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J. M. WYATT  
Chairman of the Board  
and Chief Executive Officer  
OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

September 22, 1982

Office of the Secretary of the Commission  
United States Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D. C. 20555

DOCKET NUMBER  
PROPOSED RULE PR-50

33

(47 FR 27371)

Re: 10 CFR Part 50  
Mandatory Property Insurance for  
Decontamination of Nuclear Reactors  
(47 FED. REG. 27371, June 25, 1982)

Dear Sirs:

Louisiana Power & Light Company (LP&L) appreciates the opportunity to submit comments on NUREG-0891, Dr. John D. Long's report on nuclear property insurance.

LP&L is constructing a nuclear unit at Taft, Louisiana, to help serve the needs of its 536,000 customers. This unit is expected to be placed in commercial operation in early 1984, so LP&L is vitally interested in the issues being addressed in Dr. Long's report.

We have seen the response filed by our parent company, Middle South Utilities, Inc. (MSU), to this subject, and rather than our going into a detailed response to Dr. Long's report, we can simply say that we endorse the comments of MSU. The use of assessable mutual insurance as a means of providing insurance coverage for the nuclear industry is a viable approach for providing the capacity required by the industry.

Further, LP&L endorses the response made by the Edison Electric Institute to the other issues addressed by Dr. Long in his report.

We appreciate the opportunity to submit these comments on NUREG-0891.

Very truly yours,

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PDR PR  
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ADD: Robert Wood  
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**Commonwealth Edison**  
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September 22, 1982

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

DOCKET NUMBER  
 PROPOSED RULE PR-50  
 (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:

The Commonwealth Edison Company (Edison) appreciates the opportunity to comment on the Commission's Advance Notice of Proposed Rulemaking concerning nuclear property insurance. Edison is licensed to operate eight commercial power reactors and has five additional units under construction. We are among the founding members of both NML and NEIL and, prior to the formation of NML, we had a number of years experience as property insureds of ANI. Nuclear insurance of all types represents a \$25,000,000 annual expenditure for us. Edison, therefore, believes that it can make a useful contribution for the Commission's consideration in this matter. Since we concur with the comments being filed by several other groups, notably the Edison Electric Institute, NML and NEIL, we will not belabor the points made in their comments unless we have a somewhat different perspective to offer.

Summary of Concerns

The amount of available property insurance for nuclear power plants has increased dramatically in the last five years. The increase from \$175 million at the end of 1977 to over \$900 million today has chiefly been the result of four factors:

1. A desire for increased coverage on the part of the utility owners of the plants.
2. An insurance market in which competitive pressures could stimulate an increase in coverage in response to increasing demands for it.

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3. Willingness on the part of electric utilities to enter into mutual insurance pools to further increase the available supply of coverage.
4. A stable and free market in which both commercial insurance and mutual insurance pools could function without undue interference.

As long as these four conditions persist, there is good reason to expect that the amount of nuclear property insurance available to plant operators will continue to increase. Commonwealth Edison Company is concerned, however, that if the NRC were to impose rules along the lines contemplated by Professor Long's report, several of the factors which have been operating to increase the availability of insurance would be disturbed. We are concerned that the effect of such a disturbance would be to reduce the insurance protection available to us from the levels which otherwise would be achievable, and to increase the cost which we pay for property insurance. This would be contrary to our interests and those of the public we serve.

Removing competition in the nuclear insurance market by requiring every licensee to purchase coverage from both NML and ANI is likely to both constrain the supply of insurance and increase its cost. An unregulated monopolist supplying a market which is obligated to buy its product has no incentive to increase its own financial risk by expanding the coverage offered. Profitability can be maintained and profits increased at any given level of coverage simply by increasing price.

The financial resources devoted to nuclear insurance, particularly those resources devoted by commercial insurers and re-insurers, cannot be forced to remain so devoted. We are concerned that efforts by the Commission to indirectly regulate the form and pricing of nuclear property insurance will cause a flight of resources out of the nuclear property insurance market, or, at least will make it more difficult to attract new resources to the market.

