market failure in the competitive nuclear property insurance market to justify regulatory intervention.

- 3(a). Should the NRC refuse to accept property insurance which does not offer discounted premiums to insureds who purchase other property insurance in the same layer on a quota-sharing basis? (Paraphrased from discussion and questions in 47 Fed. Reg. at 27372.)

FPL emphatically urges the NRC not to adopt the course of action suggested by this question. First of all, such a restriction would raise all the concerns just described in Section II.A.3. above. In addition and more specifically, FPL is concerned that such a requirement might drastically affect NML, one of only two significant primary layer property insurers in existence.

As pointed out in Section II.B.2.b. below, FPL sees many practical problems arising from any attempt to raise the primary layer coverage through the use of joint ANI/MAERP and NML policies (FPL understands the encouragement of such joint policies to be the basis for Dr. Long's and the NRC's suggestion of a premium discount requirement). Even if these practical problems were surmounted and joint policies were found to be a useful way of increasing available coverage, FPL would still be extremely concerned about the use of a premium discount

requirement as a means of encouraging or facilitating joint policies. FPL does not believe that the lack of a premium discount is a major cause of insureds' reluctance to enter into joint policies. Moreover, FPL understands that NML's financial structure is not compatible with offering premium discounts for joint coverage, and that NML will be commenting on this problem in its comments on the Advance Notice.

3(c). Should the NRC refuse to accept assessment insurance such as that offered by NML to satisfy its requirements?

FPL feels that assessment insurance has and will continue to play a major role in providing nuclear property insurance coverage, and submits that an NRC prohibition or restriction on the use of such insurance would be counterproductive to the NRC's goal of seeing the amount of nuclear property insurance increase. This point is discussed at length in Sections II.B.1. and II.B.2.d. below.

3(d). Should the NRC require that all proceeds from property insurance be used to pay for decontamination after an accident before claims of creditors and owners are satisfied? What would be the legal basis for such a requirement?

FPL submits that the NRC should not, and does not have the legal authority to, require a priority for decontamination expenses at all layers of nuclear property insurance. Such a requirement could adversely affect the financial standing of

utilities and would be inconsistent with the nature and purpose of property insurance. This point is discussed at length in Section II.B.2.c. below.

4. Should the NRC become involved in regulating the replacement power insurance program as currently offered by NEIL and described in NUREG-0891? Would more capacity for property insurance become available if replacement power insurance were no longer issued? Is replacement power insurance necessary, or is it sufficient and relatively equitable to collect such charges through rates?

NRC involvement in regulating the replacement power insurance program would be inappropriate and probably would exceed the NRC's jurisdiction. FPL does not believe that the demise of the replacement power insurance market would be likely to increase the amount of nuclear property insurance coverage available. Replacement power insurance is a necessary and appropriate way to spread the risks of incurring large replacement power costs, both over time and among the participants in such an insurance program. The rate treatment of replacement power costs is not really relevant to the need for this type of insurance, because both the utility and its ratepayers have an interest in spreading the risk; whoever has to pay for the replacement power costs stands to benefit from the risk sharing made possible by this form of insurance.

The NEIL extra expense insurance program ("NEIL-I") is a response to the situation in which many utilities, including

FPL, find themselves, wherein the fuel cost per kWh for nuclear power is significantly less than their cost per kWh for power from their non-nuclear units or for purchased power. As a result, any extended outages of nuclear units result in substantial additional fuel costs being incurred to supply the same amount of energy. The nature of the outage creating this problem need not relate to the nuclear aspects of a unit's operation. For example, FPL has recently had an extended outage of its nuclear-powered Turkey Point Unit No. 3 resulting from the failure of the electric generator for that unit, a problem which could develop at any generating unit regardless of fuel type. The only real connection between this insurance program and the nuclear character of the insured units is the low fuel costs of nuclear power; it is the low level of these costs which makes paying for replacement power such a considerable item of additional expense.

NEIL-I responds to the situation just outlined by providing a "weekly indemnity" payment to help cover some of these replacement power costs. The "weekly indemnity" payments become available only after a six month "deductible period" following the commencement of an outage, and continue until the insured nuclear unit is back on line or until the coverage period (one year at the full "weekly indemnity", with an additional year at one-half the "weekly indemnity") ends, whichever is first.

