

Salt River Project

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September 17, 1982

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BRANCH

Office of the Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555

DOCKET NUMBER
PROPOSED RULE PR-50

(12)
(47 FR 27371)

RE: Docketing and Services Branch,
Advance Notice of Proposed
Rulemaking,
47 F.R. 27371-73, June 24, 1982

Gentlemen:

Salt River Project Agricultural Improvement and Power District, is a Political Subdivision of the State of Arizona and one of the state's major electric utilities. As such, Salt River Project is a participant in the 3-Unit Arizona Nuclear Power Project currently under construction. The rules for procurement of Nuclear Property Insurance being proposed by the NRC, as published in the Federal Register of June 24, 1982, will have significant affect on our ownership interest in that facility. Therefore, we wish to add our voice to those other electric utilities with nuclear involvement and with the associations that represent their interests.

Dr. John Long's report, "Nuclear Property Insurance: Status & Outlook," NUREG-0891, which underlies the advance notice of proposed rulemaking, is a thorough historical sketch and a comprehensive analysis of the current Nuclear Property Insurance market. NUREG-0891 provides stimulating thought regarding future direction and financial responsibility needs of the nuclear industry, but our position is philosophically and practically opposed to several of Dr. Long's recommendations. Our comments will generally parallel those offered by the APPA and may be very similar to the the positions of other electric utilities and associations. Our philosophical approach will be discussed first and will be followed by a response to each of the questions raised by the Commission.

The Salt River Project as a public entity owes to its customers, and the people of Arizona, the assurance that financial responsibility will be demonstrated in all of its undertakings. Such assurances of fiscal care are also very meaningful to our bondholders. For these reasons we committed our resources to the economical production of nuclear power and we intend to protect that commitment with the purchase of adequate insurance. The utilities with which we participate in the Nuclear Project are

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Acknowledged by card

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similarly inclined. The agreement governing the operation of the facility requires the maintenance of "Nuclear Property Insurance providing coverage against radioactive contamination and all other risks of loss . . . , in an amount not less than 90% of either the actual cash value or replacement cost . . . ," or "the maximum amount of nuclear insurance available." Briefly stated, it is our intent to purchase all available insurance up to an amount considered adequate to indemnify the loss of all or part of our investment.

In fulfilling our duty of financial prudence, the Salt River Project is not inclined toward membership in mutual insurance arrangements that could subject it to retroactive premium assessments. We have, in the past, avoided such arrangements in favor of the guaranteed cost of commercial non-assessable policies. In this respect, we are in agreement with several of Dr. Long's comments regarding retroactive insurance.

However, our aversion to assessment coverage is secondary to our commitment to financial responsibility. If it becomes necessary to seek membership in NML or NEIL to secure proper protection for our nuclear facility, then we will do so and Salt River Project will make necessary preparations to support that decision financially. Assessable insurance is not "funny insurance" as it is termed in NUREG 0891, but is, in fact, a pure insurance form in which a class of insured actuarially "protects-its-own".

Salt River Project relies on competition in the insurance marketplace to provide adequate capacity (limits of liability), to assure a comprehensive range of coverage, and to hold down premium costs. Our insurance program is marketed regularly to seek the best protection at the best possible price. In spite of the uniqueness and the magnitude of the nuclear risk, the insurance industry has continued to provide such competition in the nuclear insurance arena through the offerings of ANI/MAERP and NML. The race between those two entities toward completion of the primary property insurance layer has benefited the nuclear industry and has generated new enthusiasm to create valuable insurance capacity in excess layers and in other lines -- (Extra Expense or Replacement Power Insurance). Elimination of competition may serve certain short term needs but will certainly retard growth leading to the \$1 billion plus limits that the industry requires.

Regulation of the insurance industry has long been a right reserved to the states. Federal and state litigation and legislation has continually upheld that right. The states, we believe, have done a credible job of administering that regulation and the same treatment should be accorded Nuclear Insurance. We will not attempt to address the ability or authority of the NRC to override that of the states, but we cannot support the NUREG-0891 suggestion that state control be superseded or circumvented to achieve a kind of national uniformity regarding Nuclear Insurance.