We have been informed by financial analysts that they would view adoption of certain of Professor Long's suggestions as adversely affecting the general financial strength and creditworthiness of plant operators. In particular, we have discussed the proposal of a mandatory decontamination priority with analysts for the principal security rating agencies. On the basis of those discussions we believe the agencies would view such a mandatory provision with disfavor and that, depending upon individual company circumstances, it could affect security ratings. These analysts' concerns were

caused by the possibility that a loss of financial flexibility might, in the event of an accident, result in a shortage of funds and consequent default on debt obligations (see p. 6 below). They were also concerned that the precedent set by such a mandatory provision would increase the perceived regulatory risks of nuclear power.

It might make some sense to suffer these adverse consequences in order to significantly reduce a risk to the public safety. We do not, however, believe that implementation of Professor Long's suggestions would add anything to the public safety. On the contrary, by interfering with the orderly growth of nuclear insurance and adversely affecting the financial capability of utilities to deal with the possible consequences of an accident at a nuclear power plant, the suggestions would be detrimental to the public safety and to the public interest.

#### The Use of Retrospective Assessment Insurance

The Advance Notice asks several questions concerning insurance which includes retrospective assessment features. In order to respond to these questions it is useful to review the role which such insurance has played in the nuclear area.

The tremendous expansion in the insurance coverage available to the owners of nuclear plants is in very great measure due to the development of mutual insurance pools. In the case of coverage offered by NEIL that is self-evident, but we believe it to be equally true in the case of NML, which has led the expansion of the primary insurance layer to the \$500 million level. Without the financial resources afforded by retrospective premium agreements, neither of these companies would have been able to offer coverage at the levels which have become available.

A retrospective premium arrangement can be thought of as a contingent commitment of capital to an insurance program. The alternative is a permanent, or advance, commitment of capital. Nuclear property insurance requires capital and premium flow to meet the likelihood of occasional small to moderate losses, and also the resources to meet a quite unlikely, but large, policy limits loss. Since Edison is primarily a public utility rather than an insurance or other type of investment company, Edison would prefer not to have large amounts of capital passively invested in an insurance program awaiting a highly unlikely policy limits loss. Edison recognizes, however, that an insurance program cannot function without the capital resources to meet a policy limits loss. By promising to supply the capital when and as required through retrospective assessments, a group of companies like Edison

can satisfy the capital needs of a major insurance program without tying up large amounts of capital in passive investment.

Contrary to Professor Long's apparent belief, there is no more reason for concern that the members of the current utility mutuals will refuse to meet their contractual obligations than that the members of ANI will refuse to meet their contractual obligations. (Indeed, the obligations of NML's and NEIL's members to respond to a call are far simpler and more direct than the complex web of contracts which Professor Long describes as governing the obligations of the many companies forming ANI). A promise to pay, of course, offers less security than funds in hand, but it offers a sufficiently high degree of certainty that relatively few commercial or financial transactions in this country are on a cash basis. Professor Long offers a few obscure cases in which members of mutual companies contested retrospective assessments, but one need not look far to find recent examples of disputes among large commercial insurers over their respective obligations to insureds. See, e.g. "Business Insurance" January 25, 1982, p. 3; March 1, 1982, p. 1; April 5, 1982, p. 3, concerning disputes over the Kansas City Hyatt Hotel disaster, MGM Grand Hotel fire, and asbestosis litigation, respectively.

The use of industry mutuals, a wide variety of retrospective premium arrangements, "captive" insurance companies and other such programs has become a recognized aspect of corporate risk management. This is because these tools have been demonstrated to have financial advantages over conventional insurance in many applications. The many commercial and industrial enterprises which have adopted them are not reckless or unconcerned about risk. They are, however, concerned about dealing with financial risk in the most financially efficient manner. For the same reason, we at Edison have successfully employed these risk management tools in connection with our employee benefit programs, workmens' compensation, and conventional public liability exposures. Based on our own success and that of others with these kinds of programs in non-nuclear areas, as well as the contributions to nuclear insurance made by NML and NEIL, we do not feel their use in the nuclear area should be precluded.

