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NUCLEAR REGULATORY COMMISSION

In the matter of:

COMMISSION MEETING

Discussion of Commission
Position on Price-Anderson

(Public Meeting)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Commission Meeting - - - Public Meeting

DISCUSSION OF COMMISSION POSITION ON
PRICE-ANDERSON

Room 1130
1717 H Street, N.W.
Washington, D.C.
Thursday, June 20, 1985

The Commission met at 2:33 p.m., pursuant to notice,
in open session.

NRC COMMISSIONERS PRESENT:

Nunzio Palladino, Chairman
James Asselstine, Commissioner
Thomas Roberts, Commissioner
Frederick Bernthal, Commissioner
Lando Zech, Commissioner

STAFF AND PRESENTERS SEATED AT TABLE:

John Hoyle, SECY
Herzel Plaine, OGC
Bill Bechtel

1 Holmes Brown
2 Keiki Kehoe
3 Kathleen Welch
4 Michael Faden
5 Richard Schmalz
6 Joseph Marrone
7 Jerry Salzman, NRC
8 Guy Cunningham, OELD

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P R O C E E D I N G S

CHAIRMAN PALLADINO: Good afternoon, ladies and gentlemen.

This meeting is for the purpose of discussing the Commission's position on the matter of renewal of the Price-Anderson Act.

In 1983, the Commission prepared a report to the Congress on the Price-Anderson Act entitled "A Third Decade." This report contains a broad discussion of important Price-Anderson Act issues, together with seven specific recommendations.

I believe it is worth highlighting the major recommendations in the 1983 report, and they are as follows:

One, the report recommended that the Congress extend the Price-Anderson Act based on the belief that the act provides a valuable public benefit by establishing a system for the prompt and equitable settlement of public liability claims resulting from a nuclear accident. Extension of the act would ensure that the same amount, type and terms of public liability protection will be provided for future as well as existing nuclear power plants.

Second, the report recommended that the Congress amend the Price-Anderson Act and substitute an annual limitation liability for retrospective premiums that can be charged from the present \$5 million per reactor per incident

1 to \$10 million per reactor per reactor per incident per year.

2 This recommendation has two facets:

3 First, it would permit assessment of retrospective
4 premiums in succeeding years until all public liability claims
5 from an accident are paid.

6 Second, an increase in the size of retrospective
7 premiums to \$10 million would substantially increase funds
8 available to pay public liability claims arising out of an
9 accident.

10 Moreover, the fund would make available annually an
11 amount roughly comparable to the amount of insurance coverage
12 now provided for most large commercial nuclear power plants to
13 pay on-site property damage claims.

14 An increase in the retrospective premium to \$10
15 million would not, according to a recently completed study by
16 the NRC Staff, jeopardize the financial viability of the
17 participating utility.

18 Third, the report recommended that the Congress
19 retain the present statutory language for the finding of an
20 extraordinary nuclear occurrence, to establish a definitive
21 basis for distinguishing valid claims, and to conserve
22 resources to pay for these claims.

23 In this regard, it should be noted that the
24 Commission published on April 9th, 1985 a proposed rule to
25 redefine the criteria for an extraordinary nuclear occurrence.

1 Four, the report recommended that the Congress
2 extend the statute of limitations for filing a public
3 liability claim arising from a nuclear accident from 20 to 30
4 years, in order to provide greater assurance that latent
5 injuries caused by a nuclear accident are provided protection
6 under the Price-Anderson system.

7 The report also recommends a study of the experience
8 gained from other administrative systems for compensating
9 latent injury claims before any further changes to the
10 causation and proof of damages provision of the Price-Anderson
11 Act.

12 We greatly appreciate the willingness of today's
13 participants to take the time to describe for the Commission
14 their views on the Commission's position Price-Anderson. We
15 structured the presentation into panels. Each panel has been
16 allotted 30 minutes, except for the third panel, which will
17 receive 20 minutes. The allotted time is intended to include
18 both prepared presentations and responses to Commission
19 questions. Our time is short, and I strongly encourage all
20 participants to adhere to the schedule.

21 Let me ask now whether other Commissioners have any
22 opening remarks.

23 COMMISSIONER BERNTHAL: No.

24 COMMISSIONER ASSELSTINE: No.

25 CHAIRMAN PALLADINO: All right. Then I wonder if we

1 might have the first panel join us here at the table, and that
2 is Mr. Griffith and George Gleason.

3 COMMISSIONER BERNTHAL: I will make one comment,
4 Mr. Chairman. Since those who are not aficionados of the
5 subject may misunderstand, it is the Congress that is going to
6 carry out any amendments of the Price-Anderson Act, not this
7 Commission. This Commission's role is simply one of
8 recommending to the Congress such changes as Congress might
9 choose to adopt.

10 CHAIRMAN PALLADINO: That's a good point. Thank
11 you.

12 MR. GRIFFITH: Mr. Chairman, my name is Steve
13 Griffith, and I am Senior Vice President and General Counsel
14 of Duke Power. With me is George Gleason of the American
15 Nuclear Energy Council. And if I could make a very short
16 statement, and then answer any questions, and after that
17 excuse myself and let George answer whatever questions and
18 make a short statement.

19 The Price-Anderson law is an enlightened public
20 benefit legislation. In the event of a nuclear accident, it
21 would assure prompt compensation of legitimate claims from a
22 large pool of funds without unnecessary procedural obstacles.

23 Back in 1978, it was my privilege to argue the case
24 involving the constitutionality of the Price-Anderson Act
25 before the Supreme Court of the United States. The court not

1 only upheld the constitutionality of Price-Anderson, it
2 recognized that Congress had put potential claimants in a far
3 better position for the full spectrum of potential accidents
4 than they would be if left to only the funds of the person
5 liable and conventional tort remedies.

6 In effect, the court recognized that while
7 Price-Anderson limits liability, it does not limit public
8 compensation.

9 Mr. Chairman, there is a limit to our ability to
10 foresee and to provide correctly for the full range of
11 circumstances that might prevail after a very large but
12 improbable accident.

13 It makes sense to establish mechanisms before the
14 fact, to assure a large pool of funds almost immediately,
15 sufficient to deal completely with low and medium consequence
16 events, and sufficient to deal promptly with the more pressing
17 needs for compensation in a high consequence event.

18 That is what prior Congresses rightly chose to do.
19 But it does not make sense for Congress to tie itself to the
20 tort system and judicial administration of claims when it
21 might be more equitable and more expeditious and, indeed, less
22 costly to adopt after the event other mechanisms, if
23 necessary, to provide and disburse compensation tailored to
24 the peculiar nature of the accident. A limit on liability
25 permits this.

1 Those who would drastically change the fundamental
2 structure of Price-Anderson are really saying that they have
3 no faith that Congress will honor the promise of full
4 compensation.

5 At the same time, by suggesting that application of
6 the tort system should be preserved with all of its
7 transaction costs and efficiencies, those that say this do
8 nothing to assure compensation of legitimate claims arising
9 from a nuclear accident.

10 Critics often charge that the industry has given up
11 nothing and received large benefits in return. By far the
12 largest and most significant burden assumed by the nuclear
13 utility industry is that all nuclear power plant licensees
14 have in effect agreed to be insurers for their fellow licenses
15 through the retrospective premium system accepted by the
16 industry and enacted in 1975.

17 This, I submit, is a burden without parallel in the
18 American judicial system.

19 Now turning to the NRC proposal which it made to
20 Congress in its December 1983 report that the present \$5
21 million per licensed reactor per nuclear incident
22 retrospective premium assessment and the current floating rate
23 but ascertainable limitation on liability be replaced with a
24 \$10 million annual cap on assessments, but no limitation at
25 all on liability per incident. This has the effect of

1 creating unlimited liability and unlimited assessments subject
2 only to an annual limit on the drain on utility cash flow.

3 We were and are opposed to this 1983
4 recommendation. As a matter of basic fairness, the industry,
5 its suppliers and investors have proceeded in reliance upon an
6 ascertainable limitation on liability and imposing the
7 obligation of being insurers in an unlimited amount on all
8 licensees is simply wrong.

9 The public as a whole is better served by a system
10 that retains the present structure of the act, including a
11 definite limit on liability. If, as we all firmly believe, an
12 accident having major consequences for the offsite public will
13 never occur, then consumers are better served by a system that
14 does not impose artificial costs, provides a high degree of
15 assurance of full public compensation for all but the least
16 probable events and provides the flexibility to switch to a
17 different system for a truly major accident.

18 Mr. Chairman, I have furnished the Secretary of the
19 Commission with a copy of my testimony before Congress last
20 summer which details our opposition to this proposal. I ask
21 that that testimony be made a part of this record, and I will
22 be happy to answer any questions.

23 CHAIRMAN PALLADINO: All right. Thank you. We will
24 make that a part of our record.

25 Let me ask you one question -- two questions, if I

1 may. You seem to support the idea of full compensation, but
2 only under the provision that the Congress later decide what
3 more should be done if the limit is exhausted, and that leaves
4 a rather uncertain picture. Whereas the Commission's 1983
5 proposal for full compensation by a plan of retrospective
6 premiums seems to be more certain.

7 Why would you not go for the more certain rather
8 than uncertain situation, unless you are counting that
9 Congress will only go after the taxpayers and not the
10 utilities?

11 MR. GRIFFITH: Well, first of all, I think that when
12 the industry itself is willing to step up and assume the
13 burden of the liability or the responsibility for others for
14 an accident, you've got, let's say, 90 reactors in operation
15 in the country and only one has an accident, the other 89 are
16 not responsible and have nothing whatsoever to do with it.
17 And you don't put a limit on what they are responsible to do,
18 then you are penalizing every operator. That's the basic
19 unfairness of the proposition.

20 Second, you create a situation where you simply
21 encourage people to make claims whether they are justified or
22 not, and you have this mechanism that would be put in place
23 that would just generate tons of money into a pot, which the
24 court, I think, would have an extremely difficult time in
25 managing, even if that were the thing to do.

1 And third, I want to suggest this, that if you do
2 have an accident of the proportions that would require a third
3 or fourth contribution by another -- by the industry itself,
4 then I would suggest that the whole country is in deep
5 trouble, and these utilities, while it may appear that their
6 balance sheets are fully able to respond in these amounts of
7 money, that would soon dry up.

8 CHAIRMAN PALLADINO: Would soon what?

9 MR. GRIFFITH: Dry up. The money just wouldn't be
10 available. In case --

11 CHAIRMAN PALLADINO: Well, I don't follow that.

12 MR. GRIFFITH: All right, sir. If you have an
13 accident that would require Duke Power Company, when it has
14 its seven reactors in operation, to put up \$70 million, and
15 then the next year to put up another 70, and the third year to
16 put up another 70, you have had a disaster of such enormous
17 proportions that all of the creditors of all of these
18 utilities are going to be right there, and those balance
19 sheets that look so favorable right now won't be worth the
20 paper they're written on.

21 The balance sheet of the Penn Central looked good
22 the day before it went bankrupt.

23 CHAIRMAN PALLADINO: Well, you sort of anticipated
24 my next question. Would you care to comment on the NRC Staff
25 study of the financial impacts of an annual \$10 million

1 assessment?

2 MR. GRIFFITH: Yes, sir. We found that in looking
3 at this in the case of the GPU Company, which was a holding
4 company of a number of operating companies, and they had no
5 claims whatsoever to pay out because Price-Anderson was in
6 effect and there was no offsite damage, but nevertheless no
7 claims, and yet they just about went under because their
8 balance sheet that looked good the day before the accident
9 simply did not materialize as producing ready funds once the
10 accident had occurred.

11 CHAIRMAN PALLADINO: Well, that's the company that
12 had the accident.

13 MR. GRIFFITH: That's the company that had the
14 accident.

15 CHAIRMAN PALLADINO: How about the others?

16 MR. GRIFFITH: I suggest if you have disaster
17 offsite, every electric utility that has a nuclear plant will
18 be in serious financial condition and all you've got to do is
19 look at what happened when the Consolidated Edison Company,
20 back in the middle '70s, passed its dividend or reduced its
21 dividend. The stock prices of every electric utility in the
22 country took a nose dive.