It should be readily apparent from this brief description of the NEIL-I program and its background that the program has little resemblance to the purpose, structure or terms of nuclear property insurance. The risks being insured are not the same, the form of protection offered is not the same, and the concerns being addressed by the two types of insurance are not the same. While it is likely that an extended outage will result from an incident which also entails some form of property losses, there is no necessary connection between the two. The connection between an extended outage and significant decontamination expenses being incurred is even more remote; a TMI-type incident is only one of numerous causes of the extended outages for which NEIL-I provides insurance protection.

In view of the dissimilarity of the NEIL-I program and nuclear property insurance, FPL believes that: (1) whatever justification and authority the NRC may have to intervene in the nuclear property insurance markets does not extend to the replacement power insurance market and NEIL-I; (2) the likelihood of insurance capacity freed up from NEIL-I finding its way into the nuclear property market is small because of the different nature of the risks involved; and (3) it would be extremely inequitable to deprive utilities and their ratepayers of the risk-spreading for replacement power costs made possible by NEIL-I in order to address other concerns such as the clean-up of nuclear incidents, especially in view of the fact

that NEIL-I provides coverage against replacement power costs incurred even where no nuclear incident has occurred.

B. General Comments on NUREG-0891 Proposals and Recommendations

FPL perceives the general thrust of NUREG-0891 (hereinafter, the "Long Report") to be that insufficient property insurance is currently available for the purpose of decontamination at nuclear power plant sites in the event of TMI-type incidents. From this general position, the Long Report concludes that some form of NRC intervention may be appropriate to: (1) attempt to increase the amount of available nuclear property insurance; and (2) require that the available insurance contain a priority for decontamination expenses.

FPL generally agrees that it would be in everyone's -- utilities, utility investors, rate payers, and the general public -- best interest if the amount of available nuclear property insurance continued to increase steadily. FPL does not believe, however, that NRC involvement is necessary or would be appropriate to achieve this end. FPL is also concerned that an across-the-board priority for decontamination expenses would radically and undesirably change the nature of nuclear property insurance, resulting in this insurance no longer responding adequately to its primary purpose -- to protect the utility and its debt and equity holders against catastrophic loss of utility property.

1. Market Responses to the Need For Greater Coverage

As discussed above, FPL has a history of, and plans to continue, involving itself in efforts to increase the amount of nuclear property insurance coverage available. FPL believes that these efforts, together with those of the many other involved utilities, have been successful. Ten years ago (approximately the time FPL's first nuclear unit went into service), there was only approximately \$85 million in nuclear property insurance available, from NEPIA, the predecessor of American Nuclear Insurers/Mutual Atomic Energy Reinsurance Pool ("ANI/MAERP"). With the advent of NML in 1973, this coverage immediately increased to \$100 million, then continued to grow steadily to \$300 million at the time of the TMI incident. Subsequently, the amount of available insurance has increased from \$300 million to the approximately \$908 million - \$1 billion current level.^{1/} Thus, over the last ten years, there has been an increase of about 1000-1200% in the amount of nuclear property insurance available. While it is unclear to FPL whether this growth rate can be sustained, it nonetheless would seem to demonstrate that the insurance industry has been responsive to FPL's and other utilities' interest in acquiring additional nuclear property insurance at a reasonable cost.

^{1/} These levels do not include the possibility of acquiring both the ANI/MAERP and NML primary level policies. However, FPL does not believe this to be a workable arrangement at present. This point is discussed further in section II.B.2 below.

FPL is confident that the nuclear property insurance market will continue to be responsive to the desire of FPL and other utilities to increase their nuclear property insurance coverage.