Certainly there are limits beyond which retrospective assessment insurance should not be carried. Edison is not, at present, anxious to increase its exposure to new programs of that sort. We would not, however, wish to have the option of participating in a new program foreclosed. As the existing programs mature and accumulate reserves, the practical exposure to assessment is substantially reduced. The NEIL I program, for example, could already meet more than a policy

limits loss out of premiums and resources other than assessments. Consequently, while the limits of our contractual obligations to the NEIL I program have not been reduced, there is now far less likelihood of an assessment than at the time the program was formed. Even without that process, we may conclude that some insurance program not presently contemplated is so worthwhile, or so advantageous compared to other means of reaching a goal, that it is worth accepting additional assessment exposure.

For these reasons, Edison believes that insurance incorporating retrospective assessment provisions is a reliable and secure form of coverage. We also believe that it is vital to maintaining current levels of property coverage and that there is no prospect for substantial increases in coverage without such insurance. No regulation precluding its use would be desirable or practical.

#### Financial Implications of NRC Action

The Commission should not act in ways which unnecessarily impair the financial strength of reactor owners. That financial strength is important to the customers of utilities in a variety of ways not directly related to nuclear power, but it also has direct significance to nuclear insurance needs in at least three respects. First, it supports substantial insurance programs and is necessary to their expansion. Second, in the event of an accident a strong company will find it easier to attract capital and will have far more flexibility of action than a weaker company. Finally, weakening utilities will hinder the expansion of nuclear power. Quite aside from the importance of such expansion to national energy policy, expansion will facilitate expansion of insurance coverage. A larger number of insured sites will provide increased premium volume and a wider spread of risk, thereby supporting increases in coverage from both mutual and commercial resources.

At least two of Professor Long's suggestions, if implemented, are likely to be detrimental to the financial strength of utilities and their capacity to respond to any accident. These are the suggestions that the Commission abolish the NEIL I replacement power insurance program and the suggestion that it mandate that all property insurance include a "decontamination priority." Comments filed by others deal at length with the difficulties with both of these suggestions. In essence, abolition of NEIL I would add little, if any, commercial insurance resources to property insurance programs, but abolition of the program would deprive a utility of a substantial source of funds in the event of an accident. The absence of those funds would certainly limit the options

available to a plant owner and could well hinder efforts to obtain additional funds from banks or the financial markets. Similarly, a mandatory decontamination priority would mean that the flexibility to apply funds to various post accident activities as required would be curtailed.

It is important to recall that following a severe accident there will be many financial obligations faced by a plant operator. The foremost obligation will, certainly, be the protection of the public health and safety, but that does not mean that vast sums will be immediately required for decontamination once the immediate effects of the accident have been contained. There are many plausible circumstances in which it would be necessary or most efficient to proceed with decontamination at a deliberate pace. While that is going on, if all insurance includes a decontamination priority, insurance funds will likely be sequestered and unavailable for any other purpose. That is true even if there is every likelihood that the cost of decontamination will be less than the available insurance coverage. In this regard, one should recall that the property insurance on a nuclear plant must be capable of responding to non-nuclear accidents as well as accidents involving the reactor itself. A major turbine accident, for example, could be very expensive to repair and would impose large financial burdens on the plant operator, but would present comparatively minor contamination difficulties.

It is also important to place in perspective the concern which apparently gave rise to the suggestion of a mandatory decontamination priority. That was the possibility that a bond trustee might receive insurance proceeds and refuse to disburse them for plant clean-up. Under a typical bond indenture, property insurance proceeds are payable to the trustee, but the trustee must release them as expenditures are made for plant repair and restoration. Since decontamination is an integral part of restoring a damaged nuclear plant, insurance proceeds could be drawn down for that purpose. The situation in which that might not occur is if a plant were damaged beyond repair, so that decontamination did not constitute a restoration expense. (Even in that case, many indentures do provide mechanisms for the release of funds). It is hard to conceive of an accident which would damage a large power reactor to this extent which would not also give rise to a claim against the excess insurance layer. As the Commission knows, the NEIL II excess property insurance will include a "decontamination priority." Consequently, in the event of any loss large enough to call into question the availability of primary insurance proceeds, a pool of excess insurance proceeds, currently targeted at \$500 million (and the layer which seems most likely to expand), will be available. This seems

an appropriate balance between the risks associated with a lack of financial flexibility and the risk of having no major pool of funds to apply to decontamination. The former, the risks associated with a lack of flexibility, should not be dismissed as unimportant. If a plant operator were to default on its financial obligations due, for example, to a short term lack of funds, the resulting confusion and litigation would certainly not be conducive to plant restoration in the most efficient manner.

