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PUBLIC SERVICE COMPANY

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September 21, 1982

OFFICE OF SECRETARY
PROPOSED RULE

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THOMAS G. WOODS, JR.
EXECUTIVE VICE PRESIDENT
CHIEF OPERATING OFFICER

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

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

Re: 10CFR50-Mandatory Property Insurance for
Decontamination of Nuclear Reactors:
Advanced Notice of Proposed Rulemaking
47FR27371, June 24, 1982

Gentlemen:

Arizona Public Service Company (APS), a principal owner and the Operating Agent of the Palo Verde Nuclear Generating Station located within the State of Arizona, appreciates this opportunity to comment on the above referenced notice.

In an effort to facilitate the review process, our comments and recommendations relating to specific questions addressed in the notice are listed separately and follow our general statement of position. APS requests careful consideration of these attached comments.

If there are any questions regarding these comments, our staff will be pleased to discuss them with you.

Sincerely,

BT/TGW/fb

Attachments

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DS10
ADD: Robert Wood AR-5037

9/23/82 emp

COMMENTS
OF
ARIZONA PUBLIC SERVICE COMPANY
ON
MANDATORY PROPERTY INSURANCE FOR DECONTAMINATION OF NUCLEAR REACTORS
SEPTEMBER 22, 1982

I. GENERAL COMMENTS

Arizona Public Service Company (APS) endorses the comments of the Atomic Industrial Forum submitted on the subject matter. In general, it is the view of APS management that further regulation by the NRC in the area of nuclear property insurance in addition to that currently provided by 10CFR50.54 is not warranted, would not enhance the protection of the public health and safety and could be counter-productive.

In our view, the nuclear industry, including that segment which provides insurance against nuclear risks, has been reasonably responsive to the needs perceived from time to time. Thus, as Dr. Long's report - NUREG 0891 reveals (page 61), with a base of zero experience and reserves, approximately \$60 million of property insurance was made available in 1957 -- an amount which was indeed significant at the time. In the following 15 years, this coverage increased about 65% to \$100 million. Over the subsequent seven years (pre-TMI), the coverage had tripled to \$300 million. Currently the prospect is that the coverage four years after TMI will be more than tripled again to \$1 billion. Another way of putting it is that in the past ten years the nuclear property insurance will have increased by one order of magnitude.

This phenomenal increase has been achieved without any regulation from the NRC or any other federal or state agency and with the introduction of competition in the insurance industry through the organization of NML. In fact, one notable omission in Dr. Long's report is the absence of any analysis of the impact of this competitive force on the nuclear insurance market.

Similarly, as TMI experience revealed the needs, the nuclear industry has responded developing additional types or scope of nuclear insurance through NEIL I and NEIL II to deal with (i) replacement power costs, and (ii) excess coverage with priority to be given to decontamination. These developments, too, have taken place in the absence of governmental regulation.

This demonstrated responsiveness of the nuclear industry in the absence of any governmental interference can only be attributed to the fact that nuclear utility management has recognized the necessity to secure proper financial protection to cover its nuclear risks and maintain its ability to attract investment

capital. If the prospective amount of \$1 billion of coverage is not sufficient, there is no basis to conclude that the forces of private initiative are incapable of producing the additional capacity required. Certainly, governmental regulation will not and cannot produce either increased or improved coverage. On the contrary, the evidence is that additional governmental interference will only exacerbate the financial problems faced by utilities and impair the ability of the insurance industry to respond to their needs.

II. RESPONSES TO SPECIFIC QUESTIONS RAISED IN ADVANCE NOTICE OF PROPOSED RULEMAKING (47FR27371, JUNE 24, 1982)

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

The NRC should retain its current property insurance requirement (10CFR50.54) as published March 31, 1982, utilizing an annual disclosure of insurance coverage as a focus for decision making by State regulatory bodies. In publication of Final Rule, "Elimination of Review of Financial Qualifications of Electric Utilities in Licensing Hearings for Nuclear Power Plants" 10CFR2 and 50, B.1 Mandatory Property Insurance for Decontamination, page 13752, the Commission acknowledged that its intent was "neither to disrupt the insurance markets"... "nor to require utilities to obtain insurance under unreasonable terms and conditions." That was a valid observation in that proceeding and is applicable in this instance.