Salt River Project and the Arizona utilities have generally been able to work within Arizona State law and regulations in order to preserve their financial stability. Should changes be required in Arizona statutes or insurance rules to accommodate the purchase of necessary insurance, then those changes shall be sought with the cooperation of state authorities.

The NRC performs a necessary function in the coordination and direction of the nuclear industry. Nuclear energy presents a potential hazard of significant magnitude to health and safety and requires regulatory intervention in areas such as Bodily Injury and Property Damage Liability, Environmental Impairment, and decontamination to protect the American public. We believe that, as respects Nuclear Property Insurance, the prime concern of the NRC should be decontamination following an occurrence. Costs for repair, replacement, or decommission are properly the financial concern of the owners of a facility. Evidence presented by the Commission in 47 FR 13750, considering the elimination of Review of Financial Qualifications of Electric Utilities, supports the hypothesis that utilities have shown consistently responsible approach to the financial aspects of nuclear power generation and that safety is not adversely affected by those financial considerations.

Consideration for the safety of employees and the public, as well as conservation of capital investments, are high priorities for the Salt River Project and for most utilities. These concerns are responsible not only for comprehensive loss control efforts in the generation, transmission and distribution of thermal or hydroelectric power, but are reflected by the substantial investment in loss preventative devices and procedures throughout the nuclear electric industry. Whether motivated socially or

finanically, these concerns have produced corrective measures in nuclear design and operation that will reduce the opportunity for future Three Mile Island-like occurrences.

The Salt River Project has supported the establishment of INPO and the investment in nuclear operation training simulators. We will continue to support these and other measures promoting the safe handling and use of nuclear energy.

Keeping the foregoing statements in mind, Salt River Project offers the following response to the specific questions which the Commission has proffered. As previously mentioned, these remarks will support those submitted by the APPA, of which we are a member:

1. What dollar limits of Property Insurance coverage should the NRC require? Should the amount of insurance required be based on Three Mile Island-type accident recovery cost estimates, or on some other technical basis?

TMI-2 shocked the nuclear industry and introduced it to the realities of the nuclear hazard and its potential magnitude. To use Three Mile Island as an example is prudent, but to use it as a basis for setting insurance requirements would be actuarially unsound. Each nuclear facility presents a unique risk. Propensity for loss is based on a wide range of factors including size, location, age, and type of facility, brand of equipment, operating characteristics, load factors, operating procedures, quality of personnel and training, and the level of management commitment to safe operation. Thus, as in other kinds of generating facilities, the amount at risk will vary and the owner(s) of nuclear stations must establish proper limits to meet their needs. Utilities can be expected, as finanically responsible entities, to secure such limits.

The competitive environment in the Nucear Insurance Industry is vital and should be retained. Any attempt to remove that competition by mandating the purchase of coverage from all sources, even if it were deemed practical in light of the existing market structures,

would be counter productive and could slow the progress now being made in building capacity. The Salt River Project believes that enforcement of a reasonable minimum level of Property Insurance, perhaps \$500,000,000 per site, is in order. Beyond that, each utility should be capable of securing an adequate level of financial protection. Annual publication of the coverage carried at each facility, and the limits that are available through the various insurers, could be a valuable device for the industry to use for comparison and communication of its insurance needs. As the Commission suggests, ". . . the decision to purchase any further Property Insurance could be resolved through the market mechanism by the licensee, its insurers, its customers, public utility Commissions, equity, and debt holders, and other interested parties."

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

The Salt River Project opposes the suggested changes for reasons already given; however, should those changes come to pass, it would become necessary to regulate by exception. If every facility were required to carry all available insurance, for instance, those that are able to show that their exposure is less than market limits will be forced to prove it to the Commission. Needless to say, a whole new range of administrative hearing, procedure, and record keeping would become necessary.

The Salt River Project believes that the concerns expressed by the Commission under this question are better satisfied by the financially responsible nature of the utilities involved with Nuclear Energy, and by the state regulatory agencies already established for such purposes, than by further actions of the Commission.