Edison recognizes the possibility that the cost of decontaminating a damaged plant might exceed \$500 million, or for that matter \$1 billion. We do not believe that such a possibility is an adequate ground for segregating all of the available property insurance resources and making them available only for decontamination. Such segregation would, it is true, reduce the financial uncertainty associated with contamination damage to a nuclear plant, but it is simply not feasible to segregate sufficient resources to deal with each financial contingency associated with providing electric service to the public. If it were possible, it would be horribly inefficient and far too costly a course of conduct for utilities to expect their customers to bear.

The kind of financial uncertainty dealt with through insurance is, after all, fundamentally different from the physical risks with which the Commission normally deals. Physical systems are designed to prevent or contain an accident. If the systems do not function and the accident occurs, the physical consequences may be repairable, but they are not reversible. In essence, once a risk to the public safety has been created, or once an individual has been unintentionally exposed to radiation, the event sought to be prevented has taken place. Insurance (or other financial protection) is designed not to prevent, but to facilitate repair of the consequences of an accident. As a result, insurance programs should be designed with different objectives in mind from those applicable to physical systems.


The financial protection "design" can properly reflect two goals which do not demand equal priority. First, it is important that funds exist to stabilize a damaged plant and perform any decontamination necessary to remove any immediate threat to the public safety. Aside from all the other resources available to a plant owner, the NEIL II program provides a pool of funds which should be more than adequate for this purpose. (Even if they were not immediately available to the insured, the existence of the NEIL II funds would support the extension of credit to a plant owner for decontamination.) Second, the immediate availability of sufficient funds to ultimately return the plant to service or to decommission it if necessary would be desirable, but is of



lesser significance. It is clear that following any major accident the excess layer insurance proceeds currently available will support a lengthy, sustained decontamination process. If in the course of that process it appears that the insurance and other financial protection programs then in place will be insufficient, time will be available to marshal additional resources.

We do not state the above lightly. Edison has been in the forefront of the utility industry's efforts to expand insurance programs. We, like our industry, have had a goal of reducing the financial uncertainty associated with the possibility of an accident at one of our plants. We still have that goal. We believe, however, that it can best be achieved by an orderly expansion of insurance resources through a process which preserves the maximum degree of financial flexibility in preparing for and dealing with the consequences of a possible accident. We believe that this approach offers the greatest possibility of minimizing risk and uncertainty over the long term.

Very truly yours,



Harlan M. Dellsey  
Staff Counsel

# The Light company

Houston Lighting & Power P.O. Box 1700 Houston, Texas 77001 (713) 228-9211

September 22, 1982  
ST-HL-AE-888  
File No. G3.15

DOCKET NUMBER  
PROPOSED RULE

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47 FR 27371

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
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Mr. Samuel J. Chilk  
Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

Comments Regarding the Advance  
Notice of Proposed Rulemaking on Mandatory  
Property Insurance for Decontamination of Nuclear Reactors

On June 24, 1982, the NRC published an advance notice of proposed rulemaking entitled, "Mandatory Property Insurance for Decontamination of Nuclear Reactors." (47 Fed. Reg. 27,371). Houston Lighting & Power Company, the Cities of Austin and San Antonio, Texas, and Central Power and Light Company (the Participants) are participants in, and co-owners of, the South Texas Project and co-licensees for the construction of, and co-applicants for operating licenses for South Texas Project Units 1 and 2. They have considered the Federal Register notice and the Long Report (NUREG-0891) and jointly offer the following comments through Houston Lighting & Power Company as Project Manager. Individual comments addressing specific concerns are being submitted by the Cities of San Antonio and Austin.

The Participants in general support the requirements of the current interim rule (47 Fed. Reg. 13,750) in which a new paragraph (w), concerning on-site property insurance for decontamination expenses, was added to 10 CFR 50.54.