23 What happens in one place reacts all across the
24 country on the financial condition of these companies.

25 CHAIRMAN PALLADINO: Let me give an opportunity to

1 my other colleagues to ask a couple of questions. Tom? Jim?

2 COMMISSIONER ROBERTS: I had all the --

3 COMMISSIONER ASSELSTINE: Go ahead, Tom.

4 COMMISSIONER ROBERTS: Never mind. I was going to
5 say --

6 [Laughter.]

7 COMMISSIONER ASSELSTINE: You had all the
8 Price-Anderson questions you wanted for a while?

9 COMMISSIONER ROBERTS: That's right.

10 [Laughter.]

11 Yesterday afternoon. I have no questions. Thank
12 you.

13 COMMISSIONER ASSELSTINE: I had a couple, but I want
14 to follow up on a point you were discussing, Joe.

15 Steve, if I understand you, what you're saying is,
16 if there is an accident at one plant that results in a few
17 billion dollars in damages, public liability claims, that that
18 is going to have a devastating effect on all of the rest of
19 the utilities with nuclear power plants, those that weren't
20 involved in the --

21 MR. GRIFFITH: It could.

22 COMMISSIONER ASSELSTINE: That's interesting. I
23 guess I had not thought that the entire financial health of
24 all the others would be jeopardized automatically by the
25 occurrence of that.

1 MR. GRIFFITH: Well, look at what happened to the
2 stock prices of the nuclear utilities following the accident
3 at Three Mile Island. Now the stock price of GPU went down,
4 as I recall, to about \$5, somewhere in that range, and they
5 were just teetering around. You remember Chrysler when it had
6 its problems and went down to \$5. That appears to be where
7 they go. But the stock price of Duke Power Company went down
8 significantly. And the analysts on Wall Street can show you
9 where that nuclear penalty occurred and it stayed in there for
10 a good while.

11 Now I think that that nuclear penalty in there has
12 disappeared.

13 COMMISSIONER ASSELSTINE: That leads me to my next
14 question, and that is you said you thought we were better off
15 with a system if you had an accident of more catastrophic
16 proportions in having the Congress decide among alternatives
17 after the fact on how to fully compensate the victims.

18 MR. GRIFFITH: Right.

19 COMMISSIONER ASSELSTINE: Given what you have said
20 about the financial consequences of that scale of an accident
21 on all the other utilities, what are those alternatives?
22 Realistically is it for the taxpayers footing the bill?

23 MR. GRIFFITH: No. Let me postulate that you extend
24 Price-Anderson, but increase the retrospective premium to
25 create a billion dollar fund or a two-billion dollar fund.

1 COMMISSIONER ASSELSTINE: Say you had a \$10 billion
2 accident.

3 MR. GRIFFITH: And you have a \$10 billion accident.
4 You've got enough money right there to take care of immediate
5 needs for hospitalization, for medicine, for evacuation, for
6 housing, for that type of situation, and that's what
7 Price-Anderson will do. It will allow the payment of those
8 funds, and the judge that's in charge of this -- all of the
9 suits will be consolidated into one court. Now, then --

10 COMMISSIONER ASSELSTINE: But the court has to
11 apportion, right? It can't pay it all out?

12 MR. GRIFFITH: The court will start apportioning,
13 but you have let's say \$10 billion in claims. That's not
14 going to be processed in a couple of days. It's going to take
15 a while just to find out what the situation is.

16 So Congress could look at this after the fact --
17 let's say it takes a year or two years or three years. It
18 would take a right good while to parcel out \$2 billion in an
19 equitable manner.

20 CHAIRMAN PALLADINO: How did we get the \$2 billion?

21 MR. GRIFFITH: That came from the Price-Anderson
22 insurance and the retrospective premium, and we are assuming
23 that the Congress has increased the retrospective premium so
24 that it produces a \$2 billion fund rather than the \$600
25 million at present.

1 Now they can come along and say that what we're
2 going to pay for is similar to workmen's compensation and send
3 out a schedule of payments for the loss of certain things. If
4 you've lost an arm under workmen's compensation, it's worth
5 "X" dollars. And that scheme can be put in place and then a
6 surcharge put on all energy generated in this country, all
7 nuclear energy, or a tax could be put on, or another
8 retrospective premium.

9 The Congress has a number of options available to it
10 which it can look at after the fact which we submit would be a
11 fairer system.

12 COMMISSIONER ASSELSTINE: But if you're right that
13 the financial condition is going to be such that you're all
14 going to be in trouble, as a practical matter it seems like to
15 me the only realistic available source, if you're right, is
16 the Treasury.

17 MR. GRIFFITH: Well, no, it's not. Now the
18 ownership of the utilities may change hands, but the utilities
19 won't disappear. They'll be there. The stockholder may be
20 wiped out and it may be the public just operating those
21 systems, but they'll still be in place just like TVA. And the
22 Congress would have the opportunity to put a surcharge on all
23 electricity generated from nuclear plants if nuclear plants
24 are still operating.

25 COMMISSIONER BERNTHAL: Jim, let me interject a

1 question here. What is the -- I don't know whether to ask for
2 the average or the median, perhaps, net worth of nuclear
3 utilities in this country?

4 MR. GRIFFITH: I don't have any idea what an average
5 net worth would be.

6 COMMISSIONER ASSELSTINE: What is the net worth of
7 Duke?

8 MR. GRIFFITH: Well, our earnings last year were in
9 the neighborhood of \$340 million. All of that was not cash
10 earnings. Some of it was AFUDC. Now if you look at our
11 capitalization, we are about 45 percent common equity, and the
12 balance is debt and preferred stock. Now right now our stock
13 is trading on the New York Stock Exchange at \$25 a share, and
14 we have about 100 million shares outstanding, and so you could
15 say that that is worth \$3.5 billion today. But last year that
16 stock was trading at about \$20 a share.

17 Right now electric utilities are very much in
18 favor. So it is very difficult to say what our net worth is.
19 We carry a big inventory of coal.

20 COMMISSIONER BERNTHAL: But it is fair to say that
21 the net worth of Duke Power, which is by no means the smallest
22 nuclear utility, is in the neighborhood or under \$5 billion.
23 Is that a fair statement?

24 MR. GRIFFITH: Well, the money that has been put
25 into the company is in excess of about \$7 billion.

1 COMMISSIONER BERNTHAL: And so the net worth -- I'm
2 not sure we're communicating here. Are you saying that
3 represents the net worth?

4 MR. GRIFFITH: That represents the investment in the
5 company. We have our liabilities. We owe about half of that
6 in the form of long-term debt.

7 COMMISSIONER BERNTHAL: But rough numbers, it sounds
8 like about \$5 billion is a rough number. And the only reason
9 I'm asking that kind of question is to show that this idea
10 that somehow out there, there is unlimited compensation in the
11 case of a serious accident is no more true for the utility
12 industry in this country than it was for Union Carbide in the
13 case of the accident that occurred some time back. That's
14 pure nonsense. There is no unlimited compensation in real
15 life.

16 MR. GRIFFITH: That's absolutely correct. When
17 things are going well, your balance sheet looks very good.
18 When things have turned sour, all of the creditors are
19 standing there right in line, and the friendly neighborhood
20 banker who has been lending you --

21 COMMISSIONER BERNTHAL: He's going to be in the
22 front.

23 MR. GRIFFITH: -- wanting his money.

24 COMMISSIONER BERNTHAL: And many utilities are
25 considerably smaller than Duke, I might say, and if Duke

1 itself -- if you really want to put this into the marketplace,
2 throw it open to the marketplace, independent of all the other
3 issues that might be raised, the fact of the matter is that
4 the compensation, the assured compensation for the public
5 would on average, I am sure, be no matter and perhaps less
6 than it is even under the proposed two plus billion dollar
7 compensation in the revised Price-Anderson. Even if that is
8 adequate. So there have been these arguments made that you
9 really ought to throw it into the marketplace and let the
10 utilities subject themselves to market forces. And that is
11 not going to provide compensation to the public in the case of
12 an accident. That's mythology.

13 COMMISSIONER ASSELSTINE: As far as I can tell,
14 nobody in the Commission has suggested that. I think that
15 they --

16 COMMISSIONER BERNTHAL: No, but it's been suggested
17 on the other end of Pennsylvania Avenue from time to time.

18 COMMISSIONER ASSELSTINE: Well, that may be, but the
19 debate at least here has not been whether to scrap
20 Price-Anderson and go back to normal tort liability or not.
21 The question is whether to stick with the kind of system that
22 we have had up until now, or whether to modify that system to
23 provide for greater industry participation in the case of the
24 low probability but catastrophic consequence accidents.

25 CHAIRMAN PALLADINO: In view of the fact that we're

1 trying to have the panels work within the timeframe --

2 COMMISSIONER ASSELSTINE: Yes, why don't I stop.

3 CHAIRMAN PALLADINO: Did you have another question?

4 If not, I'll turn to Commissioner Zech.

5 COMMISSIONER BERNTHAL: Well, I did have one or two
6 questions. One touches on the question of full compensation
7 again, and particularly the issue that George, I know, we've
8 talked about before, this so-called omnibus feature in the
9 act.

10 I don't know what your views are on that at this
11 point, but I wanted to clarify it for the record and for me
12 here, whether you feel that the Commission's proposal, as
13 opposed to the current status of the act, would somehow
14 undercut that omnibus provision.

15 CHAIRMAN PALLADINO: Excuse me, let me interrupt. I
16 still want to have a little time for Mr. Gleason.

17 Do we have any more questions --

18 COMMISSIONER BERNTHAL: Oh, I see. I'm sorry.

19 CHAIRMAN PALLADINO: Why don't I give Lando a chance
20 to ask questions.

21 COMMISSIONER ZECH: I have just one question for
22 Mr. Griffith, please. On page 11 of your testimony that you
23 have given us, you say this:

24 "Even more importantly, given the qualms in the
25 financial investment communities about nuclear power today, it

1 would introduce an additional premium in the cost of utility
2 capital, both debt and equity, to impose unlimited liability,
3 subject only to an annual cap."

4 And my question really is, could you elaborate on
5 this just very briefly? I'm concerned as to why this should
6 be a problem if one believes that a nuclear accident with
7 major consequences is really very unlikely or certainly quite
8 unlikely under best estimates, as far as the offsite public is
9 concerned. Could you elaborate just briefly on that?

10 MR. GRIFFITH: All right. Well, PEPCO that serves
11 here has no nuclear plants.

12 CHAIRMAN PALLADINO: Has no what?

13 MR. GRIFFITH: PEPCO, who serves Washington, has no
14 nuclear plants. And Duke Power has -- will have seven. And
15 if you were an investor and you perceived this as a risk, then
16 why wouldn't you discard Duke and invest your money in PEPCO?
17 And what that would do -- and we saw this following Three Mile
18 Island, the stock prices of all nuclear utilities dropped
19 below those of coal-fired, and they remained so for a good
20 little while.

21 Now we think that that has disappeared.

22 Also your bond rating agencies could take a view
23 that the nuclear business was such a risk that instead of
24 having a double A bond rating, you have a single A bond
25 rating. And that's a cost to your consumers because when you

1 sell bonds rated single A, you're going to pay a higher
2 interest rate than you do when you sell at a double A. And
3 that's been true historically, and that's true today.

4 COMMISSIONER ASSELSTINE: Lando, if I could follow
5 up on that. But, Steve, if that's the case, why isn't that a
6 problem that's shared by every other industry? Most
7 industries you have unlimited liability. The airline
8 industry, chemical industry, petrochemicals, natural liquid,
9 natural gas, whatever. Those people have unlimited liability,
10 and the unlimited liability is fixed on that particular firm.
11 And yet investors invest in those entities all the time.

12 And here, if you're really talking about a very low
13 probability event, and if the probability is as low as the
14 industry has been urging for some time, it seems to me that is
15 something the investor can understand and can take into
16 account.