3. To what extent, if any, should the NRC become involved with the structure and terms and conditions of the Property Insurance offered? Should the NRC refuse to accept (retroactive insurance) coverage to satisfy its

requirements? Is concern with overuse of retroactive insurance warranted?

The Nuclear Insurance Industry has been extremely active in providing the broadest possible coverage and in seeking additional capacity. Market competition and nuclear industry pressures are among the causes providing the impetus for such growth. Interference in this process should be avoided for legal reasons (anti-trust; insurance regulation reserved for the state), practical reasons (established structure of existing insurers), and in order to maintain a positive and flexible stance that will promote the expansion of insurance capacity.

Although Salt River Project does not generally favor its use, we believe that assessment or retroactive insurance is an integral part of the current nuclear market offering. A significant number of utilities prefer the retroactive approach and would seek such coverage even if unlimited capacity were available in commercial markets. Selection of insurers should be left to the management of each facility and to the appropriate state regulatory agencies. From a practical standpoint, elimination of the use of assessment insurance would severely restrict the ability of the insurance industry to expand its capacity.

4. (Corollary) - 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?

In the wake of Three Mile Island-2 and its resultant investigation, regulation and litigation, the Nuclear Electric Utility Industry has been greatly diminished as a force for providing future power sources. It is difficult indeed, in the current social environment to undertake the construction and operation of a nuclear facility. Additional negative factors, such as giving decontamination coverage first priority in loss recovery may further erode the ability of facility owners to secure or maintain financing.

The Salt River Project strongly believes that the nuclear industry has shown its willingness, in spite of NUREG-0891 statements to the contrary, to protect its financial viability whether through the purchase of insurance or by offering its financial resources to assist in indemnifying one of its members in the event of an occurrence. The previously established financial responsibility of those engaged in nuclear electric generation should be relied upon to assure adequate financial protection for all manner of loss. It should be sufficient that the NRC mandate the inclusion of decontamination expense in the property insurance placement.

5. Should the NRC become involved in regulating the Replacement Power Insurance Program?

The Salt River Project has already expressed its position with regard to NRC regulation of the insurance market. Replacement power costs have become, in recent years, a very real and highly significant part of any property loss. It is very likely, in most loss situations, that the expense of providing replacement power will exceed the total direct damages by two or three times. Presumably, power generated through the use of nuclear energy will remain one of the most economical power sources. If so, any utility can be expected to protect itself and its customers against the loss of that source. Regulations, social and political climates, and utility philosophies vary between states and utilities, so, the ability to charge such losses back through the rates will vary. Determination of these matters are, again, better left to the facility owners and their state regulatory entities.

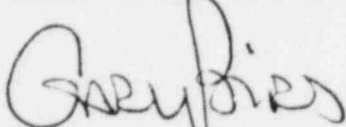
In any case, regulations requiring that Replacement Power Insurance capacity be directed toward property coverage would not guarantee that such capacity could be made available for another purpose. Treaties, capacity duplication, and other factors may significantly reduce the apparent additional capacity.

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September 17, 1982
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The Salt River Project thanks the NRC for this opportunity to express our views on these issues.

Respectfully your,

SALT RIVER PROJECT

A handwritten signature in cursive script that reads "Gary Bird".

Gary Bird, ARM
Insurance Division

GEB:rb

cc: A. J. Pfister
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September 20, 1982

Office of the Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, DC 20555

DOCKET NUMBER PR-50
PROPOSED RULE

10

(47 FR 27371)

RE: 10 CFR Part 50
Mandatory Property Insurance for
Decontamination of Nuclear Reactors
(47 Fed. Reg. 27371, June 24, 1982)

Dear Sirs:

We act as counsel to Nuclear Electric Insurance Limited ("NEIL"), a utility-owned Bermuda mutual insurance company which provides excess property insurance for nuclear power plants and insurance for replacement power costs. On behalf of NEIL, we respectfully submit comment upon NUREG 0891, the report on nuclear property insurance prepared by Dr. John D. Long, "Nuclear Property Insurance: Status and Outlook" (hereinafter referred to as the "Long Report"); we also comment upon certain of the questions raised by the NRC in its "Advance Notice of Proposed Rulemaking," dated June 24, 1982 (47 Fed. Reg. 27371). By letter of today's date we have also submitted