The Participants believe that the NRC should take the necessary steps to preempt any state or local prohibitions concerning the purchase of mutual insurance or insurance requiring retroactive assessments to be used for on-site decontamination of nuclear reactors. These steps are necessary because Section 52 of Article III of the Texas Constitution denies a Texas city the power "to lend its credit or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company." The Texas Supreme Court has construed this provision as prohibiting a Texas city from purchasing insurance which provides for assessment of policy holders or from purchasing insurance from mutual insurance associations where the policyholder becomes the equivalent of a stockholder in the company. City of Tyler v. Texas Employers Insurance Association, 288 S.W. 409 (Tex. Comm'n App. 1926,

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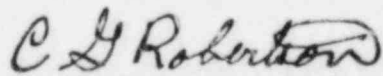
judgmt adopted), reh'g denied 294 S.W. 195 (Tex. Comm'n App. 1927); Lewis v. Independent School District of Austin, 139 Tex. 83, 161 S.W.2d 450 (1942). The participants believe the provisions of 10 CFR 50.54(w) (3) were included in the interim regulations in recognition of this prohibition.

The availability of additional insurance for municipally owned utilities would result in providing the public with increased health and safety protection. The public interest in minimizing nuclear power plant costs would also be maintained. However, the provisions of 10 CFR 50.54(w) (3) should be retained in the event such steps are subsequently determined ineffective in preempting state or local prohibitions.

We believe that a disinclination to purchase less than the maximum insurance available does not exist among utilities. We suggest this matter bears reinvestigation since surveys have indicated that utilities holding operating licenses purchase the maximum amount of insurance available from primary insurers. A few older plants with significantly reduced values and risks are believed to be the exceptions in purchasing the maximum amount of insurance available.

Specific and detailed comments relating to the advance notice of proposed rulemaking, i.e., answers to specific questions contained within the notice, are provided in the Attachment to this letter.

Very truly yours,

  
C. G. Robertson  
Manager  
Nuclear Licensing

TAP/aa

Attachment

cc: G.W. Oprea, Jr.  
J.H. Goldberg  
J.G. Dewease  
D.G. Barker  
Management Committee  
Finance Committee  
Insurance Committee  
Legal Committee

Specific and Detailed Comments Concerning the  
Advance Notice of Proposed Rulemaking: Mandatory  
Property Insurance for Decontamination of Nuclear Reactors

The following comments correspond to the specific questions (1-4)  
provided by the NRC in the Federal Register Notice (47 Fed. Reg. 27,371):

- 1) A. What dollar limits of property insurance coverage should the  
NRC require?

Comment: No specific dollar limits should be imposed.  
However, the maximum limit of property insurance coverage  
requirements should be the maximum amount of insurance that is  
currently available as determined by the NRC under reasonable  
terms and without requiring duplication of coverage. More  
extensive Federal government involvement in insurance may cause  
available capacity to be reduced or in some cases eliminated.  
Additionally, due to market growth, increased coverages are  
expected to become available thereby continuously increasing  
the absolute dollar amount of insurance available.

- B. Alternatively, the NRC could retain its current property  
insurance requirements, and in addition, could publish annually  
the amount of coverage carried by each commercial reactor  
licensee. [The present regulation requires each licensee to  
report its insurance coverage to the NRC annually (10 CFR  
50.54(w) (4).]

Comment: The current NRC requirements on reporting are  
adequate.

- C. Finally, should the amount of insurance be based on TMI-type  
accident recovery cost estimates or on some other technical  
basis?

Comment: At this time, experience would indicate that the TMI  
occurrence is not necessarily representative of the loss  
potential. Occurrences of this type are complex and diverse,  
resulting in cost estimates that may be unique and inappro-  
priate to use for insurance purposes. Additionally, since  
there is an insufficient data base of accidents resulting in  
large scale contamination, it is inappropriate to approach  
insurance coverage on a technical basis at this time.

- 2) A. If the NRC changes its requirements for property insurance,  
should there be special provisions for certain types of  
licensees? For example, should all power reactors regardless  
of authorized power level be required to purchase the same  
amount of insurance?

Comment: As previously stated in our response 1)A, the amount of property insurance required to be purchased should be the maximum amount that the NRC determines to be currently available under reasonable terms and without requiring duplication of coverage. The NRC should retain the authority to set lower limits in individual cases in order to provide the amount appropriate for each individual situation.