2. Problems With NRC Involvement in the Nuclear Property Insurance Market

FPL does not comment on the NRC's statutory authority to regulate nuclear licensees' property insurance programs, except to note that any attempt to require certain levels of property insurance almost certainly would lead to extensive regulation of the insurers themselves, an area FPL believes to be beyond the NRC's ambit. FPL does want to point out several practical problems it sees with NRC involvement in the nuclear property insurance area, and urges the NRC to leave this area to the market forces presently at work there.

a. Insurance Limits

First of all, as pointed out above, FPL believes that the nuclear property insurers have been very responsive in providing the insurance coverage desired by the utilities owning nuclear units, and have done so at reasonable rates. This is an extremely important point because it means that the opportunities for regulatory intervention to affect significantly the insurance marketplace are small. As long as utilities such as FPL actively express an interest in and work toward getting increasing amounts

of insurance, and as long as the insurers are responsive to this, the only constraint on coverage should be the capacity of the insurance community to prudently and economically underwrite the insurance. Insurance industry capacity is not something that is subject, either theoretically or practically, to the NRC's control. As a result, an NRC attempt to effect an increase in coverage limits likely would have very little effect on the available coverage; perhaps worse, it could result in some additional coverage being available, but only at uneconomical rates. The latter, of course, would leave the NRC with a choice between subjecting utilities to exorbitant premiums and getting drawn into the quagmire of determining "reasonable" insurance rates.

b. Joint NML - ANI/MAERP Policies

Dr. Long's report points out only one instance of what he considers market failure in the nuclear property insurance market. That is the alleged refusal of NML and ANI/MAERP to combine resources so as to offer a joint primary layer policy. FPL's experience does not indicate that the lack of such a policy demonstrates a refusal to cooperate by the two insurers. Rather, FPL submits that a variety of factors such as the completely different nature of the policies offered (guaranteed cost vs. assessable), the different administrative mechanisms, and the lack of totally separate, individually sufficient reinsurance markets have been largely responsible.

FPL is not opposed to the concept of a joint policy or policies involving NML and ANI/MAERP. If it were possible thereby to increase substantially the primary layer coverage, thus moving the excess layer to a higher increment and to accomplish this at a reasonable cost, FPL would be extremely interested in considering the purchase of such policies. However, FPL is concerned that an NRC attempt to force the creation of joint policies could have adverse consequences far outstripping the potential benefits.

The primary concern FPL has about forcing the creation of joint policies is whether this would bring about a significant increase in available coverage. There would be the serious problem of shared reinsurers also mentioned by Dr. Long.^{2/}

Moreover, there probably would be considerable difficulty on the part of each of the insurers in rapidly absorbing the sudden increase in new business. FPL understands that such an increase would impose severe strains on the reserves NML has built up, and could cause problems both of equity, between the new and old insureds, and of the adequacy of the reserves. A temporary reduction in coverage limits might be necessary unless new members were willing and able to make large initial capital

^{2/} Long Report at 87. NML and ANI/MAERP currently both reinsure part of their risk exposure through common reinsurers. As Dr. Long recognizes, these reinsurers probably would be unwilling to continue to offer the current amount of reinsurance if they were going to be reinsuring the same risks through both insurers.

contributions at the time they first obtain coverage. Beyond these problems of insurance market capacity, forcing joint policies might create administrative problems as well, including the problem of having dual and possibly conflicting safety standards.

Also, inherent in the joint policy scheme would be the requirement that those insureds currently not participating in primary level assessment insurance (i.e., NML) become participants in that form of insurance. This could cause problems both for current participants in NML as well as these non-participants. FPL understands that, in many instances, the non-participants have avoided the assessment insurance market because they are unwilling or unable to accept the contingent liability burden that is a necessary concomitant to participation in that market. It would be unfair to these non-participants to force this contingent liability on them; it would also be unfair and somewhat disturbing to the existing participants to be forced to accept as members of NML parties with a demonstrated reluctance or inability to carry the share of the assessment burden which they would be obligated to accept.