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ADD: Robert Wood AR-5037

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

comment on these matters on behalf of Nuclear Mutual Limited ("NML"), the utility-owned Bermuda insurer of primary nuclear property risks. Neither NML's ownership nor the risks it insures are identical to those of NEIL. Since there are substantial similarities in the operations of these companies, however, we have, where appropriate, incorporated by reference comments made on behalf of NML herein (the "NML Comments").

As with NML, the operations of NEIL are generally familiar to the NRC and are discussed in some detail in the Long Report.* The following recent developments, however, which are relevant to the issues to be considered here, should be noted:

1. As of September 15, 1982, NEIL's Extra Expense Insurance Program ("NEIL I") provides a maximum weekly indemnity of \$2.5 million, with a maximum recovery of \$195 million.

2. As of September 15, 1982, NEIL's Excess Property Insurance Program ("NEIL II") provides coverage of \$365 million in the event of a full policy loss. The excess program of American Nuclear Insurers and the Mutual Atomic Energy

* Long Report at 53-60.

Reinsurance Pool ("ANI/MAERP") currently provides coverage equal to 13.4 percent of any loss in excess of \$500 million, with the maximum recovery limited to \$67 million. If both the NEIL II and ANI/MAERP excess property programs were purchased, the aggregate amount of insurance capacity available toward any loss of \$1 billion or more, as of this date, would be \$932 million. There is reasonable expectation that available capacity will reach the \$1 billion mark by the end of this year.

A current listing of NEIL's member insureds is appended as Attachment A hereto. NEIL I and NEIL II are independent insurance programs; there is thus overlap, but not identity, of the insureds in the two programs.

INTRODUCTION

NEIL wishes to comment specifically with respect to two issues raised by the Long Report: The first is the partial reliance on assessments to fund insurance for nuclear power plants. The second concerns the recommendation that all nuclear property insurance policies be required to provide priority for payment of decontamination costs. In addition, NEIL wishes to respond to certain of the specific questions posed by the NRC.

These comments are made against the background of an extraordinary response by the industry to the needs for

increased insurance which the Three Mile Island accident dramatized. Policy limits of only \$300 million were available when that accident occurred; today, through the organization of an industry mutual and the development of some additional capacity in response to this industry effort, property and decontamination coverage of almost \$1 billion and extra expense insurance of almost \$200 million are being generally purchased and the prospects are for substantial continued growth.

Assessment Insurance

The accident at Three Mile Island demonstrated for the first time that the adequacy and scope of insurance coverage available at that time were not sufficient. Ensuing concern with regard to the adequacy of available capacity prompted studies to be undertaken, and legislation proposed, by Congress;* studies and rulemaking by the NRC;** and action by the nuclear utilities themselves and the commercial insurance market.***

* See Greater Commitment Needed to Solve Continuing Problems at Three Mile Island, Staff of U.S. General Accounting Office (1981); S. 1606, 97th Cong., 2d Sess. (1982); H.R. 5963, 97th Cong., 2d Sess. (1982).

** See 47 Fed. Reg. 13,750 (1982) (To be codified at 10 C.F.R. §§ 50.2, .33, .40, .54, .57); Long Report.

*** Discussed below, pages 6-7. See also NML Comments at 6-7.

Despite a common perception of need for greater insurance capacity, such increased capacity was not readily available from the commercial insurance market. For specialized areas of risk such as the nuclear industry, the combined resources of the world's national and international insurers and reinsurers must be drawn upon. The aggregate capacity offered by the world's markets has been limited; the reality of that limitation must be understood in appraising the Long Report's dissatisfaction with assessable insurance programs such as those of NEIL and NML.