17 I'm not sure I understand why you're in a different
18 situation than every other industry that now has unlimited
19 liability, and where the liability in fact is fixed on the
20 firm, and where the firm itself is likely to go out of
21 business if you had this kind of a catastrophic problem.

22 MR. GRIFFITH: You know, as a member of the board of
23 directors of Duke Power, if I thought that we would experience
24 an accident of the magnitude that we have talked about, I
25 could not be a part of that organization, having created these

1 monsters, so to speak. I truly believe that the chances of
2 having this accident are virtually zero. But I am not the
3 investor out there we're talking about. I'm a little fellow
4 who owns some Duke stock and that sort of thing, but investors
5 are skittish, and risks are perceived on the strangest of
6 things.

7 And so they say, well, if I have an alternative, why
8 shouldn't I -- this is the investor talking -- select the
9 lowest denominator of risk? And that's what they generally
10 do.

11 COMMISSIONER ASSELSTINE: But the alternatives all
12 involve unlimited liability.

13 MR. GRIFFITH: I understand that. An automobile, in
14 my view, is much more dangerous than living next to a nuclear
15 power plant. Much. I think hundreds of times more
16 dangerous. But we are willing to get in an automobile and,
17 surprisingly enough, not buckle up that seat belt. The public
18 is willing to take that risk, which is a dangerous risk. But
19 when it comes to nuclear power, that's a different situation.

20 COMMISSIONER BERNTHAL: You know, just so folks will
21 be convinced that we had a debate here, I really do have to
22 object to this terminology "unlimited liability" that gets
23 thrown around. There is not unlimited liability from the
24 standpoint of the plaintiffs when it comes to an airline, or
25 any other industry. The liability ends basically at the net

1 worth of the company, unless you're talking further about
2 punitive damages because of that kind of action on the part of
3 the firm.

4 And from the standpoint of the plaintiff, there
5 surely is not unlimited liability. From the standpoint of the
6 investor, liability ends at the stock he happens to own. So
7 it's a matter of terminology, I realize, Jim, but that does
8 not exist.

9 COMMISSIONER ASSELSTINE: Unlimited liability, to
10 the extent of the assets of the firms. And some of those
11 firms have fairly substantial assets.

12 COMMISSIONER BERNTHAL: But it ends there.

13 COMMISSIONER ASSELSTINE: That's right.

14 COMMISSIONER BERNTHAL: And in the case of
15 Price-Anderson, whether it's 2 billion or 5 billion, we can
16 argue about, and I suspect the Congress will decide however we
17 argue about it. But the point is that here you've got a
18 collective commitment from an entire industry where the
19 commitment for overall liability essentially goes beyond what
20 you are characterizing as what would be unlimited liability
21 for any single firm.

22 COMMISSIONER ASSELSTINE: I'm not sure the \$560
23 million does.

24 COMMISSIONER BERNTHAL: Oh, I don't --

25 CHAIRMAN PALLADINO: Or even one bigger.

1 COMMISSIONER BERNTHAL: -- but under the revised
2 Price-Anderson, essentially what you're going to do, we
3 presume, is bring that into line with reality whether it's 2,
4 and maybe reality is 5. But that's where it ends. And it
5 seems to me that --

6 COMMISSIONER ASSELSTINE: And then have the federal
7 government pick up the rest.

8 COMMISSIONER BERNTHAL: That would be true in the
9 case of a chemical industry or in the case of Agent Orange, as
10 we've found, or in the case of dioxin. It just is not
11 inconsistent with what you're doing elsewhere in other
12 industries.

13 CHAIRMAN PALLADINO: Let me make a suggestion. We
14 have a lot of speakers and we are going to pick up these
15 topics several times. I think Mr. Griffith wished to be
16 excused so that he can catch an airplane. But I want to give
17 Mr. Gleason a chance to make a few remarks.

18 Thank you very much, Mr. Griffith.

19 MR. GRIFFITH: Thank you, Mr. Chairman.

20 MR. GLEASON: I really only want to make two points,
21 because I think Steve has covered the broader picture very
22 well. But let me respond first to Commissioner Asselstine's
23 point.

24 The nuclear technology is different, it's perceived
25 different, and that's why we have a Nuclear Regulatory

1 Commission and don't have "Chemical Regulatory Commission,"
2 because it is a different technology.

3 And there is a very low probability of a
4 catastrophic accident. We can't deny that. And that's what
5 makes it unique. And that's why a system like Price-Anderson
6 makes sense here, and is even beginning to make sense in the
7 chemical industry, and the Congress is now in the process of
8 reauthorizing Superfund.

9 The principal emerging issue is the issue of third
10 party liability. And they are going to end up in Superfund
11 with a system like Price-Anderson, because it's the only way
12 they are going to be able to regularize the liability. The
13 federal government has a policy under Superfund, they want to
14 clear up the hazardous sites, and people in the industry who
15 have the capability to do that have gone to the Congress and
16 said, "We have the capability to do that, but because of this
17 enormous liability, we can't do it. Congress, you're going to
18 have to take care of it."

19 That's precisely what the nuclear people told
20 Congress in 1957. "You are promoting a technology, we want to
21 do it, there is this liability of risk, do something about
22 it."

23 Congress is going to reenact Price-Anderson, and it
24 is my opinion that they're going to reenact it with a
25 limitation. I think all of us are in agreement that the

1 objective is full compensation. It's a question of how we get
2 there.

3 But let me get to the two points I want to make:
4 why the Commission's proposal is deficient and does not get
5 you there.

6 And let me add that I think it's significant, the
7 fact that the Commission's proposal has now been on the street
8 for two years and nobody has seen fit to introduce it in
9 legislation into Congress. And the reason for that is that if
10 you are going to go to a system of unlimited liability, there
11 are better ways of doing it than the NRC proposal.

12 The fact that it hasn't generated any interest on
13 the Hill I think tells you something about the perception of
14 it.

15 There are two fundamental problems with the
16 Commission proposal, and they are sort of technical and
17 esoteric, and I think have been largely overlooked in the
18 debate over the emotional issues.

19 One is the point that Commissioner Bernthal makes.
20 By providing a system of unlimited liability under
21 Price-Anderson, you have destroyed the essential feature of
22 Price-Anderson, which is the omnibus provision.

23 Under Price-Anderson, everybody is covered by one
24 indemnity agreement, and that means that all of the available
25 resources in the case of an accident are focused on the point

1 of the accident, because everybody's liability is covered
2 under the utility's policy.

3 Once you provide unlimited liability, you take the
4 cap off liability. You have destroyed that feature because,
5 unlike the system in foreign countries where you have a
6 channeling of legal liability to the operator, under
7 Price-Anderson you do not have a channeling of legal
8 liability, you only have a channeling of financial
9 responsibility.

10 COMMISSIONER BERNTHAL: George, if I may interrupt
11 for a moment, I feel compelled, since I've argued rather
12 passionately against the proposition Jim has advanced here, I
13 should set the record straight also that I don't buy the
14 industry position particularly either, because to me unlimited
15 liability is not a liability with an annual cap. I think as a
16 practical matter that simply isn't unlimited. If you're not
17 happy with a billion dollars a year, maybe we can sell you on
18 a hundred million a year or a few hundred thousand a year.

19 So the point is I realize it creates a perception,
20 and it may be the financial markets view it that way -- I'm
21 not an expert in financial markets, but I don't think as a
22 practical matter I buy that interpretation of unlimited
23 liability, either.

24 MR. GLEASON: We've had that discussion, and I'm not
25 about to dispute you on it, since you seem to be pointed in

1 the right direction.

2 [Laughter.]

3 MR. GLEASON: But let me make my point. It does
4 destroy the fundamentals of Price-Anderson. Once you have the
5 Commission's approach to this, everybody else who is still
6 legally liable has now got to go out and protect themselves
7 from that liability, and they are going to dissipate the
8 insurance resources to points other than the point at which
9 the accident happens, and that will decrease the amount of
10 money which is available.

11 CHAIRMAN PALLADINO: Say that again. How's that
12 going to go -- I don't understand how you get from --

13 COMMISSIONER ASSELSTINE: My perception of the
14 omnibus feature was what you do is you channel liability.

15 MR. GLEASON: Jim, excuse me, under Price-Anderson
16 Act --

17 COMMISSIONER ASSELSTINE: The financial
18 responsibility.

19 MR. GLEASON: You do not channel legal liability.
20 Unlike the system in Europe.

21 COMMISSIONER ASSELSTINE: Right.

22 MR. GLEASON: All you channel is financial
23 responsibility.

24 COMMISSIONER ASSELSTINE: That's right.

25 MR. GLEASON: So here is the situation under the

1 Commission's proposal. You have had an accident --

2 COMMISSIONER ASSELSTINE: Right.

3 MR. GLEASON: GE or Westinghouse or Stone & Webster
4 is held legally liable, and that's a requirement under the
5 Price-Anderson Act. The court says, you, GE, are legally
6 liable.

7 COMMISSIONER ASSELSTINE: Right.

8 MR. GLEASON: Now we have a system that says the
9 financial responsibility for that is channeled to the utility.

10 COMMISSIONER ASSELSTINE: Right.

11 MR. GLEASON: The court says I understand that you
12 have a claim against the utility under Price-Anderson, but
13 that's your problem. We have held you legally liable. We
14 don't think these people ought to sit around and wait for
15 compensation under Price-Anderson. So you're legally liable,
16 you pay, and then if you can collect it from the utility, go
17 ahead. That's precisely the situation.

18 CHAIRMAN PALLADINO: How does that differ from
19 today?

20 MR. GLEASON: How does it differ from today?

21 CHAIRMAN PALLADINO: Yes.

22 MR. GLEASON: Today you have immediate compensation
23 with the cap and then you go to Congress.

24 COMMISSIONER ASSELSTINE: Okay. So you have a \$560
25 million accident today. What's -- I don't understand what the

1 difference is.

2 MR. GLEASON: There's a distinct difference because

3 --

4 COMMISSIONER ASSELSTINE: The utilities are going to
5 pay and the financial responsibility is channeled right to the
6 utilities under the different premium system right now. And
7 if it's somebody else's --

8 MR. GLEASON: No, no, you're missing the point.

9 With a cap -- and that's what at that point relieves any --
10 there is payment up to the cap and at that point the liability
11 under Price-Anderson is relieved. But if you have no limit on
12 liability, the "X" company is liable for the full amount, and
13 the court may say you have a claim ultimately to go back and
14 offset this against the utilities, but you have the legal
15 liability and we want you to pay it.

16 What that means is that all of those companies have
17 to go out and insure themselves against that risk and the
18 contingency that they may not be able to collect it from the
19 utilities because, as Steve said, utilities may not have the
20 money.

21 So what you have done is you have taken a system
22 which creates a certainty of compensation and you have created
23 a cloud over that compensation by removing the limit.

24 CHAIRMAN PALLADINO: That's what I don't follow. If
25 the company "X", one of the vendors is liable under the

1 proposed '83 system, why isn't it just as liable even though
2 there's a cap? Especially if you exceed the cap.

3 MR. GLEASON: Well, you just identified the point.
4 It's the cap that makes the difference.

5 CHAIRMAN PALLADINO: Then I don't see it yet.

6 MR. GLEASON: Well, let me explain it again.

7 CHAIRMAN PALLADINO: All right.

8 MR. GLEASON: Under the current system of
9 Price-Anderson, you have to go out and you have to find the
10 person who is legally responsible and sue them and get a
11 judgment in court.

12 COMMISSIONER ASSELSTINE: Say that's a utility.

13 MR. GLEASON: Say it's General Electric.

14 COMMISSIONER ASSELSTINE: All right.

15 MR. GLEASON: You have to --

16 CHAIRMAN PALLADINO: Under Price-Anderson you have
17 to go find the person that's --

18 MR. GLEASON: That's correct, Mr. Chairman.

19 CHAIRMAN PALLADINO: I thought the whole purpose of
20 Price-Anderson was so that you can settle the claims --

21 COMMISSIONER ASSELSTINE: That's right.

22 MR. GLEASON: Well, I do think there's a point here
23 that the Commission doesn't understand.

24 CHAIRMAN PALLADINO: Go ahead and I'll listen.

25 MR. GLEASON: And I think the point is that the

1 Staff proposal does not distinguish between legal liability
2 and financial responsibility. And under Price-Anderson -- the
3 concept of Price-Anderson was to leave existing tort law in
4 place except where Price-Anderson specifically changed it.
5 That's all Price-Anderson does, is leave tort law in place
6 except where we specifically changed it.