2a. "If the NRC changes its requirements for property insurance, should there be special provisions for certain types of licensees? Should NRC exempt from applicable portions... utilities prohibited by State law from obtaining coverage from certain types of insurers?"

Requirements should allow sufficient flexibility to exercise prudent management decisions subject to NRC or State Regulatory approval. 10CFR50.54 adequately addresses these issues.

2b. "Should utilities with multiple reactor sites be required to obtain coverage for each unit separately or is site coverage sufficient?"

The appropriate answer to this question was well stated in Question 1, 47FR27372, "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." Given the opportunity, prudent utility management will design appropriate risk financing mechanisms utilizing reasonably available insurance to meet catastrophic exposures. Such decisions are a matter of individual utility management judgment and are not an appropriate area for NRC mandate.

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

As so aptly stated by Professor Long, "the most effective contribution NRC can make to the quality and reliability of nuclear property insurance is to promote safety in the operation of nuclear reactors." (NUREG 0891, page 109). The NRC needs no further involvement in nuclear property insurance than that specified in 10CFR50.54. Any entry by the NRC into regulation of insurance terms and conditions, the business operations of the insurers, the rejection of insurance due to underwriting or rating practices, or the limitation of retroactive assessments will adversely impact the "fragility of the insurance mechanism" acknowledged by Dr. Long (NUREG 0891, page 108).

Utility management has a well-documented commitment to obtaining adequate nuclear property insurance. The high priority given this financial plan is evidenced by the accumulation of \$500 million primary capacity and \$427 million excess of \$500 million excess nuclear property insurance capacity now available. That commitment has been extended to obtain substantially higher amounts of available insurance. NRC regulation or involvement would be counterproductive and not in the best interest of the public or the utilities.

- 3b. "Is concern with overuse of retroactive assessments warranted?"

Retrospective premium adjustments are common throughout the insurance industry and are an effective means of controlling cash flow and adjusting premium to actual loss experience. The assessment provisions used in both nuclear property and liability insurance are of a greater magnitude than normally found in the commercial insurance marketplace but not too dissimilar to premium increases and modifications to the ANI-MAERP Insurance Industry Experience Guide. Assessments, premium increases, and elimination or reduction of experience credits are all mechanisms to adjust cash flow to meet the incremental cash demands of a claim adjustment over a several year period. Nuclear utilities with adequate property insurance programs have the ability to meet such premium assessments or increases within normal financial planning, subject to their individual management judgment and approval of their regulatory authority.

Disclosure of potential or contingent liabilities to the investing public is effectively regulated by other agencies and provides an adequate mechanism for prudent financial and risk management.

This is not an appropriate area for NRC interference. In this connection it is notable that Dr. Long provided absolutely no analysis to support his opinion that no additional insurance coverage based on the retroactive premium adjustments should be allowed. Apparently his opinion is basically visceral in nature.

While it is true that the cumulative effect of multiple incidents and multiple retroactive premium adjustments cannot be ignored and the "worst case" deserves consideration, the ultimate question is one of "risk". At the least, some sort of probabilistic analysis should be performed if the sole basis for rejecting premium assessment insurance is the potential "worst case". Having established some probabilistic base, an evaluation should then be made of cost effectiveness of the risk of multiple premium assessments by analyzing the impact of such risk on the cost of capital to various utilities, probably ranked by their relative financial stability.

- 3c. "...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?"