In sum, while FPL would welcome an increase in available nuclear property insurance coverage at reasonable rates, it does not believe that the forms of NRC intervention proposed by Dr. Long would be helpful. Rather, FPL believes that such intervention might well hinder the progress of what

hitherto has been a marketplace quite responsive to the needs of FPL and other utilities.

c. Decontamination Priorities Should Not Be Extended To The Primary Layer Policies

Another disturbing recommendation of the Long Report is that which would require all nuclear property insurance to have a priority for decontamination expenses.^{3/} This requirement would effect a fundamental shift in the balance of the interests of the utility, utility investor, ratepayer and the general public. It essentially would strip away the protection for the utilities' secured investors upon which these investors have relied in putting their money at risk, and could discourage future investors from committing their money toward meeting the utilities' needs. This would be extremely unfortunate during these times of rapidly increasing utility capital requirements, and could interfere with the utilities' ability to continue to attract the funds necessary for the load growth expansion they are obligated to undertake.

To understand a utility concern, it is necessary to understand the relationship of a utility company with its

^{3/} Long Report at 109. FPL is unsure from the wording of this recommendation whether Dr. Long intends that all property insurance would have to have a priority for decontamination expenses, or only some share thereof. However, the NRC's Issue No. 3, 47 Fed. Reg. at 27372, seems to indicate clearly that the priority would extend to all insurance.

secured investors and the role that property insurance plays in this relationship. Most utilities have provisions in their mortgages and deeds of trust relating to their first mortgage bonds which require them to maintain property insurance on the property securing the mortgage. In the event of loss, the proceeds of this insurance are paid over to the trustee, who then disburses them as the property is repaired or, if repair is not contemplated, retains the proceeds as replacement security. These retained proceeds are not released by the trustee except to the extent that the utility already has other property or cash pledged which adequately secures the mortgage or replaces the damaged property with other property of equivalent value. As may readily be seen from this arrangement, this insurance plays an important role in assuring the investors that their security interests will still have value in the event of a major loss.

FPL believes that the \$500 million of primary property insurance it has with NML is extremely important for protecting these secured investors' interests. While the proceeds from this policy would typically be used for both decontamination and repair in the event of smaller losses, the proceeds would be available in their full amount as replacement security in the event of a catastrophic loss where the damaged unit would not be repaired and returned to service.

An NRC mandated change in the NML or ANI/MAERP primary layer coverage would eliminate the investor's protection, with

the attendant consequences discussed above. Moreover, as the NRC has indicated in phrasing its question in the Advance Notice of Proposed Rulemaking regarding decontamination priorities, the main justification for extending such a priority to primary layer coverage would be "public policy". 47 Fed.Reg. at 27372-73. The Long Report echoes this as justification for its recommendation that the NRC require a primary layer decontamination priority. See Long Report, at viii, 109. These arguments implicitly assume that a proper purpose of property insurance is the protection of the off-site public from the consequences of damage to the insured property. FPL submits that this assumption is incorrect; property insurance is designed primarily to protect against the risk of loss or expense of repair to the insured property. This protection assures the property owner that, in the event of an accident involving the insured property, he will not lose his investment; the insurance will pay for restoring the property to its useful state or reimburse the property owner for some or all of his investment in the property if repair is infeasible or uneconomic. As such, property insurance covers a relatively close-ended risk, dissimilar to and inconsistent with the open-ended obligation to the off-site public for which Dr. Long apparently would propose that the property insurance primarily be used. FPL strongly urges the NRC to reject Dr. Long's recommendation in this regard.

d. The Use of Assessment Insurance.

The Long Report, at 78-85, and 109, expresses concern over the viability of assessment insurance such as that provided by NML and NEIL, and recommends that the NRC restrict future growth in the use of this form of insurance for nuclear property coverage.^{4/} FPL believes that Dr. Long's concern is unjustified at this time, and that the NRC should not impose limits on continued growth in the use of assessment insurance.

Dr. Long is obviously correct in noting that there are no ironclad assurances that each and every insured will be able or willing to respond promptly to every assessment "call" which might be made under assessment insurance policies, be they for nuclear property or any other type of insurance. However, FPL submits that Dr. Long's conclusion, that the NRC should restrict future growth in the use of assessment insurance, does not follow.