7 Under tort law you must go out and find the person
8 who is legally responsible.

9 Now what Price-Anderson said, then once you do that,
10 we will channel the financial responsibility to the utility
11 with the funds available up to the limit to support that.
12 That's the current system.

13 When you remove the cap, you leave the other
14 companies legally responsible, but not for an unlimited
15 amount, and a court could well conclude that not only the
16 legal responsibility but the financial responsibility would
17 lie with that company who may ultimately, under
18 Price-Anderson, be able or not able to go back and get it from
19 the utility.

20 So you have created a very uncertain system in place
21 of the system that you have today that results in certainty.

22 COMMISSIONER BERNTHAL: George, I don't understand
23 what the difference is as long as you haven't changed the
24 definition in the law under the act as it exists -- and I
25 don't believe that definition has changed in the Commission's

1 proposal -- which, as you know, I don't happen to concur in at
2 this point largely for other reasons. As long as you haven't
3 changed the definition -- the person indemnified, I think is
4 the key word in the existing law -- I don't understand that
5 there's any difference between then and now.

6 MR. GLEASON: Indemnification relates to the
7 financial responsibility. You will look in vain in Section
8 170 for a sentence that says that GE retains legal
9 responsibility. It's not there. And the reason it's not
10 there is because Price-Anderson left existing court law in
11 place, it did not touch it, and it is in the existing tort law
12 that you find that provision.

13 What you will find in Price-Anderson -- you won't
14 find that there. That's a result of tort law. What you will
15 find in Price-Anderson is it says but financial responsibility
16 will be channeled to the utility. And that's why you cannot
17 remove the overall limit and keep Price-Anderson intact.

18 If you were going to do that, then you would have to
19 totally change the system from one depending on existing tort
20 law to an approach like they have in Europe, where you would
21 channel not only financial responsibility but legal
22 responsibility to the utility. That would be a fundamental
23 change in our system of law.

24 COMMISSIONER ASSELSTINE: But why can't you leave
25 the system in place the way it is now? You say the utilities

1 come up with the money. In essence this is a -- in terms of
2 the financial responsibility, that is a shared pooling
3 arrangement among the utilities, no matter what the cost is.
4 And if it turns out that the legal liability is with another
5 entity, let the utilities go sue that other entity and try and
6 get their money back.

7 MR. GLEASON: There may be other ways of
8 accomplishing the objective --

9 COMMISSIONER ASSELSTINE: The money goes to the
10 victims.

11 MR. GLEASON: There may be other ways of
12 accomplishing the objective sought in the Commission
13 recommendation. But the Commission recommendation is
14 deficient because it does not achieve that objective. It may
15 be that if you want it -- if we agreed that that was what we
16 wanted to do, there may be a way that we could constructively
17 do it.

18 All I'm saying is that the Commission recommendation
19 is legally deficient in that regard, and that would be the
20 practical consequence.

21 COMMISSIONER ASSELSTINE: Maybe we have spent enough
22 on time.

23 CHAIRMAN PALLADINO: Yes, I was going to suggest,
24 especially --

25 COMMISSIONER ASSELSTINE: We'll take it up with the

1 staff later.

2 CHAIRMAN PALLADINO: -- if you can stay, we'll get
3 to the staff and we may ask the same questions of the staff.

4 MR. GLEASON: Let me just make my one remaining
5 point, and I'll make it briefly. The other problem is that
6 you have, I believe inadvertently, removed the real safety
7 valve in the current law of the Congressional review. We have
8 never in this country or indeed any country in the world been
9 able to legislate a national catastrophe in advance. Because
10 the only thing that national catastrophes have in common is
11 that they are all unique, they are all different. And that's
12 why we have always taken care of a national disaster after
13 it's happened.

14 And when you remove that Congressional role and you
15 remove the limitation on liability, you have vested legal
16 rights in those damaged persons which Congress cannot
17 thereafter under the Constitution take away from them. So you
18 have tied Congress' hands in fashioning a unique solution to a
19 unique problem. Because the injured parties have a vested
20 right which you cannot remove from them. And I really don't
21 think you want to do that.

22 COMMISSIONER ASSELSTINE: But, George, I think you
23 have to keep in mind -- and I don't want to unduly prolong
24 this -- that the roots of the Price-Anderson system lie in the
25 Texas City disaster. And one of the reasons why the Congress

1 wanted this system to start with in the 1950s was because they
2 found out that an after-the-fact effort to compensate public
3 victims of a disaster of that kind, an industrial disaster,
4 doesn't work well. That is one of the very reasons why many
5 people advocated and supported the Price-Anderson system to
6 start with. Because by the time the Congress got around to
7 try -- after all of the wrangling in the courts for years and
8 years under the court system -- by the time the Congress
9 finally got around to providing some compensation to the
10 victims of the Texas City disaster, it was pennies or nickels
11 on the dollar and it was long, long overdue.

12 And I think one of the prime motivations by many
13 people on the Hill to get the Price-Anderson system in place
14 was when they realized with this new technology there was this
15 potential for a low probability but high consequence accident,
16 that they wanted to plan in advance for that. And they
17 anticipated that the amount of money that would be available
18 would be sufficient to cover the claims.

19 MR. GLEASON: I have recently reread the legislative
20 history of Price-Anderson in full from 1957. I do not believe
21 the Texas City disaster played any part in the consideration
22 at all, and I would ask you if you think it does, to refer to
23 the legislative history, number one.

24 Number two, there's a common perception that
25 Congress was dilatory. Congress acted promptly in the Texas

1 City disaster. After the conclusion of the lawsuits they
2 acted within two years. And that's prompt --

3 COMMISSIONER ASSELSTINE: How long did it take the
4 lawsuits, though? About six or eight years, wasn't it?

5 MR. GLEASON: That is the beauty of Price-Anderson,
6 because Price-Anderson will expedite that part of it. You
7 will get to the Congressional review, and Congress did act
8 expeditiously.

9 COMMISSIONER BERNTHAL: Congress is only not
10 dilatory when compared with the tort law system.

11 COMMISSIONER ASSELSTINE: I won't argue with you at
12 all that Price-Anderson is a big step forward. I think it is
13 a much better system, much better approach than simply relying
14 on tort law. The only question is, can we make it better.

15 MR. GLEASON: I think we all agree that full
16 compensation is the objective. I think an approach like the
17 approach taken in the Senate bill accomplishes that. I think
18 the Commission's approach is legally deficient and it would
19 have the untoward impacts that I mentioned.

20 CHAIRMAN PALLADINO: Okay. Well, thank you,
21 Mr. Gleason. I think we're embarked on a four-hour meeting --

22 [Laughter.]

23 COMMISSIONER ROBERTS: Well, then, let me say on the
24 front end, I've got some other chestnuts in the fire and I'm
25 not going to be here all afternoon.

1 CHAIRMAN PALLADINO: Well, thank you.

2 Let me call for the second panel. We have more
3 opportunities to discuss these same questions.

4 Bill Bechtel, Keiki Kehoe, Kathleen Welch and
5 Michael Faden.

6 COMMISSIONER BERNTHAL: This just proves why the
7 Congress, which is composed of -- what is it, about 90 percent
8 lawyers -- is better equipped to deal with this than we are,
9 Mr. Chairman.

10 CHAIRMAN PALLADINO: That may very well be

11 We set aside 30 minutes for this portion, and I
12 would hope that we give our visitors a chance to make whatever
13 statements they're going to make, and then see what questions
14 we might have. Because the same question might appear for
15 each one of you.

16 Do you have an order in which you are going to
17 speak? Would you each introduce yourself as you speak?

18 MR. BECHTEL: Mr. Chairman and Commissioners, I am
19 William Bechtel. I am here today representing Gov. Anthony
20 Earl of Wisconsin. The governor would like very much to have
21 been here himself, but he has an \$18 billion biennium budget
22 on the floor of the legislature today for the final vote, and
23 he simply could not be present, and asked me to present his
24 testimony. I am his representative in the Washington office
25 of Federal-State Relations.

1 Gov. Earl's testimony here today is on his own
2 behalf as governor of Wisconsin. He is also the chairman of
3 the National Governors Association, Committee on Energy and
4 the Environment, which has been giving a lot of active
5 consideration to the Price-Anderson Act.

6 A member of the staff of that committee, Holmes
7 Brown, is here today and would be available to answer any
8 questions the Commission has in regard to NGA's Energy and
9 Environment Committee's consideration of this issue.

10 Prior to becoming elected governor of Wisconsin,
11 Anthony Earl was Secretary of the Wisconsin Department of
12 Natural Resources, under three governors, both Democrats and
13 Republicans, and has a longstanding interest in this issue.

14 So I am presenting his testimony as governor of
15 Wisconsin.

16 The state of Wisconsin and its citizens are vitally
17 concerned about nuclear accident liability and were most
18 interested in the current discussions on the reauthorization
19 of the Price-Anderson Act.

20 We are concerned because we are a major nuclear
21 state with four commercial reactors located in Wisconsin and
22 another four along our borders in Minnesota and Illinois.
23 More than 150,000 Wisconsin residents live within the 10-mile
24 evacuation planning zones around these eight reactors.

25 During the past three years there have been more

1 than 200 truck shipments of commercial spent fuel through the
2 southeastern corner of our state, an area with more than one
3 and a half million residents.

4 The western side of our state, along the Mississippi
5 River, is a major corridor for commercial spent fuel shipments
6 to and from other states. More than 100,000 Wisconsin
7 citizens live within a few miles of the railroad currently
8 being used for the largest commercial spent fuel shipping
9 campaign in the history of the industry. And this same route
10 may be heavily used in the future for shipments to and from a
11 monitored retrievable storage facility and to a geologic
12 repository.

13 As one of 17 states being considered for the second
14 geologic repository, Wisconsin is also concerned that
15 Price-Anderson be revised to specifically address liability
16 for accidents at federal nuclear waste storage disposal
17 facilities.

18 As you have all said here today, the mathematical
19 probability of a severe reactor accident is low, but it is not
20 negligible. One of your recent studies concluded that the
21 probability of a reactor meltdown by the year 2000 may be as
22 high as 45 percent.

23 The economic consequences of severe reactor
24 accidents have also been grimly documented by other NRC
25 reports.

1 Direct offsite losses could exceed \$10 billion, and
2 such estimates do not reflect the full economic cost if major
3 water resources, such as the Mississippi River or Lake
4 Michigan, were contaminated by such an accident.

5 It is Gov. Earl's position and we believe that of
6 most of Wisconsin citizens that our national policy regarding
7 liability for commercial reactor accidents should be based
8 upon the principles of full and timely compensation for
9 injured parties, and full reimbursement for federal, state and
10 local government expenditures.

11 We agree with the views expressed recently by
12 Chairman Palladino that the Price-Anderson Act should be
13 modified to minimize both the potential for uncompensated
14 losses by victims of a commercial nuclear power plant accident
15 and the need for additional financial contributions by the
16 federal government to meet public liability claims.

17 We believe this end can best be met by revising
18 Price-Anderson along the lines originally recommended by this
19 Commission in 1983. We support the Commission's original
20 position for the following reasons:

21 It provides for full compensation of victims in a
22 timely manner. The funding mechanism, the collection of
23 annual retrospective premiums, is equitable and unambiguous,
24 and the fiscal burdens upon the industry would be predictable
25 and reasonable in the event of a severe accident.