It is useful to note that the recognition of limitations on commercial nuclear insurance capacity preceded Three Mile Island. The desire to eliminate government funding from the Price-Anderson program, when that Act was last renewed, led to the realization that the establishment of a post-loss nuclear utility assessment program was the only practical mechanism to replace government insurance and increase capacity. This decision had two elements: Congress could require nuclear utilities -- but not the commercial insurance market -- to provide expanded insurance capacity. Further, as a policy judgment, due to the remote and infrequent nature of such losses it was deemed preferable to contemplate funding for higher levels of loss by assessment after the loss rather than by advance payment of premiums. Both of these factors still prevail today.

The full dimensions of Three Mile Island's financial consequences were not immediately apparent after the accident. It was quickly recognized, however, that funds were not readily available to purchase power required to replace that from the damaged unit. The risk that the lack of such funds could threaten the financial viability of utilities suffering a like accident led to the formation of NEIL and the establishment of the NEIL I insurance program. There was no commercial insurance available for this risk, and the use of an assessment program for partial funding of the new insurance coverage was deemed the desirable and, indeed, the only practicable approach.

As the magnitude of the costs, including decontamination costs, associated with the restoration of TMI-II became known, with attendant pressure to provide increased insurance to pay for such expenses, this history repeated itself. The quantum jump in property insurance capacity desired -- to an initial target of a full \$1 billion -- was not available from the commercial insurance market. A program relying, in part, on post-loss assessment could fill the need; NEIL II was designed to this end.*

* After the NEIL II program was initially outlined, ANI/MAERP made a similar proposal for excess insurance coverage and it too relied heavily on post-loss assessments.

It is not suggested that, at some point, concern with an unlimited cumulation of assessment insurance programs would be unwarranted. The flaw in the Long Report's analysis of the issue is in its implicit assumption that a preferable alternative is available. That is not the case. There is uniform recognition of the fact that conventional commercial insurance for nuclear risks is in limited supply.

The commonality of reliance on post-loss assessment to provide funds if and when required -- in the NML, NEIL I and NEIL II programs; in the preliminary program developed for ANI/MAERP's excess program; and in the tentative structure contemplated for a decommissioning insurance program in NUREG/CR-2370 -- rests on sound underlying assumptions:

- Losses suffered in the operation of nuclear power facilities will have to be paid by those operating the facilities.
- Spreading the risk of loss among a reasonable number of operators diminishes the severity of loss for any single operator.
- Full pre-loss funding of risks with a low probability of occurrence, but potential for high severity, may both be excessively costly

and commit scarce assets to meet needs which may never or rarely arise.

There is recognition that the combination of current premium payments and additional funds available by assessment to meet unexpected contingencies provides a system that deals flexibly and responsibly with the potential risks.

Decontamination Priority

The NEIL II policy provides excess property insurance coverage. As currently written, it is a "following form" policy: it provides coverage for all risks which are covered under a utility's underlying property policy, whether with NML or ANI/MAERP. Thus, NEIL II would be liable for all losses for which these insurers are liable, to the extent such losses exceed \$500 million.*

Both NML and ANI/MAERP currently provide "all risk" insurance. The policies insure against radioactive contamination and all other risks of direct physical loss, with

* Under Section V(4) of the NEIL II policy, NEIL would be liable for losses caused by flood, windstorm or earthquake, to the extent such losses exceed \$500,000,000, whether or not the loss is covered under the underlying property policy.

exclusions not here relevant. The insurance as written specifically covers "expenses necessarily incurred by the Insured(s) in removing debris of and in decontaminating the property covered by this Policy following direct physical Damage to such property caused by any peril not excluded hereunder." These policies do not order the priority of claims payments, although decontamination expenditures would normally precede both repairs or replacement of damaged property. As a "following form" policy, NEIL II would also cover such costs.

By action taken at its June 1982 annual meeting, NEIL has determined that the form of policy to be issued on November 15, 1982 will be a "Decontamination Liability and Excess Property Insurance Policy," giving priority to payment of decontamination losses.* Thus, in situations where a utility plans to restore its damaged plant to service, proceeds from both the primary and NEIL II policies will be available for decontamination.** Even where restoration of the damaged

* This action reflects an implementation of the original design for the NEIL II program, as contemplated in August 1981.