- B. Should the NRC exempt from applicable portions of property insurance requirements those utilities prohibited by state law from obtaining coverage from certain types of insurers?

Comment: As stated in our letter, the NRC should take the necessary steps to preempt any state or local prohibitions concerning the purchase of mutual insurance or insurance requiring retroactive assessments to be used for on-site decontamination of nuclear reactors. However, the provisions of 10 CFR 50.54(w) (3) should be retained.

- C. Should the utilities with multiple-reactor sites be required to obtain coverage for each unit separately or is site coverage sufficient?

Comment: See answers to 1)A and 2)A.

- 3) A. To what extent, if any, should the NRC become involved in the structure and terms and conditions of the property insurance offered? Would that [Professor Long's recommendations that the NRC involve itself in the structure and terms and conditions of property insurance] and similar NRC policies represent an unreasonable burden on insurers?

Comment: The NRC should not become involved in the structure and terms and conditions of on-site nuclear property insurance, except to the extent required in determining what coverage is currently available under reasonable terms and without duplication of coverage. More extensive Federal government involvement in insurance may cause available capacity to be reduced or in some cases eliminated.

- B. Should the NRC refuse to accept such coverage [subject to retroactive assessments] to satisfy its requirements? Is concern with overuse of retroactive assessments warranted?

Comment: The use of retroactive assessments is an accepted practice of risk sharing in various industry groups, including the nuclear industry, and this use should not be restrained. The NRC should not refuse to accept such coverage. See answer to 2)B.

- C. As a corollary issue, 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? What would be the legal basis for such a requirement?

Comment: The NRC should not issue regulations requiring that all proceeds from property insurance be used to pay for decontamination after an accident before claims of creditors and owners are satisfied. Nuclear property insurance limits of coverage have increased since the TMI event in order to respond to the nuclear industry's perceived need for additional coverage (as opposed to a response to an NRC requirement). Since the insurance market is currently self-adjusting, it will continue to increase coverage limits as the demand for higher limits increases. Additional NRC regulations concerning how insurance payments are distributed after an accident may interfere with the orderly increase of insurance limits since additional regulations would cause the marketplace to be no longer self-adjusting. Furthermore, we doubt that legal basis for such a requirement exists.

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

Comment: No. The replacement power insurance was a response by the utility industry to help assure the financial stability of a utility which may experience an increased cost of power in the event of the shutdown of a nuclear facility.

- B. Would more capacity for property insurance become available if replacement power insurance were no longer issued?

Comment: Although replacement power insurance and property insurance may come into use as a result of the same loss, the coverages are completely different and respond to different types of risks. The current replacement power insurance program has resources to respond to one maximum loss without involving the reinsurance or an assessment. It is, therefore, unlikely that any additional property insurance would become available if the replacement power coverage were no longer issued. The capacity for property insurance is currently independent of the capacity for replacement power insurance.

- C. Is replacement power insurance necessary, or is it sufficient and relatively equitable to collect such charges through rates?

Comment: The methods of recovering replacement power costs are determined by individual state regulations and associated rates imposed. Whether or not replacement power insurance is necessary, depends upon each states' regulations concerning utility rates. Replacement power insurance should remain available since it has the potential to assure utilities have a positive cash flow in the event of an accident requiring decontamination.

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OFFICE OF SECRETARY  
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September 21, 1982

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)

29

Re: 10 CFR Part 50, Mandatory Property Insurance  
for Decontamination of Nuclear Reactors  
(47 F.R. 27371-73, June 24, 1982)

Dear Sir:

I appreciate the opportunity to comment on the content of the Federal Register notice of June 24, 1982, concerning mandatory property insurance, and on the property insurance report prepared by Professor John D. Long which was recently published by the NRC as NUREG-0981, Nuclear Property Insurance: Status and Outlook.

I feel the NRC and Professor Long should be commended for the preparation of the first detailed compilation of facts relating to the types and amounts of available nuclear property insurance. Professor Long's report, prepared in chronological order, will be a very valuable tool for use as the NRC, industry and financial communities consider the questions posed by the NRC in its rule making notice and as we all confront other property insurance issues which, in all probability, will be considered by the nuclear industry or raised by the public in the future. Nuclear property insurance is a very complex and detailed issue. Provided here are some general observations and comments on the report which represent my views on Insurance and Indemnity.