1 If there is any problem in locating the testimony, I
2 have additional copies.

3 CHAIRMAN PALLADINO: No, that's okay.

4 MR. BECHTEL: We believe that Price-Anderson must
5 also be modified to more directly address liability for
6 transportation accidents involving shipment of radioactive
7 materials, especially commercial spent fuel by NRC licensees.
8 And this is the problem we are dealing with in Wisconsin at
9 the present time.

10 As is the case with potential reactor accidents, the
11 probability of transportation accidents is low, but the
12 potential consequences are high. The statistical potential
13 for a severe transportation accident will increase as the
14 number of shipments and the miles traveled increase.

15 Licensee shipments of spent fuel have become more
16 frequent recently as witnessed by the Monticello and Cooper
17 Station shipments, and they will grow dramatically in the next
18 decade and a half as reactors begin shipping fuel to a
19 monitored retrievable storage facility, or to a geologic
20 repository.

21 Resolution of transportation liability issues is in
22 some ways even more urgent than those related to reactor
23 liability because of gaps in the current regulations. The
24 Commission's current regulations for power plants, fixed
25 facilities, allows a needs determination by the appropriate

1 state authority. It requires a full environmental impact
2 statement prior to licensing, and it requires development of
3 an emergency response plan and periodic exercises to ensure
4 public safety.

5 In contrast, there are currently no federal
6 regulations requiring determination of need for spent fuel
7 shipments. The only federal regulations regarding route
8 selection, physical safeguard requirements and highway routes
9 ignore the route-specific environmental impacts, and there are
10 no federal requirements for route-specific emergency response
11 planning and exercises.

12 We have had correspondence with you, with EPA and
13 with others in regard to these shipments from the Twin Cities
14 area to rural Illinois and, again, it is the governor's
15 position that no serious attention was given to the
16 environmental consequences of a nuclear transportation
17 accident along that route.

18 These regulatory gaps, coupled with purported
19 federal preemption of state transportation and environmental
20 regulations and inadequate enforcement of federal inspection
21 requirements, have a direct but generally unrecognized impact
22 on the larger issue of accident liability. Since both reactor
23 and transportation accident claims must be paid under
24 Price-Anderson from the same financial base, it is incumbent
25 upon the Commission to require the same strict risk reduction

1 measures for licensee transportation activities as for fixed
2 facilities, in order to protect the overall financial
3 viability of the retrospective payment system in both its
4 present form and the various proposals for modification.

5 Regarding accident liability per se, it is our
6 position that the same principles of full victim compensation
7 and full reimbursement of government expenditures should
8 apply. We urge the Commission to specifically include
9 liability for commercial spent fuel transportation accidents
10 in the same retrospective annual premium plan as originally
11 proposed for commercial reactors.

12 We support this approach for the same reasons cited
13 earlier. A distinction should be made, however, regarding
14 shipments of commercial spent fuel and high level waste to
15 which the U.S. Department of Energy has taken title under the
16 provisions of the Nuclear Waste Policy Act.

17 It is our opinion that such shipments are federal
18 activities and, as such, they should be treated under the
19 separate provisions of Price-Anderson regarding liability for
20 federal facilities and contractor activities.

21 COMMISSIONER BERNTHAL: Would you excuse me a
22 minute? I thought that that was already covered, that
23 transportation is already covered under Price-Anderson.

24 COMMISSIONER ASSELSTINE: I think it is under
25 virtually all present circumstances, because it is covered

1 under the indemnification agreement if it's coming -- if a
2 spent fuel shipment is coming from a reactor to GE-Morris, or
3 to an MRS or wherever it's going, I think it is covered under
4 the facility agreement.

5 MR. BECHTEL: Well, if that is the case, of course
6 we would be pleased to know that.

7 COMMISSIONER BERNTHAL: I think that's in the law
8 now and that's certainly, as far as I know, the Commission's
9 position and remains the Commission's position.

10 COMMISSIONER ASSELSTINE: We need to be sure that
11 all the bases get covered. You could have a situation, I
12 think, if for example it went from a reactor to a private
13 storage facility, it went from a private storage facility to
14 another storage facility, it wouldn't be covered in between
15 there, I don't think.

16 So there may be some gaps, depending upon future
17 shipments, but I think the current shipments are covered. But
18 we could cover that with our staff as well.

19 CHAIRMAN PALLADINO: Yes, we could ask the staff to
20 comment on that.

21 MR. BECHTEL: Just in conclusion, we want to thank
22 the Commission for its 1983 position recognizing full and
23 timely compensation as a basic principle in nuclear accident
24 liability. This Commission has set the standard for the
25 current national debate over Price-Anderson and all other

1 proposals must be measured against the Commission's standard.

2 This Commission's 1983 position is correct, proper
3 and equitable. Anything less than timely and full
4 compensation for accident victims is unacceptable. We urge
5 you to maintain your position and to work for a strengthened
6 Price-Anderson Act.

7 Thank you.

8 CHAIRMAN PALLADINO: Thank you.

9 I guess I should have asked before we started how
10 you were all going to divide your time. Are we going to have
11 four presentations or --

12 MS. WELCH: We're actually presenting a joint
13 statement, but each of us is presenting one small piece of it.

14 CHAIRMAN PALLADINO: Okay. Do you have an estimate
15 of how much time?

16 MS. WELCH: Very brief. We will be very brief.

17 CHAIRMAN PALLADINO: Okay. Well, I was going to
18 suggest we go on and hear all the presentations and then come
19 back and we may have common questions.

20 MS. WELCH: That sounds fine to us.

21 CHAIRMAN PALLADINO: Would you proceed, then.

22 MS. WELCH: My name is Kathleen Welch. I am from
23 the United States Public Interest Research Group, and we would
24 like to thank the Chairman as well as the other members of the
25 Commission for giving us this opportunity to present our views

1 on the renewal of the Price-Anderson Act, as well as on the
2 Commission's policy on this matter.

3 As you know, earlier this month we presented
4 testimony before the House Interior & Insular Affairs
5 Committee. Our testimony, which we have provided to you,
6 addressed in detail a wide range of issues concerning that
7 which we believe Congress should address in developing a
8 policy, a comprehensive policy for protecting the public in
9 the event of a nuclear accident.

10 We urge each of you to look very carefully at this
11 testimony and consider the issues we have addressed before
12 locking yourselves into a firm position on Price-Anderson.

13 Today, however, we'd like to briefly discuss what
14 in our view must be the fundamental goals of any
15 Price-Anderson system and how well the NRC's various proposals
16 meet those goals.

17 We would also like to respond to some of the
18 specific concerns and issues raised by the individual
19 Commissioners in your testimony before the Interior Committee.

20 We believe that Price-Anderson policy should achieve
21 three basic goals:

22 First and foremost, to assure that a mechanism is in
23 place to provide prompt and full compensation of all victims
24 of a nuclear accident. And we believe that this mechanism
25 should be in place for all accidents, not just low and medium

1 consequence accidents. And we believe that the decision on
2 what this mechanism should be and how it should be applied
3 should be made before the accident now as we are developing a
4 national policy on this.

5 Secondly, we believe that a Price-Anderson policy
6 should avoid reliance on the federal Treasury as the source of
7 funds for this compensation.

8 And lastly, we believe that a Price-Anderson policy
9 should create additional incentives for safety in the design,
10 construction and operation of nuclear power plants.

11 The NRC Commission's proposal as embodied in the
12 1983 report to Congress to impose an annual limitation on
13 liability, rather than an absolute limitation, meets two of
14 these three goals, and we believe could be constructed to
15 meet the third.

16 The greatest strength of the NRC's proposal is that
17 it does assure prompt and full compensation, yet does not rely
18 on federal dollars.

19 To us, this is a matter of basic fairness.

20 Furthermore, as the NRC Staff April 1985 analysis so
21 clearly demonstrates, the \$10 million annual assessment would
22 have little to no impact on the financial well-being of the
23 nuclear utilities.

24 In fact, the staff calculations reveal that the \$10
25 million assessment represents only about 2 percent of the

1 overall operating expenses of most nuclear utilities.

2 We also don't consider this a crushing financial
3 burden on the utilities.

4 We believe that the NRC proposal in the 1983 report
5 does present utilities with an ascertainable, predictable
6 limit on liability.

7 Unfortunately the NRC's proposal falls short in
8 achieving the critical goal of establishing strong incentives
9 for safety and high standards of industry accountability.

10 For this reason we do not consider it sound and
11 complete public policy.

12 Under the NRC plan, the utility who causes the
13 accident bears no greater burden of responsibility than any
14 other utility, regardless of whether or not the accident was
15 caused by negligence, carelessness or reckless behavior, and
16 we think that needs to be addressed in Price-Anderson.

17 While it may be impossible to predict precisely what
18 impact increasing exposure to liability will have on the
19 performance of the industry, we believe that whatever measures
20 can be taken to further safety incentives should be taken, and
21 we urge the Commission to send a clear and united message to
22 Congress that a mechanism must be in place to assure full
23 public compensation.

24 CHAIRMAN PALLADINO: Okay, thank you.

25 Are you going to go next?

1 MR. FADEN: My name is Michael Faden. I am
2 legislative counsel for the Union of Concerned Scientists.
3 And I also appreciate the opportunity to present our views
4 today.

5 As the only lawyer among the three public interest
6 representatives, I guess I have been asked to address the
7 legal issues that a number of the Commissioners raised in
8 their testimony before the Interior subcommittee.

9 Let me state at the outset that we certainly agree
10 with the viewpoint I think expressed by every Commissioner
11 that the goal of Price-Anderson ought to be timely and full
12 compensation, and we think the structure as it is set up now
13 does do a very good job of providing timely compensation, and
14 the plan that you proposed in 1983 would do an excellent job
15 of providing full compensation.

16 So we hope you will stay with that plan.

17 I guess the disquieting factor that appears to have
18 at least partially figured in the changes of position some of
19 the Commissioners has mentioned has been the role of lawyers
20 and the role of the tort system.

21 I don't want to be placed in defense of everything
22 that lawyers do and everything that happens in the tort
23 system, because there are a lot of excesses there. But I
24 think the Price-Anderson structure has done a great deal to
25 limit these excesses and limit the abuses that can take place

1 in other forms of tort proceedings.

2 Features like the consolidation of parties that is
3 implicit in channeling, the consolidation of jurisdiction in
4 one court. That is the major issue that will take years to
5 decide in the Bhopal proceedings, and that's already decided
6 at the outset in any -- after any nuclear incident.

7 The consolidation of lawsuits. The waiver of
8 defenses that would otherwise be used to delay the resolution
9 of valid claims.

10 All these lead to a point where the only legal
11 issues before the court would be what damages were caused and
12 did this incident cause those damages.

13 Much of the underbrush is stripped away, that
14 lawyers normally take enormous time and expense that make up
15 the transaction costs.

16 So we think that you have less to worry about with
17 the current Price-Anderson structure than with almost any
18 other, as far as lawyers drawing away the funds. We don't
19 think that is a sound argument against unlimited liability in
20 the form that you have proposed it. And I agree very much
21 with Commissioner Bernthal that there is not unlimited
22 liability in the classic sense, nor in the sense that we have
23 advocated before the Congress.

24 The important point I would like to leave you with
25 is that these fears about the court system, for lack of a

1 better words, should not end up being used to limit the
2 compensation available to the parties.

3 In other words, you should not take care of the
4 lawyers by in effect taking care of the plaintiffs also.

5 One important point in that context is that we agree
6 again with Commissioner Bernthal, and as I understood his
7 statement to say that punitive damages are not covered in the
8 Price-Anderson compensation pool.

9 Those are the open-ended damages. Compensatory
10 damages are finite, they are capable of being calculated even
11 though you can have long and detailed arguments over their
12 extent. But punitive damages are open-ended, and we certainly
13 agree that the Price-Anderson Act as it is currently written
14 does not include punitive damages in the pool. And that is a
15 position we are in accord with.

16 Let me just finish by saying that the institutions
17 that we have to deal with in a nuclear accident are largely
18 the court system and we would encourage you to retain
19 confidence in them. Improvements can be made, but we think
20 the Price-Anderson Act has already made a good deal of
21 improvements that are now being suggested for other forms of
22 toxic disasters.