** Although the standard utility mortgage indenture requires that the proceeds of all insurance covering the mortgaged property must be paid to the trustee in the event of a loss, the trustee is required to release those proceeds to the extent they are needed to repair, replace or restore the property. For a more detailed discussion of this issue, see NML Comments at 19-22.

unit to service is not planned or possible, the proceeds of the NEIL II policy will be paid directly to the utility for decontamination expenses.

NRC Questions

Our primary comment with respect to the questions posed by the NRC in its "Advance Notice of Proposed Rulemaking" concerns Question 4: "Should the NRC become involved in regulating the replacement power program as currently offered by NEIL and described in NUREG 0891?"

NEIL emphatically believes that the NRC should not become involved in "regulating" the replacement power program, particularly if there is implicit in the question the suggestion that this program be abandoned.

It should be clear that utilities have numerous non-decontamination insurance needs. Once the NRC has established a reasonably satisfactory method of providing for the public interest in the adequacy of funds for decontamination, it should not arbitrarily seek to mandate a sole focus for all insurance. The NEIL I program serves to provide coverage for the extra expense of purchasing replacement power during prolonged accidental outages of nuclear power generating units. The Three Mile Island accident clearly demonstrated that such

costs can be substantial. Buying insurance to meet such costs benefits the utility's customers and the utility itself. Since the extra cost of replacement power would normally be passed on to the ratepayer in the form of higher electricity rates, the coverage protects the ratepayer by providing a measure of insulation from the risk of higher rates. It protects the utility from the risk that state regulatory authorities determine not to allow such costs to be passed on promptly to the ratepayers.*

Preventing utilities from purchasing replacement power coverage would not automatically make funds available for property insurance. The surplus accumulated by NEIL I -- at \$135 million** a major element of its financial resources -- cannot simply be allocated to property insurance without infringing on the rights of the NEIL I member insureds, a number of whom are not the licensed operators of the plants whose output is being insured.*** Were utilities discouraged

* The reality of this risk is evidenced by the experience at Three Mile Island; the recovery of these costs was delayed for a full year.

** Based on unaudited financial statements for the six month period ending June 30, 1982.

*** It should be noted that NEIL I insures a utility's interest in the output of a nuclear unit, not in the property of the unit. The NEIL I coverage is available to any utility which has a right to purchase or receive any portion of the power generated by a nuclear unit. Thus, a utility need not own or operate a nuclear unit in order to purchase NEIL I coverage.

from buying replacement power coverage, NEIL would likely be forced to terminate the extra expense program and distribute the NEIL I surplus to the NEIL I member insureds. It is difficult to see how this would stimulate growth in property insurance capacity.

Our final comment concerns the impact on NEIL of combining the capacities of the primary property insurers.* Both the NRC's questions and the Long Report assume that, were such combination mandated, NEIL's excess capacity would attach at the level reached by the combined primary programs. (For example, if that combined primary coverage were assumed to be \$1 billion, NEIL's coverage would be added thereto to provide, currently, \$1.365 billion). It is not clear, however, that this can be done without consequences which, at present, are difficult to evaluate.**

The primary concern is the impact on NEIL's premium and the retrospective premium obligation of its insureds. In order to have adequate resources to cover losses, NEIL requires its insureds in the NEIL II program to assume the obligation to

* Certain observations of the Long Report regarding such matters as the "worst case" situation postulated, disclosure of limited liability, and insurance regulation and taxation are applicable to NEIL and commented upon in the NML Comments at 27-32.

** The NML Comments address other aspects of mandating combined capacity which NEIL need not address. See NML Comments at 3-19.

pay up to seven and one-half times one year's premium as a retrospective premium assessment. The premium to which this multiple applies is that which would be charged for a full \$500 million coverage in excess of \$500 million primary coverage. If the policy were now to attach at \$1 billion, the applicable premium should be reduced to reflect the lesser exposure. NEIL cannot afford to do this, however, without increasing the multiple since it must retain the ability to marshal the resources needed to pay maximum policy claims. Such an increase in multiple would pose troublesome contractual and state regulatory problems. If successfully resolved, the aggregate financial commitment -- a function of multiple times premium -- would of course remain constant. The reduction in current premium, however, would serve to slow down the accumulation of surplus and hence the growth of insuring capacity.