First of all, FPL would note that, as Dr. Long acknowledges, the utility members of NML and NEIL have a much stronger community of interests than in the case with many insureds under assessment insurance policies. Long report, at 82. These utilities were largely responsible for setting up NML and NEIL, and they have a strong shared interest in seeing these insurers

^{4/} The NRC also raises this concern as one of its questions in the Advance Notice of Proposed Rulemaking. 47 Fed. Reg. at 27372.

succeed. FPL strongly doubts that any of the members of NML or NEIL would try to avoid legitimate "calls" made by the insurers; such behavior would be inconsistent with all the member utilities' commitments to the continuing viability of a competitive nuclear insurance market. Furthermore, the utility industry is comprised of large, financially stable companies which are in a reasonably good position to tolerate the assessment "calls" imposed by NML and NEIL. These utilities have stable revenue streams because of the importance of electricity to utility customers and generally have good access to the financial credit markets, at least for the level of potential borrowings which meeting assessment "calls" might require. Finally, the utilities' regulated status protects them, and their rate payers, from financial insolvency in all but the most dire straits; this is an added measure of "last resort" financial integrity which is not present for many other businesses. In sum, the members of NML and NEIL have both the incentive and resources to respond to assessment "calls" by these insurers if and when they occur.

Secondly, FPL wishes to point out that NRC restriction of the use of assessment insurance would be extremely counter-productive to the NRC's efforts to generate additional nuclear property insurance. It is undisputed that the entries of NML and NEIL into the nuclear property insurance field have had an extremely beneficial effect on the marketplace for this form of

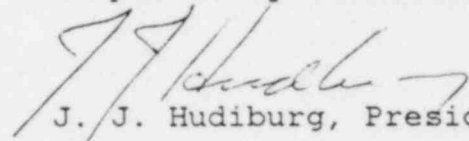
insurance. This entry has increased substantially the level of available coverage, as well as diversifying the utilities' options as to the nature of the financial commitments they must make to the insurers. Moreover, FPL believes that the role of assessment insurance in increasing the level of available coverage may become increasingly significant as the capacity of traditional insurance markets to provide nuclear property insurance becomes saturated. To say that assessment insurers might be unsuccessful in raising 100% of the anticipated proceeds of a "call" is no reason to foreclose the potentially substantial increase in coverage which may become available through these insurers. Even if, as a worst case, they were unable to provide all of the coverage for which their policies provided, this would still be much better than not having the coverage available at all.

III. CONCLUSION/RECOMMENDATIONS

FPL recommends that the NRC not amend its existing rule 10 CFR §50.54 (w) as suggested by Dr. Long. This rule, together with the history of utilities such as FPL continually pressing for greater amounts of nuclear property insurance on reasonable terms, and the actual expansion of such coverage, give adequate assurance to all involved that each utility will have whatever coverage it needs and the insurance markets are capable of providing at reasonable cost. While FPL would welcome the

expansion of the markets for nuclear property insurance, FPL does not believe that regulatory intervention would be helpful at this time. Finally, FPL strongly recommends that no decontamination priority be required for the primary layer of coverage; this would be unfair and could have severe consequences for utilities' standing in the financial markets upon which they depend so heavily. The need for insurance coverage to pay for decontamination expenses is adequately addressed by the impending revision to the NEIL excess layer policy creating a priority for these expenses.

Respectfully submitted,



J. J. Hudiburg, President



Public Service Company of Colorado
USNRC

16805 W. 8219 SEP 20 P 12:04 mile, Colorado 80651

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

September 15, 1982
Fort St. Vrain
Unit #1
P-82396

9

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

DOCKET NUMBER
PROPOSED RULE PR-50

(47 FR 27371)

Gentlemen:

In the Federal Register of Thursday, June 24, 1982, the Nuclear Regulatory Commission requested comments on the report "Nuclear Property Insurance: Status and Outlook" (NUREG-0891), and on questions raised by the Commission. We wish to comment on the NRC questions in the order presented in the Federal Register.

1. "What dollar limits of property insurance coverage should the NRC require?"

In establishing insurance requirements, we do not agree with Dr. Long's recommendation. To simply require all reactor licensees to carry the maximum insurance offered by all sources is unrealistic, unduly costly and burdensome.