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add: Robert Wood  
AR-5037

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Acknowledged by card... 9/28/82 emj

### Private Sector Increases in Capacity

I believe that all reports and/or NRC regulations published on the status of nuclear property insurance should recognize and commend the industry on its success in obtaining increased capacity as a notable achievement. Professor Long's assessment of the Three Mile Island accident demonstrates the inadequacy of available nuclear property insurance. Industry, however, has not been standing still before or since 1979, when TMI occurred, nor has industry ignored the realities of TMI.

Property insurance capacity has steadily increased since 1957, with a threefold increase occurring just prior to TMI (1972-1979). There have been substantial increases since TMI as a result of the coordinated efforts of the utility and insurance industry. Currently, Nuclear Mutual Limited (NML) makes \$500 million primary property insurance available to its members, while American Nuclear Insurers (ANI) and the Mutual Atomic Energy Reinsurance Pool (MAERP) offer \$460 million. The Pools have announced plans to provide \$500 million primary property insurance capacity by January, 1983. There currently is \$477 million of nuclear property insurance available as excess coverage over the primary layer of either NML or ANI/MAERP (NEIL II \$365 million; ANI \$67 million; AIG \$45 million). Increases in primary and excess capacity which are expected to occur in 1983 will make available more than \$1 billion dollars of nuclear property insurance.



Additional increases in nuclear property insurance are contemplated for the future. The nuclear utilities and insurance companies are already exploring the appropriate methods to reach substantially higher capacity. The private sector initiatives which secured these substantial increases in the principal sources of capacity represent a significant accomplishment on the part of industry, and constitute a clear commitment toward resolving, without governmental involvement, some of the problems identified by Professor Long in his report.

#### Federal Regulation of Nuclear Property Insurance

Several sections of Professor Long's report, and questions three and four in the June 24, 1982 Federal Register notice, raise the issue of whether the NRC should become a regulator in the field of nuclear property insurance. I believe that any further involvement in this area by the NRC would only delay the foreseeable accomplishment by the nuclear industry of achieving adequate property damage insurance.

Federal government intervention could also adversely affect existing sources of insurance capacity. Particularly sensitive to further regulation would be that portion of the Pools' capacity (about 50 percent) which comes through foreign reinsurance pools. I understand that such foreign sources are more likely to scrutinize and react to changes in regulatory climates, with the potential of delaying or diminishing the participation of these sources in building increased nuclear property insurance capacity. In light of the extensive state

regulation of the insurance and utility industries, NRC regulation of the insurance and utility industries, NRC regulation in the property insurance area is also likely to result in duplication and conflicts between state and federal regulation. One other possible disadvantage could be adverse effects on attempts to increase capacity further.

In the past several years, the nuclear industry has provided significantly higher limits of protection and demonstrated the ability to develop innovative measures to respond to the difficult problems of nuclear property insurance. If there are any shortcomings of the current property insurance system, the NRC should avoid assuming any regulatory posture which could impede the dynamic developments occurring in the industry.

#### Retrospective Assessment Insurance

Professor Long concludes that "the assessment programs now in use have reached the limits of prudence" and he recommends that the NRC not accept any future assessment insurance as satisfying nuclear property insurance requirements. NUREG-0891, p. 85. I do not believe that NRC should, by rule or by policy, prohibit absolutely the development of additional assessment insurance. The nuclear industry should be able to retain flexibility in formulating innovative responses to evolving property insurance issues. Thus, it would be unwise to eliminate the assessment technique or any other technique which may be developed to help provide additional insurance. In 1981-82, the nuclear utilities and insurance industry have provided \$477 million of property insurance excess of \$500

million. Of this amount, only \$173 million is non-assessable insurance (\$61 million NEIL II reinsurance; \$67 million ANI/MAERP, \$45 million AIG). Commercial insurance capacity is limited to net line participation due to reinsurance treaties which exclude all nuclear hazards. To eliminate or restrict the use of retrospective assessment insurance, therefore, will only perpetuate the problem of inadequate nuclear property insurance.