23 Thank you.

24 CHAIRMAN PALLADINO: Okay, thank you.

25 MS. KEHOE: Thank you.

1 My name is Keiki Kehoe with the Environmental Policy
2 Institute. I, too, appreciate the opportunity to be here.

3 I wanted to make two brief points:

4 The first is the question of full compensation.
5 Everybody is for full compensation. Every Commissioner here
6 has supported full compensation, as do everybody on all sides
7 of this issue.

8 Supporting full compensation is easy. Developing a
9 policy which achieves full compensation is very difficult.
10 And that is where I think the parties differ on this issue.

11 The proposal which the Commission recommended to the
12 Congress by unanimous vote, four of the five of you sitting
13 here, is a policy which would actually achieve a mechanism for
14 full compensation and for that reason we think it's very
15 sound.

16 To say that you want full compensation for the
17 public, but you want a cap liability at \$2 billion or \$3
18 billion or whatever the figure may be is a contradiction.
19 Because what you are saying, in order to rationalize a
20 rationale behind capping liability is the assumption that an
21 accident could cause damages which a court finds to be valid
22 which will be in excess of the amount that you're capping.

23 If you make that assumption, and then you cap
24 liability, then how do you develop a system for compensating
25 those damages which exceed that cap, if that incident does

1 take place?

2 The proposals that we understand at least two of the
3 Commissioners here would support -- and that's the proposal
4 that Mr. Simpson and Mr. McClure in the Senate have proposed
5 -- would leave the decision of how you pay for those damages
6 until after the fact.

7 We think that is very poor public policy. The
8 aftermath of Three Mile Island was a political disaster. We
9 all know that. We saw everyone pointing at everyone else,
10 wanting somebody else to pick up the tab.

11 An accident of the magnitude which would cause
12 several billion dollars of offsite damage would be so many
13 more times worse, it's difficult to conceive of.

14 To force any uncompensated victims to sit and wait
15 for the Congress to decide politically who is going to have to
16 pay for this is not a kind of policy which would assure fair
17 or full compensation, in our view.

18 My second point is a question of public acceptance
19 of nuclear power. For more than 30 years now, the public has
20 been assured time and again by both the Commission and the
21 industry that the risks of a nuclear accident are very, very,
22 very small. Yet when you look at the Price-Anderson issue,
23 that is the core of the issue, how safe is this industry.

24 If the public looks at the Price-Anderson policy, it
25 sees one thing: It sees that the nuclear industry, while

1 saying that these risks are small, is not willing to assume
2 those risks. By not assuming those risks, they are forcing
3 the public to accept risks which the very industry finds
4 unacceptable.

5 A policy like that, I believe, very, very seriously
6 undermines the credibility of the safety of -- the public's
7 perception of the safety of the industry and the perception of
8 the Commission. And I urge you then to think long and hard
9 before you abandon your 1983 policy just what you're saying to
10 the public about risks of nuclear power.

11 CHAIRMAN PALLADINO: Okay. Thank you.

12 I'm going to suggest that we go around one question
13 per each Commissioner and then see if we each have more
14 questions.

15 Why don't I begin at the other end of the table.

16 Mr. Zech?

17 COMMISSIONER ASSELSTINE: Sure.

18 COMMISSIONER ZECH: I'd like to ask Ms. Kehoe a
19 question, and I thoroughly appreciate your viewpoint. But you
20 apparently believe that a system of unlimited liability would
21 significantly increase the public's chances for full and
22 timely compensation, and I'd be interested in any views you
23 may have to explain your optimism in that regard. I'm just
24 not as optimistic as you are.

25 MS. KEHOE: Okay. Well, I believe that that's

1 probably in the context of the testimony we gave in the House
2 which did say that the bill that that was in reference to is
3 the Seiberling bill which takes the cap off of compensation.

4 It is my personal feeling, and I think that others
5 on this panel share that, that if the incentive were put -- or
6 I'll put it this way:

7 If the burden of deciding how much insurance was
8 necessary, either through self-insurance schemes or through
9 private insurance, if that burden was put on this industry,
10 the industry would decide how much insurance they should
11 carry. Much like they did after Three Mile Island for their
12 onsite property insurance.

13 I think it is inconceivable to think that there
14 would be less than a billion dollars of liability coverage
15 available either through self-insurance mechanisms or private
16 sources.

17 I think it is likely that there would be much more
18 than that.

19 I think that taking the cap off of liability puts an
20 incentive on the industry to obtain resources in order to meet
21 those liability obligations in the event of an accident which
22 would be greater than the amount of resources that are
23 currently available under the Price-Anderson scheme which is
24 \$530 million.

25 And so I believe that if you take that cap off, that

1 utility company would have greater resources there and would
2 have insured greater.

3 The second point of that is that if you take the cap
4 off and you take the hold-harmless provisions, which we find
5 to be very bothersome, off then you would give the public the
6 opportunity to help collect or to sue another supplier, if
7 that supplier was negligent.

8 As we have right now, the system is very unbalanced
9 because the utility company having the accident can turn
10 around and sue a Babcock & Wilcox or whoever they find liable
11 for the accident for all of their costs. So that utility can
12 sue, they can tap those resources, yet the public is
13 prohibited from the availability of those resources. And I
14 think the public should have the same rights as the industry.

15 COMMISSIONER ZECH: Well, let me just say that I'm
16 glad that -- I'm not so sure I agree with your viewpoint, but
17 I'm glad that we both do agree that full and timely
18 compensation is our goal. And that certainly is what we all
19 should be striving for.

20 Thank you.

21 CHAIRMAN PALLADINO: Okay. Tom?

22 COMMISSIONER ROBERTS: I have a couple questions.
23 The first one is for Mr. Bechtel.

24 In the governor's prepared testimony, the first
25 page, the second paragraph under the heading "Liability,

1 Commercial Reactor Accidents," I'm reading, "Direct offsite
2 losses could exceed \$10 billion."

3 I am not disputing the number, I'm not saying it's
4 correct, low or high. I just want to know where did you get
5 that number?

6 MR. BECHTEL: I'll obviously have to provide the
7 citation. This was prepared by the Department of Natural
8 Resources.

9 COMMISSIONER ROBERTS: I don't question the
10 accuracy, I'd just like to know where it came from.

11 MR. BECHTEL: Well, we will have to get that
12 citation for you, sir.

13 COMMISSIONER ROBERTS: Okay. The second question is
14 to Ms. Welch.

15 I thought I heard you say that you thought under the
16 NRC '83 proposal that the utility cost would be ascertainable
17 and determinable. I can't follow that. If you would have the
18 constant dollar figure per year with no restraint on the
19 length of time that would run. I don't understand how you can
20 say their costs would be ascertainable.

21 MS. WELCH: I did say that, and my feeling is -- and
22 I think my fellow panelists share that -- is that the costs
23 imposed upon the utility would be predictable and
24 ascertainable --

25 COMMISSIONER ROBERTS: On an annual basis?

1 MS. WELCH: On an annual basis.

2 COMMISSIONER ROBERTS: All right. Okay. That's
3 slightly different.

4 CHAIRMAN PALLADINO: Okay. Fred?

5 COMMISSIONER BERNTHAL: You're going to skip
6 yourself?

7 CHAIRMAN PALLADINO: I'm going to skip myself for
8 now.

9 COMMISSIONER BERNTHAL: Gee, that's a great
10 sacrifice there, Mr. Chairman.

11 I want to just make a comment or two and then I do
12 want to ask a question.

13 One is that I think Mr. Faden touched on the
14 subject, but it should be made very clear, I think I'll direct
15 the comment toward you, Ms. Welch, because your statement
16 seemed to indicate otherwise, and I'm quoting from your
17 statement, that the public is sent the message, no matter what
18 precautions you take to protect your home, business or other
19 property, it could be destroyed by someone else's carelessness
20 or, as you put it otherwise, Price-Anderson tells the nuclear
21 industry no matter how negligent, careless or reckless you
22 are, the government holds you harmless.

23 That is not true. And plain and simply, if you're
24 negligent, reckless and careless, clearly it seems to me you
25 are in violation of NRC regulations, and under those

1 circumstances, you will be subject to punitive lawsuits in
2 court.

3 Price-Anderson deals with compensatory damages,
4 where the utility is in compliance otherwise with all NRC
5 regulations.

6 So I want to clarify the point that Price-Anderson
7 has nothing to do with carelessness and negligence. Those
8 issues can still be sued for in court and, in fact, it was
9 that very issue that was settled in the Supreme Court a little
10 more than a year ago, I guess, in the Silkwood case. They
11 cited the wrong act, they cited Price-Anderson when they
12 should have cited the Atomic Energy Act, but never mind, that
13 issue has been settled, I think.

14 MS. KEHOE: Commissioner Bernthal, may I have a
15 question about that? In that statement, had the next three
16 words been "holds you harmless for all damages to the public
17 or all public liability." I think the intent of that
18 statement is that the Price-Anderson Act says you are held
19 harmless for any damages you inflict to the public up to this
20 limit -- beyond this limit, which is low --

21 COMMISSIONER BERNTHAL: Compensatory damage, is that
22 what --

23 MS. KEHOE: Right. -- regardless of your negligence
24 or gross negligence.

25 COMMISSIONER BERNTHAL: No, I don't agree with

1 that. It's not regardless of your gross negligence, because
2 if you are grossly negligent, I hope that I can say
3 confidently you would be found to be in violation of NRC
4 regulations.

5 MS. KEHOE: Would you then be liable for paying
6 damages to the public?

7 COMMISSIONER BERNTHAL: You would be liable for
8 punitive damages, and I suspect you'd be in court the rest of
9 your life. And Price-Anderson would have nothing to do with
10 that.

11 MS. KEHOE: Well, that's comforting.

12 COMMISSIONER BERNTHAL: Nor should it. No, that's a
13 fact, I believe, and I think I'm seeing someone better
14 qualified than I nodding his head here.

15 Let me ask a question. Sorry to be prolonging this,
16 but that wasn't my question.

17 [Laughter.]

18 COMMISSIONER BERNTHAL: I do have concern over one
19 issue that is not unique to your presentation, but I guess is
20 a thread running through any position that argues that there
21 should be this shift to so-called unlimited compensation. I
22 don't consider a billion a year unlimited, myself, but let's
23 call it unlimited for the purposes of argument. The shift
24 from where we are now to that kind of provision.

25 Have you thought at all about whether there may be

1 serious legal problems, if not Constitutional problems, in
2 doing that, where you are in a situation under original
3 Price-Anderson where you had a voluntary compliance for the
4 entire industry to indemnify against accidents, and now you
5 change the rules of the game to something that at least they
6 view as being unlimited liability? Where does that leave
7 you? Are the utilities then authorized to toss it up in the
8 air and say forget the whole thing, or where are we?

9 [Commission Roberts left the meeting.]

10 MR. FADEN: If I can answer that, Commissioner. We
11 have thought about that a good deal, as has your staff. We
12 subscribe to the answer that they provided for Question 10 of
13 the Interior subcommittee's questions, which is that it does
14 not present any Constitutional problems.

15 You have the authority to regulate this industry
16 under the Atomic Energy Act. The whole Price-Anderson system
17 is a condition of licensing.

18 The act -- I believe it's Section 185, although
19 don't hold me to it, it's in the 180s -- says that all
20 licenses are accepted with the understanding that their terms
21 are subject to change with changes in the Atomic Energy Act.

22 So when Congress amends the Price-Anderson Act to go
23 to either unlimited liability or to your plan, no
24 Constitutional problem. And we think that the Duke Power case
25 very clearly underscores that result.

1 COMMISSIONER BERNTHAL: Okay. I'm not sure it's so
2 clear-cut, but I appreciate the opinion. I can use more
3 opinions on that.