Proper insurance coverage can only be established through a site-by-site, reactor-by-reactor, type-by-type comparison and consideration. We urge that the NRC create property insurance requirements, which provide for such a review. We recommend an annual reporting of insurance coverage combined with a requirement of reporting any change of insurance that occurs between annual reports.

We do not believe the amount of insurance required should be based on TMI-type accident recovery cost estimates as these costs do not apply to certain reactors. The amount of insurance should be based on the cleanup cost for the size and type of reactor involved.

Acknowledged by card... 9/23/82 emp

The regulations should provide that the burden of demonstrating the adequacy of covering rests on the utility. However, the standards for measuring adequacy must be well defined by the NRC and be acceptable to the utility and insurance industry. In so doing, the NRC should:

- a. Endorse existing probabilistic risk assessment techniques or promulgate alternative techniques as an accepted method of determining risk.
 - b. Endorse specific quantitative statistical and economic assumptions.
 - c. Establish the probabilistic level of risk which must be covered by insurance.
 - d. Endorse the results of licensees' reviews that comply with the accepted methods.
2. "If the NRC changes its requirements for property insurance, should there be special provisions for certain types of licensees?"

Absolutely. We urge that the NRC requirements for property insurance provide special provisions for certain types of licensees and give consideration to the power level of each reactor.

We operate a High Temperature Gas Cooled Reactor (HTGR). There are significant differences in design, operation, accident potential, and cleanup costs between an HTGR and a water cooled reactor. It is unrealistic, discriminatory and unduly burdensome to require insurance for all reactors based on an accident which occurred in a dissimilar reactor. We repeat, the Commission is urged to provide full consideration for the size and type of the reactors in its insurance requirement.

Dr. Long's report does not address this subject specifically. He notes, however, that the ANI/MAERP rates are based in part upon the type, rated power level, design and age of the reactor.

Unfortunately, insurers have not given consideration to the inherent safety advantages of the HTGR over a water cooled reactor. Fort St. Vrain is the only HTGR in electric power generation operation in the country. Further, it is relatively small in size compared to other power reactors. Our own estimates of comparative risk indicate that the HTGR is much less likely to experience a core damage accident than a LWR and the consequences are considerably less.

Dr. Long's report is silent on the subject of the HTGR. This is in no way a reflection on his report because it was not in the scope of his study to consider the technical differences in various power reactors. Further, at the time of his report, there were no studies or information available about potential cleanup costs of a severe accident involving an HTGR.

There are Investment Risk studies for the large HTGR. However, these studies are heavily skewed by the inclusion of replacement of power costs and do not include potential cleanup costs following a severe accident.

Following preliminary studies by our own engineers, we commissioned a study by General Atomic Company to perform detailed studies of the probability of a severe accident at Fort St. Vrain and cost estimates of cleanup costs following such an accident.

These studies indicate that the probability of a very costly accident is far lower than that of a Light Water Reactor and the probability of a core heatup accident is lower than the LWR design objective safety goal proposed by the NRC.

Further, these studies show that even for only remotely conceivable probabilities, the cleanup costs are fractionally those of a water cooled reactor and are in fact already adequately covered by the commercial, non-retroactive insurance coverage carried by our company through ANI/MAERP sources.

It is, therefore, critically important that the NRC regulations continue to permit independent consideration of reactor design and operation in determining the adequacy of property insurance coverage necessary to protect the public. We are confident the NRC will want to have the opportunity to have such studies submitted to them for their consideration, and we will be prepared to do so in the near future.

3. "To what extent, if any, should the NRC become involved with the structure and terms and conditions of the property insurance offered? Would that and similar NRC policies represent an unreasonable burden on insurers? Should the NRC refuse to accept (retroactive insurance) to satisfy its requirements? Is concern with overuse of retroactive assessments warranted?"

We wish to respond to all of these questions in a general way.

We believe that Dr. Long's remarks on retroactive insurance speak for themselves. As a matter of business practice, we have specifically avoided retroactive insurance and have purchased commercial insurance far in excess of that necessary to provide more than adequate coverage to protect the public from costs of post accident cleanup. We realize that this would not be the case for all nuclear power generating stations. However, the requirement to purchase retroactive insurance proposed by Dr. Long for all power reactors would drastically change our position from one which has been shown to provide more than adequate protection for both the general public and the owners, to one of extreme liability for retroactive insurance demands.