One further aspect of mandating combined primary capacity deserves mention. The participants in the NEIL-II program accepted the need to provide a portion of that program's financial resources through retrospective premium assessment. For many, the willingness to do so was influenced by the fact that they were not also subject to assessment as members of NML. If now forced into NML, with the attendant additional exposure to assessment, this group's willingness to make NEIL-II coverage an addition to the combined primary coverages and to expand it in the future may well be adversely affected.

Perhaps the most important conclusion to draw, from this and other examples,* is that the various insurance programs under discussion are not fungible commodities -- freely to be added or interchanged. There are significant differences between assessable mutual insurance companies such as NEIL and NML, and companies writing guaranteed cost insurance in pools such as ANI/MAERP. There are important differences between extra expense and excess coverage programs, and between primary and excess property insurers. The fact that all deal in "insurance" does not open the door to a simple additive process in the interest of increased capacity, no matter how meritorious that goal.

* * * *

NEIL appreciates the opportunity to comment on these issues.

Respectfully submitted,

BAKER & MCKENZIE

By: Peter D. Lederer
Peter D. Lederer

* See NML Comments at 12-16.

ATTACHMENT A

NUCLEAR ELECTRIC INSURANCE LIMITED

Member Insureds

Alabama Power Company
Arkansas Power & Light Company
Baltimore Gas and Electric Company
Boston Edison Company
Carolina Power & Light Company
Cleveland Electric Illuminating Company
Commonwealth Edison Company
Connecticut Light and Power Company
Connecticut Yankee Atomic Power Company**
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Duke Power Company
Duquesne Light Company
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Indiana & Michigan Electric Company

* Extra Expense Insurance Program Only

** Excess Property Insurance Program Only

Iowa Electric Light and Power Company
Iowa-Illinois Gas & Electric Company*
Jersey Central Power & Light Company
Maine Yankee Atomic Power Company**
Metropolitan Edison Company**
Middle South Energy, Inc.**
Municipal Electric Authority of Georgia*
Niagara Mohawk Power Corporation*
Northern States Power Company
Ohio Edison Company*
Pacific Gas & Electric Company**
Pennsylvania Electric Company**
Pennsylvania Power & Light Company**
Pennsylvania Power Company*
Philadelphia Electric Company
Portland General Electric Company
Public Service Electric and Gas Company
Rochester Gas and Electric Corporation
San Diego Gas & Electric Company
South Carolina Electric & Gas Company
Southern California Edison Company

* Extra Expense Insurance Program Only

** Excess Property Insurance Program Only

Toledo Edison Company
Vermont Yankee Nuclear Power Corporation**
Virginia Electric and Power Company
Western Massachusetts Electric Company
Wisconsin Electric Power Company
Wisconsin Public Service Company*

* Extra Expense Insurance Program Only

** Excess Property Insurance Program Only

Nixon, Hargrave, Devans & Doyle

Attorneys and Counselors at Law

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September 20, 1982

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U.S. Nuclear Regulatory Commission
Washington, DC 20555

DOCKET NUMBER
PROPOSED RULE

13
PR-50
(47 FR 27371)

Re: 10 CFR Part 50 - Advance Notice
of Proposed Rulemaking -
Mandatory Property Insurance for
Decontamination of Nuclear
Reactors--47 Fed. Reg. 27371
(June 24, 1982)

Dear Sirs:

On behalf of Rochester Gas and Electric Corporation ("RG&E"), we wish to comment on the questions raised by the Commission in its Advance Notice of Proposed Rulemaking with regard to Mandatory Property Insurance for Decontamination of Nuclear Reactors. Rochester Gas and Electric Corporation is owner and operator of the 470 MWe Ginna nuclear reactor and is a 14 percent owner of the 1,080 MWe Nine Mile Unit No. 2 currently under construction. RG&E purchases nuclear property insurance from the ANI/MAERP insurance pools and is a member of and participant in both the NEIL I - Replacement Power Insurance and NEIL II - Excess Property Insurance programs. RG&E believes that NRC regulation of the nuclear insurance industry is not necessary and may be counterproductive. Therefore, RG&E urges the Commission to refrain from acting on any of the proposals discussed in the Advance Notice of Proposed Rulemaking.