APS has been advised by its legal counsel that Dr. Long's recommendation, if adopted by NRC, could raise serious questions under the insurance covenants of APS' existing Mortgage Indenture which could impact and have implications on APS' compliance with the insurance covenant under its Mortgage Indenture and its ability to obtain favorable financings in the future. However, the planned November 1982 modification to the NEIL II excess property insurance coverage to give priority to decontamination and debris removal expenses appears to be an acceptable compromise achievable without the NRC action. It is anticipated that future growth in excess insurance capacity would contain the same priority provisions.

4. "Should the NRC become involved in regulating the replacement power insurance program...? Is replacement power insurance necessary...?"

As stated in 3a above, there is no valid need for NRC involvement in either the nuclear property or replacement power insurance programs. The replacement power coverage offered by NEIL mitigates the cost of replacement power, supplements cash flow, and helps assure financial stability of a utility for the

benefit of the ratepayers and investors. The program is entirely a utility self-help pooling of resources with minimum commercial insurance involvement. Elimination of this program would have no measurable effect on the growing capacity of nuclear property insurance.

Replacement power insurance is a necessary option that should remain available to utility management to meet their financial commitments. Such risk financing is a matter of individual utility judgment in conjunction with their regulatory authority.

III. SUMMARY

Nuclear property and replacement power insurance are valuable tools of risk management that are vital to the financial management of utilities generally. Recognizing that each utility is faced with its own peculiar financial requirements and problems necessitating individual solutions in risk management, increased, rather than restricted, flexibility in use of these tools should be the goal. Restrictions cannot produce improved coverage, but they can result in increased costs.

APS respectfully requests that the Commission give careful consideration to its comments, those of other utilities, and nuclear industry representatives. We appreciate the opportunity of submitting our comments on this important issue.



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OFFICE OF SECRETARY
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BRANCH

September 22, 1982

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DOCKET NUMBER
PROPOSED RULE PR-50

(47 FR 27271)

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

RE: "Nuclear Property Insurance: Status and Outlook," by Dr. John
D. Long, NUREG-0891

Dear Sir:

The National Association of Insurance Brokers (NAIB) represents major commercial insurance brokers in the United States. Our members develop the majority of the nation's business-related insurance coverages, including nuclear property insurance. The primary function and responsibility of a commercial insurance broker is to develop insurance programs and provide related products and services to protect the assets of clients ranging from large and small businesses to public and private institutions of all kinds.

We offer the following comments on certain of the questions proposed in the Advance Notice of Proposed Rulemaking, Thursday, June 24, 1982, including NUREG-0891 ("The Long Report").

1. What dollar limits of property insurance should NRC require?
This question strikes NAIB as being at the heart of the entire matter, from which other questions concerning structure and provisions of nuclear property insurance follow. The amount of property insurance necessary to address protection of public health and safety (that is, to place the plant in condition where it poses no greater risk than a normally operating reactor) unfortunately has been intermingled by some with two other separate and distinct figures: (a) the amount necessary to decontaminate totally a plant and to restore the property to service (roughly \$1.6 billion in the case of TMI); and (b) plant insurable value (exceeding in some cases \$4.0 billion for new multi-unit sites). The former amount would be expected to go considerably beyond the "public health and safety" amount while the latter is practically unrelated. NRC should keep these distinctions in mind when determining whether additional regulation is required beyond existing rules. NAIB does not think any additional regulation is required.

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ADD: Robert Wood AR-5037

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

2. To what extent, if any, should the NRC become involved with the structure and terms and conditions of the property insurance offered? In our opinion, the Commission should not become involved at all. Regulation of such a multi-purpose and ever-evolving form of insurance is more likely to stifle rather than to enhance coverage innovation and improvement. NRC has had a long history of cooperation with private insurers in developing insurance programs to address financial protection to the evident benefit of public health and safety. NAIB would prefer to see a perpetuation of this cooperative endeavor and to avoid any authoritative mandates from the NRC.