4 CHAIRMAN PALLADINO: Okay, Jim.

5 COMMISSIONER ASSELSTINE: I'll just follow up that
6 one, and then I've got one other question.

7 In fact, isn't that the same question that the
8 Congress had to face the last time around? Because prior to
9 the last extension, the utilities' limit on liability or to
10 financial responsibility only went to purchasing the available
11 insurance. And beyond that, it was the government that paid
12 the tab. The last time around the Congress said, no, we want
13 to spread the risk among the utilities with this deferred
14 premium system, get the government out of the indemnification
15 business.

16 It seems to me if that was Constitutional and that
17 was legal, then taking the next step and simply saying we are
18 going to collect these deferred premiums for several years,
19 rather than just once, also by the same token is legal and
20 Constitutional. Am I right?

21 MR. FADEN: I think that's precisely correct, and I
22 think the Supreme Court understood that and approved it in the
23 Duke Power case which, as you remember, was decided after the
24 1975 amendments.

25 The industry makes a big thing of saying we approved

1 the '75 amendments, or we didn't oppose them, we went along
2 with it. I don't think they have a veto over this
3 legislation. I think that only Congress and the President
4 have that power.

5 COMMISSIONER BERNTHAL: But you're arguing that a
6 change that arguably at least can be viewed as a fundamental
7 change, where a billion dollars a year goes on forever, that
8 even that change would not breach the question of
9 Constitutionality or due process?

10 MR. FADEN: Yes, I am. As long as it's rationally
11 related to a legitimate Congressional objective -- and I think
12 your report lays out in great detail why that would be so --
13 then it poses no Constitutional problems. It still raises all
14 the policy issues that you're discussing, but it's, in our
15 view, certainly Constitutional.

16 COMMISSIONER BERNTHAL: And you would still argue
17 that even in the absence of Congressional review? In other
18 words, if it were strictly \$1 billion a year forever and
19 Congress never gets involved?

20 MR. FADEN: Yes.

21 COMMISSIONER BERNTHAL: Okay.

22 COMMISSIONER ASSELSTINE: I had a comment and then a
23 question.

24 The comment was, Mike, I thought the points you made
25 were good on the differentiation between the Price-Anderson

1 system and the way it operates, and the involvement of lawyers
2 and the potential for the kinds of expenditures that are
3 associated with that, as opposed to how that works under
4 normal tort law and the kind of thing that we saw after Bhopal
5 in terms of the involvement of lawyers and the litigation
6 costs that are involved in that. And I want to explore that
7 further with the insurance pools when they come up and talk
8 about how it operated after TMI, and the potential for
9 minimizing those kinds of costs and the danger of having this
10 pool of money out there.

11 My question goes to the three goals, Kathleen, that
12 you mentioned to start with, and it has to do with the third
13 one, providing incentives for improved safety. And I guess
14 I'm wondering why there isn't an incentive for improved safety
15 in the Commission's 1983 proposal, in the sense that by
16 creating an annual financial obligation for these deferred
17 premiums, and creating this potential financial liability that
18 Mr. Griffith talked about, that he's somewhat concerned about,
19 why doesn't that create a very strong incentive on the part of
20 all utilities to make sure that performance, particularly
21 performance by the weaker members of the industry, is brought
22 up to snuff?

23 Why isn't that in essence a way to strengthen the
24 kind of role that we've seen from the Institute of Nuclear
25 Power Operations and the industry as a whole? If, in fact,

1 they're all on the hook for these deferred premiums for
2 potentially several years, why doesn't that give all of the
3 industry a very strong incentive before the fact to do
4 everything that they can to make sure that an accident,
5 particularly a catastrophic accident, does not occur and to
6 bring up the performance of the weak performers?

7 MS. WELCH: Well, Commissioner, I guess I would have
8 to agree with you that the plan that you proposed in '83
9 certainly, by spreading the risk among all utilities, does
10 increase the likelihood and give the industry as a whole an
11 incentive to police itself better, and I think on that basis
12 it is a good proposal.

13 [Commissioner Roberts rejoined the meeting.]

14 On the other hand, we do feel very strongly that
15 there should be additional incentive and perhaps additional
16 burden on the utility who does cause the accident, and on that
17 level we feel there should be some sort of mechanism put into
18 your proposal to ensure that that individual utility is taxed
19 more.

20 COMMISSIONER ASSELSTINE: Could you do that, for
21 example, by imposing an amount on the utility who has the
22 accident, say sandwiched in between the insurance coverage and
23 then the deferred premiums?

24 MS. WELCH: That would certainly be one way of doing
25 it that we would like to see.

1 COMMISSIONER ASSELSTINE: Okay. Now since these
2 things come into play in priorities, at least that way the
3 utility who had the accident would have to pay its obligations
4 before the others would have to pay theirs.

5 MS. WELCH: Uh-huh.

6 CHAIRMAN PALLADINO: But I was going to pick up on
7 that subject. I wanted to make one comment, I guess two
8 comments and a question.

9 With regard to incentive for safe operation, there
10 are two points that I think need to be considered. One, the
11 utility who has the accident loses the income from that
12 accident, where the others that are paying the premiums still
13 have a source of income. But you seem to discount the role of
14 the NRC in providing incentives for these plants to operate
15 safely and providing the oversight, and I think -- and my
16 question is, can't these two things supplement each other,
17 even though they're done by different vehicles?

18 MS. WELCH: Well, I certainly didn't mean to insult
19 the NRC's regulatory abilities. I apologize if you thought --

20 CHAIRMAN PALLADINO: No, I was thinking about --

21 COMMISSIONER BERNTHAL: That's all right, we're used
22 to it.

23 [Laughter.]

24 CHAIRMAN PALLADINO: I wasn't thinking in terms of
25 insult, but is that not an important consideration?

1 MS. WELCH: No, I think you raised good points, and
2 the industry certainly argues that they have incentive to
3 operate and design and build their plants safely because of
4 the crushing financial burden that they would have if the
5 accident was at their plant.

6 However, if you consider what is happening in plants
7 around this country, and you consider the myriad of examples
8 of flawed construction practices, of problems with operator
9 training and certification of those operators, such as at
10 Grand Gulf, and human error problems, as your Office for
11 Analysis & Evaluation of Operational Data reports have shown,
12 as well as incidents like the Salem situation -- it's
13 difficult for members of the public to come to any other
14 conclusion than, well, where's the incentive? Why aren't
15 these guys doing a good job?

16 And, you know, as I mentioned, we can't conclusively
17 say that creating a significantly increased exposure to
18 liability would definitely result in removal of all these many
19 problems, yet we do believe that if there's an opportunity to
20 increase those safety incentives, we should do that. And
21 that's the point I was trying to make.

22 CHAIRMAN PALLADINO: Thank you.

23 One comment for Mr. Bechtel. Without dwelling on
24 why I make this point, I'd like to make it for the record.
25 You say that the NRC studies show that the probability of a

1 reactor meltdown by the year 2000 may be as high as 45
2 percent. I think the word should be coremelt. I know the
3 subtlety may not appear to you, but at least I'd like to
4 correct the word.

5 Unless there are other burning questions, I was
6 going to suggest we thank our panel here, and we take a
7 five-minute recess, and then come back with other panels.

8 COMMISSIONER BERNTHAL: Joe, just to make a comment,
9 I think you need to go a step further and explain that
10 coremelt does not necessarily imply offsite consequences.
11 That was the issue, the point, I think, that the Chairman was
12 making.

13 CHAIRMAN PALLADINO: Well, I just wanted to correct
14 the words for the record.

15 [Recess.]

16 CHAIRMAN PALLADINO: Please take your seats. Could
17 we have the next panel join us at the table. Mr. Schmalz and
18 Mr. Marrone.

19 [Pause.]

20 Let me just get a status report on the availability
21 of Commissioners here.

22 [Pause.]

23 MR. SCHMALZ: I will speak and Mr. Marrone will be
24 available for questions, as well as myself.

25 CHAIRMAN PALLADINO: I suggest we go ahead.

1 MR. SCHMALZ: Thank you very much, Mr. Chairman and
2 members of the Commission.

3 My name is Richard Schmalz. I am associated with
4 the Nuclear Pools. I have been connected with the nuclear
5 insurance program since about 1958, almost from its
6 inception. With me is Joseph Marrone, who is Vice President
7 and General Counsel for American Nuclear Insurers.

8 We are speaking principally from the pools, but in
9 the past we have also spoken for the three large insurance
10 trade associations, American Insurance Association Alliance,
11 American Insurers, and the National Association of Independent
12 Insurers.

13 We find that we have pretty much a consensus of
14 views in the private insurance industry regarding the things
15 that are very important from the point of view of insuring the
16 nuclear power program, obtaining the maximum insurance
17 capacity from private insurance companies, and at the lowest
18 possible cost.

19 Our remarks today will be primarily from that
20 viewpoint. We are going to express our thoughts as to what,
21 from a private insurance point of view, is essential or very
22 important for a successful nuclear power program.

23 The first point is that we must have a consensus
24 that we as a nation want to develop nuclear power by private
25 means. This is important as a morale factor, it's intangible,

1 it's hard to quantify, but unless we are all who are
2 participants in the program are convinced that it is a sound
3 program that can be carried out safely and in the public
4 interest, we are not going to have a very successful and
5 perhaps not a very safe nuclear power program.

6 The second point is that strong support by
7 government is required to protect both the public and private
8 industry from the special risks of nuclear power. And this
9 support must include strong safety regulations. It must
10 include reasonable financial protection standards, and it must
11 include, in our judgment, a reasonable limitation on private
12 liabilities.

13 The implications of these criteria are clear. We
14 cannot entrust the safe development of nuclear power to a
15 laissez faire market. But, on the other hand, once the
16 government undertakes the course of close and detailed
17 regulation which is necessary, the government then becomes a
18 partner in the outcome.

19 It must be prepared at some point to assume some
20 financial stake or provide some financial support.

21 It is in our view a deception to assume that
22 unlimited liability will make nuclear power plants safer or
23 provide the public with unlimited financial protection.

24 And it is unrealistic to require special safety
25 burdens, licensing requirements and financial protection

1 standards that impose nonmarket costs on the industry, without
2 balancing these costs with some compensating relief.

3 There is no other industry that I know of where 93
4 members are required to provide compensation for an accident
5 at the 94th.

6 Now the Price-Anderson program as a concept is
7 conceptually sound because it recognizes that the special
8 risks of nuclear power impose special burdens on industry to
9 protect the public. But, in return, it limits liability to a
10 reasonable amount with the expectation that the government
11 will undertake special relief measures if it ever becomes
12 necessary.

13 Now one can argue about where the balance points
14 are, but the concept seems essentially sound.

15 Insurers are unanimous in their view that the
16 limitation on liability is the key to maximizing private
17 insurance capacity for this special hazard, which presents an
18 intractable insurance problem, if one seeks to solve it, using
19 conventional insurance approaches.

20 The limitation on liability, coupled with
21 channeling, allows insurers or reinsurers around the world to
22 make their maximum contribution to the nuclear pools and to
23 nuclear insurance.

24 Without it, insurers would be caught in a disastrous
25 crossfire of exposures that would be largely incommensurable.

1 Their reaction would be swift and simple: They would retreat
2 and turn their attention to more hopeful endeavors.

3 The proposal to abandon the limitation on liability
4 and replace it with a cap on annual payments is troublesome
5 for three major reasons:

6 It is doubtful that channeling liability will be
7 effective unless the present de facto channeling is replaced
8 with statutory channeling, as is used in most foreign
9 countries.

10 This was essentially Mr. Gleason's complaint, and we
11 agree with it.

12 Secondly, it is doubtful that placing unlimited
13 liability on 93 reactor owners for the 94th reactor accident
14 would withstand a Constitutional test. I don't pretend to be
15 a Constitutional expert. An opinion, a legal opinion, was
16 expressed. But it is not as clear-cut, I don't believe, as
17 that opinion suggested.

18 Third, the financial drain on the nuclear industry
19 that might result could be enormous. The proposal would in
20 effect create an entitlement program to unlimited full tort
21 compensation benefits.

22 The dimensions of such benefits, as advocated by the
23 lawyer entrepreneurs that are peculiar to the American scene,
24 have staggering financial implications. They could threaten
25 the financial stability of the private utility industry. Nor

1 would their customers be likely to appreciate the burden on
2 them.