Prudent risk financing results in programs designed to respond to catastrophic loss with minimum present day capital expenditure or prepayment. Utilities with adequate property insurance to protect the interests of their financial institutions have the ability to finance any future assessment, which would be called in increments, based on cash flow needs after an incident. Such risk financing is a matter of individual utility management judgment, subject to approval of their regulatory authority and not one for NRC mandate.

#### Decontamination Coverage Priority

Professor Long recommends that the proceeds of insurance policies should be applied to decontamination and debris removal expenses prior to any other expenses, and that this priority should be a characteristic of primary and excess insurance. NUREG-0891, p. 89-90.

I strongly disagree with Professor Long's recommendation with respect to priority in the primary nuclear property insurance layer. As an investor in a utility company, I feel precedence for decontamination will further erode investor confidence for nuclear utilities, adversely affect ratings of utility debt securities, and run counter to existing indenture trust agreements.

Property insurance provides security to investors. Imposition by the NRC of a precedence requirement would by most investors be viewed as a redirection of security and possibly as a breach of faith for those of us who have committed our funds to utilities. An indenture trustee may take the position that a utility is in violation of the insurance covenants under their indenture, which require the utility to maintain adequate insurance to repair or replace the encumbered collateral. Thus, the utility would be burdened with the dilemma of how to satisfy the requirements contained in the indenture insurance covenants.

Such precedence of payment could also have an adverse effect on other utility financing arrangements where lenders require covenants in financial documents, e.g., bank loans providing that the borrower maintain property insurance even though the property is not collateral for the loan. Lenders and investors are likely to view an NRC precedence requirement as an additional risk factor which would increase a utility's costs of financing or eliminate altogether financing needed for future facilities whether they be nuclear or fossil fuel.

The lack of sufficient property insurance capacity for nuclear facilities has been identified as one of the principal reasons for a 100 percent increase since TMI in cumulative risk premium on long term utility debt. Adequate and unencumbered insurance capacity to provide security to utility financial institutions will decrease or eliminate those additional debt costs (with resultant savings to the utility rate payer). The requirements in the primary nuclear property insurance layer for a decontamination and debris removal precedence over payment to indenture trustees and other creditors will only compound an already difficult situation.

It was also noted that the report does not contain the most current information with respect to the precedence given to decontamination coverage in the NEIL-II program. NUREG-0891, note on p. 89. NEIL-II has now revised its policies to give priority to decontamination and debris removal expenses. Thus, those utilities who can prudently do so, and who constitute a significant portion of the industry, have anticipated Professor Long's recommendation, and action by the NRC in this area is not necessary.

#### The Purchase of All Available Insurance

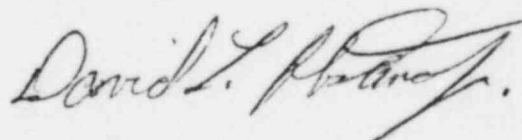
The Long report suggests that utilities should be required to purchase the maximum amounts of primary and excess coverage available. NUREG-0891, p. 95. I believe that this would not create greater capacity but possibly adversely affect the property insurance market in ways which decrease competition, thereby decreasing the incentives for each provider to make improvements in policies and foster long-term growth in capacity. I do believe that additional

capacity will be needed and desired but I also anticipate that the nuclear industry will continue to come up with innovative methods to provide this capacity.

Professor Long also states that utilities are "disinclined" to purchase all available insurance. NUREG-0891, p. 96. I disagree with this statement, and believe that this conclusion results from the passage of time between collection of the data for NUREG-0891 and publication of the report for public review. Utilities, in my opinion, have exercised good business judgment in obtaining maximum levels of property insurance in a timely manner, consistent with internal and external procedures for budget rate-making decisions, legal prohibitions, regulatory approvals and other constraints. Utility management clearly agrees that adequate nuclear property insurance is an objective that has a high priority in their long-term financial planning.

I appreciate the opportunity to submit these comments.

Sincerely,

A handwritten signature in cursive script, reading "David L. Abstance, Jr.", written in dark ink.

David L. Abstance, Jr.  
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