Specifically, RG&E has the following comments on the four questions posed by the Commission in its notice:

1. Dollar limits of property insurance coverage.
The NRC should refrain from mandating any specific dollar coverage. NRC regulation in this area is unnecessary. Since the accident at the Three Mile Island nuclear plant, private sources (within the utility industry and the commercial insurance industry) have responded to market pressures by

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greatly increasing the insurance coverage available. RG&E and other utilities have responded by purchasing insurance which has come available at reasonable cost. Utility risk managers have sufficient incentive to insure against the risk of nuclear accidents and should remain free to purchase the types and amounts of insurance best suited to each utility's particular risk situation.

RG&E opposes any requirement that utilities purchase primary coverage from both ANI/MAERP and NML. Competition in the primary market has led to lower insurance rates and improved coverage. Mandating the purchase of both policies will remove any incentive of these insurers to be responsive to the utilities' needs. Furthermore, since these policies offer different premium structures, the utility currently may choose the plan which better fits its own cash flow needs and which is more acceptable to its state commission.

RG&E prefers the alternative put forth by the Commission which retains the current regulation and then allows the market mechanism to guide the purchase of any further property insurance. As the recent past indicates, these market mechanisms have been very responsive to the utilities' insurance needs which were demonstrated by the TMI accident. There is every reason to believe that the market will continue to be responsive to these risks without further regulation.

2. Special provisions for certain types of licensees. RG&E believes that each licensee should be free to contract for coverage suitable to its needs. For example, smaller and older reactors will undoubtedly require less property insurance coverage than newer and larger reactors. For older plants, a utility may wish to purchase property coverage based upon the depreciated or actual value of the plant and the anticipated decontamination expense. Utilities with newer plants may seek replacement value insurance. The anticipated decontamination expense may vary with whether the utility plans to restore the plant to service or to decommission the plant. This needed flexibility underscores the undesirability of NRC-mandated insurance levels.

3. NRC involvement with structure and terms of property insurance. For the reasons we have already mentioned, RG&E believes the insurance industry and the utility industry have been adequately responding to provide coverage for the

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risks they perceive in operating nuclear plants. The Commission should not attempt to directly or indirectly dictate the structure, terms or conditions of property insurance. The utilities and the commercial insurers should remain free to structure additional insurance protection on the basis of retroactive premiums if they desire to do so. Retroactive premiums are a desirable mechanism in an industry where the risk of accident is slight but where the cost of the accident may be great.

The Commission should not require that proceeds from all property insurance be used to pay for decontamination expense before claims of creditors and owners are satisfied. As of November 15, 1982, the NEIL II - Excess Property Insurance Policy will give priority to payment of decontamination losses. Requiring priority for decontamination expense in the primary layer, however, would interfere with RG&E's existing bond indenture obligations.

4. Replacement power insurance. RG&E believes it is imperative that replacement power insurance remain available. The New York Public Service Commission has indicated in the past that it might not allow collection of replacement power costs in rates in every case. In addition, when a utility, such as RG&E, relies upon its nuclear plant for a large portion of its generation, the cost of replacement power could cause a significant increase in rates to its customers during the course of the outage. Thus it is to the benefit of the utility's ratepayers, as well as its shareholders, that insurance be provided against this increased cost.

Moreover, it is not at all clear that more capacity for property insurance would become available if replacement power insurance were no longer issued. This issue is discussed more fully in comments filed by NEIL.

We shall not comment on the Long report (NUREG-0891) because we understand that it is being addressed in detail by the insurance companies and industry trade associations. We thank you for the opportunity to comment on these issues.

Very truly yours,

Nixon, Hargrave, Devans & Doyle