Quite apart from the questions of NRC's statutory or regulatory authority to require private insurers to revise programs of insurance is the desirability of such action. Protection of public health and safety is the responsibility of NRC, but it is also the charge of reactor operators, the buyers of nuclear insurance. In advance of NRC rulemaking, these buyers had clearly identified increased property insurance as high priority. The workings of the marketplace thus produced within the past year (prior to the publication of the Long Report) increases of \$254 million in assessable insurance (NEIL - II) and \$278 million in guaranteed cost insurance (\$85 million ANI primary, \$67 million ANI excess, \$61 million NEIL reinsurance, \$45 million AIG and about \$20 million from other sources). Pooling all available coverages today would produce about \$925 million of capacity, and principal sources alone are expected to be able to offer a full \$1 billion by year's end. Utility demand for increases beyond this figure is clear, and we have every confidence that the marketplace will continue to respond to that demand.

3. Are utilities disinclined to purchase all available coverage? We think not. As of September 15, 1982, 41 of the 53 sites with NRC operating licenses purchased all coverage available from principal sources, in the absence of a requirement to do so (that is, they are not required to but do purchase both ANI and NEIL excess coverages). Of the remaining sites, four are awaiting regulatory approval in order to join NEIL-II, one site consists of a reactor undergoing long-term shutdown (whose management has indicated a clear desire for maximum coverages when reactor restart approaches), two sites represent very small, arguably less risky reactors, and the remaining five are sites operated by state or municipal power agencies with apparent bond indenture difficulties in joining assessment mutual companies. In our view, then, all utilities that both can and should purchase maximum insurance are doing so, and those who have not joined NEIL II are, nevertheless, purchasing all available guaranteed cost insurance from ANI/MAERP.

A corollary issue to this question concerns the very fact that both the NRC Final Interim Rule and the Long Report were out-of-date at the time of their publication with respect to insurance programs available and the extent of subscription to these programs. This is indicative of a fundamental problem faced by NRC in further, near-term rulemaking. The nuclear property insurance situation remains a dynamic one with particular volatility right now. Many questions of approach to increased limits of insurance will certainly continue to be addressed by industry after the upcoming comment period expires. NRC should, therefore, continue to defer further rulemaking for the near future and instead assess the situation after some appropriate period of time.

In summary, NAIB believes that the amount of property insurance necessary to restore a plant to a safe condition following an accident cannot be precisely determined. However, it is less than the amounts of property insurance which are in the utility's other interests to obtain. Market forces of demand and creative response to this demand will, in our view, produce the maximum amount of insurance in the shortest period of time.

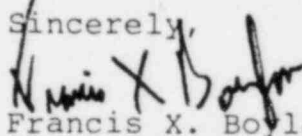
Neither regulation nor expectation of regulation can be credited with creating any significant incentive to achieve increased capacity. Increases which came into being following the announcement of potential rulemaking merely represented the maturation of efforts which were set in motion long before.

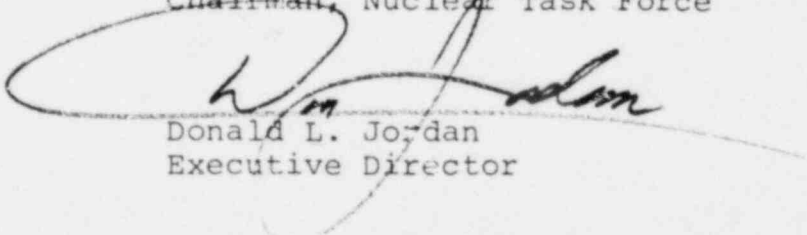
It is clear to NAIB that demand for nuclear property insurance beyond the \$1 billion 1982 goal continues to be motivated by the publics to whom utilities must respond (creditors, trustees, PUCs, etc.) As a result, one should view the nuclear property insurance area as one which is now evolving in a particularly rapid manner.

For reasons set forth above, NAIB feels that further rulemaking is neither necessary nor desirable, at least in the immediate future.

We are pleased to have had the opportunity to comment on these matters and would be happy to work with the Commission further in its consideration of these important issues.

Sincerely,


Francis X. Boylan
Chairman, Nuclear Task Force


Donald L. Jordan
Executive Director