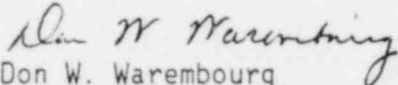
Through extensive search we have found that it is impossible to commercially insure or reinsure retroactive nuclear demands anywhere in the world insurance market. This confirms Dr. Long's opinion that additional nuclear insurance is not available beyond the present market. We urge that the Commission, through its regulation, not force an operator into this untenable situation unnecessarily.

4. "Should the NRC become involved in regulating the replacement power insurance program as offered by NEIL and described in NUREG-0891?"

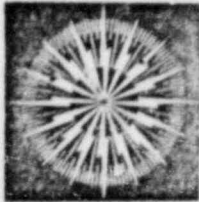
We do not carry replacement power insurance on our nuclear generating station. The NRC certainly should not require such insurance. The use of replacement power insurance is primarily a matter of concern between the utility and the state Public Utilities Commission. Regulating replacement power insurance is certainly outside the scope of the NRC's mission to assure protection of public health and safety.

We appreciate this opportunity to comment and will be glad to expand our comments or answer any questions our comments might raise.

Sincerely yours,


Don W. Warembourg
Manager, Nuclear Production
Fort St. Vrain Nuclear
Generating Station

DWW/skr



AMERICAN PUBLIC POWER ASSOCIATION

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PUBLIC POWER 1882-1982



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USNRC

September 17, 1982

'82 SEP 20 P1:45

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DOCKET NUMBER
PROPOSED RULE PR-50

(47 FR 27371)

7

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

Dear Sir:

Enclosed are the comments of the
American Public Power Association on the
proposed rulemaking NUREG-0891.

Yours truly,

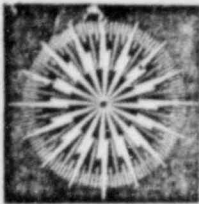
Paul R. Fry
Assistant Executive Director

PRF:jh

Encl.

DS10
ADD: Robert Wood AR-5037

Acknowledged by card 9/23/82 emip



AMERICAN PUBLIC POWER ASSOCIATION

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PUBLIC POWER 1882-1982



DOCKET NUMBER

PROPOSED RULE

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PR-50
(47 FR 27371)

September 17, 1982

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'82 SEP 20 P1:45

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

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Attn: Docketing and Services Branch

Gentlemen:

Advance Notice of Proposed Rulemaking
47 FR 27371, June 24, 1982

The American Public Power Association, on behalf of its nuclear utility owners and operators, appreciates the opportunity to submit comment on the Advance Notice of Proposed Rulemaking regarding mandatory property insurance published in the Federal Register of June 24, 1982, and on Professor John D. Long's report published as NUREG-0891, "Nuclear Property Insurance: Status and Outlook".

We have reviewed Dr. Long's report and commend both the NRC and Dr. Long for this undertaking. Although there are some statements and proposals with which we take exception, we believe Dr. Long's report provides considerable history and information on the nuclear insurance industry, providing a valuable tool to the NRC in its analysis of the subject. Our comments and concerns can best be expressed by responding to the NRC's specific questions as set forth in the Federal Register notice of June 24.

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Sacramento, California
ROBERT C. YOUNG
Burlington, Vermont

1. What dollar limits of property insurance should the NRC require?

The APPA believes that it is in the best interest of the nuclear industry to maintain the competitive environment provided by ANI/MAERP and NML. Although a combination of the coverages offered by these two companies would increase the nuclear property insurance limits available, it would simultaneously eliminate an insured's opportunity to choose the program that best suits its needs.

For some public utilities, state law prohibits the participation in a mutual insurance arrangement. Dr. Long proposes two solutions to this problem: 1) to have the NRC promulgate a regulation that would have the effect of preempting any state or local law in conflict with the regulation; and 2) to have the public utility purchase a fronting policy from a non-mutual insurer. APPA is not equipped to make a judgment on the NRC's authority to issue a regulation which will preempt state law and consequently, will not comment on this portion of Dr. Long's proposal. On the other hand, a requirement to purchase a fronting policy in order to circumvent a legal technicality imposes an additional premium burden on a utility faced with the dilemma of complying with the NRC regulation. APPA believes this is not an equitable solution to the problem.

Rather than requiring a specific property insurance limit, APPA requests that the NRC consider requiring each utility to carry the maximum amount of primary insurance available to it. Additional insurance above this amount should be left to the discretion of the utility. If the NRC institutes a requirement that a utility report on an annual basis the nuclear property insurance limits

it maintains, comparative information will be available to the financial markets, bondholders, customers, regulators and other interested parties. The public availability of such data will make utilities accountable for the exercise of good business judgment regarding nuclear property insurance.

2. If the NRC changes its requirements for property insurance, should there be special provisions for certain types of licensees?

If the NRC requires only that a utility carry the maximum available primary property insurance limits, then there will be little need to make special provisions for certain types of licensees. For example, the risk of loss and dollar value of a loss will be considerably less for a non-operating older plant than for one which has been completed recently and is operating at a full power level. Requiring primary insurance coverage on the former may be sufficient, while such coverage on the latter may be inadequate. We believe that utilities will use prudent judgment in determining the amount of insurance to carry in excess of the primary layer.

Since there are two insurance mechanisms available in the primary layer, an NRC requirement to maintain primary insurance would eliminate the problem of exempting certain utilities from obtaining coverage from a mutual insurer when such action is prohibited by state law. Historically, the nuclear insurance mechanisms have continued the expansion of the primary coverage in addition to providing capacity in the excess layer. It is hoped that the continuance of a competitive atmosphere will contribute to the growth of nuclear property insurance limits.

3. To what extent, if any, should the NRC become involved with the structure and terms and conditions of the property insurance offered?
-

APPA believe, it is in the best interest of all parties that the NRC should not assume any regulatory functions with respect to the structure, terms and conditions of nuclear property insurance. In view of the fact that there already exists state regulation of both the insurance and the utility industries, NRC participation in this arena would seem unnecessary and unwarranted.

4. Should the NRC refuse to accept retroactive insurance coverage to satisfy its requirements? Is concern with overuse of retroactive assessments warranted?
-

Whether or not a public utility is able to participate in a mutual insurance arrangement, APPA believes that the retrospective assessment programs are a valuable risk financing mechanism which has served to increase nuclear insurance capacity. Dr. Long's concern about the possibility of a confluence of assessments may indeed be warranted in the unlikely "worst case" scenario. Nonetheless, it is believed that the decision to participate in retrospective assessment programs should be left to the discretion of the utility in its exercise of prudent business judgment. Such decisions regarding the financial stability of the utility will be reviewed by state regulatory authorities as well as financial markets, which may be relied upon to require alternate action where warranted.

5. Should the NRC address the issue of whether as a matter of public policy it should require that all proceeds from property insurance be used to pay for decontamination after an accident before claims of creditors and owners are satisfied?

By requiring that decontamination and debris removal coverage take precedence over payment for damaged nuclear property, we believe that there will be considerable adverse effect on utility bond ratings in addition to creating direct conflict with many existing bond covenants or other indentured trust agreements. Consequently, at the very least, priority for decontamination payments should be avoided in the primary insurance layer in order to maintain the security currently provided to a utility investor. In the excess insurance layers, priority for decontamination expense is less critical, but we feel that the insured should be able to participate in the decision of where policy proceeds will be applied.

6. Should the NRC become involved in regulating the replacement power insurance program as currently offered by NEIL?

We believe that the NRC should not become involved in regulating any replacement power programs offered through insurance mechanisms. The mere existence of NEIL provides sufficient evidence that the nuclear industry is capable of developing a program to meet the needs of those utilities which have a replacement power cost exposure and desire a risk financing mechanism. We leave the insurance industry to respond to the question of whether or not more capacity for property insurance would be available if replacement power insurance were no longer issued.

APPA appreciates the opportunity to submit its comments and will be pleased to work with the Commission on nuclear property insurance issues.