3 Congress was wise in creating the original
4 Price-Anderson program to provide for a pause and then a
5 reassessment when a reasonable limit has been reached. We
6 have seen nothing in the development of tort law in the
7 succeeding years that undercuts the soundness of this
8 approach.

9 In fact, we find more support for it than ever in
10 what we see in some of the settlements that are being
11 negotiated today in very doubtful liability situations for
12 very large amounts.

13 I think that's all we have to say for prepared
14 remarks, but we'd be pleased to answer questions.

15 CHAIRMAN PALLADINO: All right, thank you. I'll
16 change the rule this time and start with my own questions.

17 Two of them. I'll limit myself to two for the
18 moment.

19 Several times reference has been made to the fact
20 that this is a very unique system of handling liability. You
21 cited where else would there be 93 organizations paying for
22 the accident of one of the whole population of 94.

23 Well, isn't that really what we do almost every
24 day? When I buy my automobile insurance, my rate is set not
25 on the basis of my performance, but on the performance of all

1 people. And in a sense we are all paying for the accidents of
2 others, as well as any potential accident we may have
3 ourselves.

4 I'm not sure it's all that unique. Maybe the
5 particular method is unique, but we are identifying it in a
6 different way.

7 Am I wrong?

8 MR. SCHMALZ: Well, I think that you're both right
9 and wrong, if I may suggest.

10 For one thing, most insurance endeavors are
11 voluntary. Not always, but there is a minimum amount that you
12 have to provide, perhaps for automobile liability insurance in
13 some states.

14 This, of course, is a compulsory situation.
15 Automobile liability accidents are relatively small, they're
16 relatively frequently, unfortunately, but they are quite
17 predictable. So that when you make this voluntary tradeoff of
18 deciding to insure and become part of a pool of others
19 similarly situated, you can be reasonably certain that you are
20 not going to assume enormous costs forever.

21 In this situation that we are talking about here,
22 you have both very high potential liability that is in itself
23 unpredictable, and the compensating balance here for this 93
24 paying for the 94, which was put into place at the last
25 renewal, was really the fact that it's limited and reasonably

1 predictable. Whereas they're saying today, with the unlimited
2 proposal is -- it goes beyond the bounds of that
3 reasonableness.

4 CHAIRMAN PALLADINO: I'm really not taking exception
5 with the fact that the magnitudes are different, but this
6 concept that others are paying for an accident somebody else
7 has is not new. That principle is followed at least in
8 automobile insurance and I think it follows in almost every
9 aspect of insurance.

10 MR. SCHMALZ: Yes, but it is a totally different
11 dimension.

12 CHAIRMAN PALLADINO: I will agree about the
13 dimension. Although there are things that one can do in an
14 automobile to cause great catastrophe. But I won't get into
15 that.

16 Let me ask a question. What's the status of efforts
17 to increase the primary layer of public protection?

18 MR. SCHMALZ: Well, Mr. Chairman, we had hoped as an
19 industry as our next step to be able to go to \$200 million.
20 As you know, the insurance industry has been experiencing a
21 rather unprofitable series of years as far as operating
22 results are concerned.

23 It's typical in our business to be one or two years
24 behind, perhaps, other industrial firms in that firm. 1985 is
25 showing some signs of improvement, but they tell me that we

1 are not entirely out of the woods.

2 So we are not going to make a solicitation for
3 capacity this year for fear that it would not be fruitful. We
4 are going to delay until we see a little more solidifying of
5 the recovery.

6 CHAIRMAN PALLADINO: Okay. Thank you.

7 Commissioner Roberts?

8 Jim?

9 COMMISSIONER ASSELSTINE: Just a couple.

10 You mentioned that you thought the limit on
11 liability was necessary to maximize the availability of
12 private insurance. I guess I'm not sure I understand why that
13 has a bearing on the amount of private insurance that's
14 available, since the private layer is exhausted first,
15 whatever amount of that is, and if you're talking about the
16 truly catastrophic accident that will exceed the limit on
17 liability, I could understand why that's of great concern to
18 the utilities, because they'd have to pay those deferred
19 premiums. But I'm not sure I understand why that's of great
20 concern on the insurance industry.

21 It would seem to me if you're in that kind of an
22 accident, you guys are going to have to pay your money,
23 anyway.

24 MR. SCHMALZ: Yes. It's a question -- the question
25 is, how willing am I to pay my money? How willing am I, as an

1 insurer, to participate in a program?

2 You see, what the Price-Anderson program does, and
3 the European programs do, is something unique. It sets up a
4 channeled and exclusive liability on, in this particular case,
5 the utility industry.

6 We have 94 target risks, we'll say, for the sake of
7 example, more or less. Now when several thousand reinsurers
8 and insurers around the world are contemplating what they can
9 put into the nuclear pot, so to speak, if they know they have
10 94 target risks and they know that the liability of each one
11 of these target risks for liability insurance is limited, they
12 do not have to worry about insuring the nuclear hazard under
13 all of their conventional policies that they use for pricing
14 it.

15 They have, in effect, put all the nuclear risks in
16 one pot where it's manageable and they're not getting shot at
17 from other directions.

18 That's why it is efficient as a capacity generator
19 and efficient as a cost saver.

20 COMMISSIONER ASSELSTINE: But why couldn't you
21 continue that same system with the annual liability?

22 MR. SCHMALZ: Could you continue it? I don't think
23 you could, unless you do as I suggested in my remarks, and
24 adopt the statutory exclusive liability that the European
25 systems have.

1 COMMISSIONER ASSELSTINE: Okay. Say you channel
2 liability as well as financial responsibility to the utilities
3 --

4 MR. SCHMALZ: If you did that, then that would take
5 care of that problem. However, it would not take care of the
6 problem of adverse financial impact on the utility industry
7 itself. And, quite frankly, we as an industry pay more
8 attention to the financial health of the risks that we insure
9 perhaps than anything else, because we realize that that bears
10 on safety.

11 COMMISSIONER ASSELSTINE: Are the insurance
12 companies big institutional investors in the utilities?

13 MR. SCHMALZ: I think that some --

14 COMMISSIONER ASSELSTINE: I mean you guys aren't as
15 a pool, but are there individual members --

16 MR. SCHMALZ: I think the individual members have
17 different appetites for investment. I can't really tell you
18 how big they are.

19 CHAIRMAN PALLADINO: Mr. Marrone?

20 MR. MARRONE: I am not expert in that area, but the
21 insurance industry does have substantial interests, not only
22 in stock, but maybe primarily in bonds, and I know about that
23 because we heard a little bit about that when the WPPSS bonds
24 were endangered. Somebody counted up the insurance industry's
25 stake in WPPSS and it was very, very substantial.

1 COMMISSIONER ASSELSTINE: In fact, as I recall, I
2 recall the insurance company as well after TMI complaining not
3 only they had to pay for some of the claims, but they also
4 were losing money because of their investments.

5 MR. MARRONE: Some insurers who had substantial
6 potential loss through us had to add in their GPU --
7 Metropolitan Edison bonds and they had -- we tried to impress
8 upon them that -- that they had substantially more at risk
9 elsewhere than they had with us and perhaps they ought to
10 reconsider increasing their participation with us.

11 COMMISSIONER ASSELSTINE: Let me ask one other
12 question on the way the Price-Anderson system would operate or
13 is intended to operate if there is an accident, particularly a
14 catastrophic one, and relate it a bit to how you operated
15 after TMI.

16 My sense was that after the Three Mile Island
17 accident, at least for certain claims, claims that you
18 recognized as legitimate claims, the ones associated with the
19 evacuation, that you set up a process to basically pay those
20 administratively.

21 MR. MARRONE: Yes.

22 COMMISSIONER ASSELSTINE: That could operate very
23 straightforwardly. I'm not even sure you'd need a lawyer to
24 handle that kind of a claim because it would simply be showing
25 what your costs were, and then administratively being able to

1 pay them. And I thought that that was one of the great
2 advantages of the Price-Anderson system. You had that kind of
3 mechanism that tends to clear out a lot of the traditional
4 lawyer participation in tort claim actions and punitive
5 damages.

6 MR. MARRONE: An immediate response was possible and
7 it was contemplated by the utility industry, whom we worked
8 with, and with the old Joint Committee on Atomic Energy. They
9 made a major point of our being prepared to advance funds to
10 ease discomfort as a result of an emergency. And, of course,
11 the waivers of defenses made it easier to do that.

12 COMMISSIONER ASSELSTINE: I understand that perhaps
13 personal injury claims related to TMI were a little different
14 proposition, given the sense of the low radiation releases.
15 But I'm wondering in the case of the kinds of accidents we are
16 concerned about, the catastrophic low probability, but the
17 catastrophic one, whether again you would at least, to a large
18 extent with near-term claims, both for property damage and for
19 personal injury, be able to process those administratively and
20 avoid, to at least some extent, the kinds of problems that we
21 have seen in other cases, people running to different
22 jurisdictions, different courts, the large punitive damage
23 claims that tend to translate themselves into lawyers' fees
24 and those kinds of things, to at least minimize the concern
25 that some people have by creating this annualized limit on

1 liability you're creating a very inviting target.

2 MR. MARRONE: We would make every effort to identify
3 those claims which have some basis and which warrant early
4 consideration. But there's just no doubt that along with
5 those claims that are proper and just and should be adequately
6 cared for, promptly cared for, there would be many, many, many
7 of the other kind, and hopefully we'd be able to segregate
8 them and treat those that should be promptly cared for
9 promptly, and protect the assets so that we only make proper
10 payments.

11 COMMISSIONER ASSELSTINE: Isn't your strongest
12 defense there causation requirement? Some has to prove --

13 [Commissioner Roberts left the meeting.]

14 MR. SCHMALZ: I think as a practical matter,
15 particularly if it's an extraordinary nuclear occurrence, it
16 boils down to causation. And causation in the tort law is a
17 very slippery matter, and it's subject to extensive debate and
18 development.

19 We would be especially concerned if the causal
20 connection is weakened substantially, so that you would in
21 effect be say compensating for all the people who had cancer
22 in the vicinity of Three Mile Island as a result of that
23 accident simply because you couldn't prove that they did not
24 receive the cancer from whatever radiation was released.

25 COMMISSIONER BERNTHAL: But hasn't the pattern been

1 somewhat toward kind of giving up in the argument as being
2 less trouble and perhaps less expensive simply than paying?

3 MR. SCHMALZ: No, I don't think so, Commissioner.

4 In fact, if you look at the implications of compensating
5 everybody around Three Mile Island that will receive a cancer
6 over the lifetime of the population within the 25-mile radius,
7 it's staggering what it would cost to compensate those. And
8 that would just be for cancer.

9 COMMISSIONER BERNTHAL: But I grant you in the Three
10 Mile Island case one can argue whether or not the insurance
11 industry, such as the involvement was, stuck to the principle
12 of requiring the claimant to prove causation, but perhaps you
13 can see better illustrations in other areas. I'm not sure the
14 Agent Orange issue, for example, was ever resolved.

15 MR. SCHMALZ: Yes, yes.

16 [Commissioner Roberts rejoined the meeting.]

17 MR. MARRONE: It was a \$180 million settlement with
18 no evidence, I understand no evidence offered to the
19 causation.

20 COMMISSIONER BERNTHAL: It appeared it would have
21 been difficult ever to prove causation.

22 MR. MARRONE: We did settle a few months ago 281
23 bodily injury claims. In terms of your concern with respect
24 to where the tort law might lead were you to have limitless
25 funds available, we have since that time received about 800

1 additional claims. This is 600 about six years later.

2 The kinds of injuries that are claimed, as an
3 example, I have Part 1, Complaint, without naming the names in
4 the complaint:

5 Pericarditis; acute depression; Downs syndrome;
6 learning disabilities; colitis; diverticulitis; skin
7 disorders; menstrual problems; miscarriage; skin problems;
8 profound retardation; cancer; lesion in the bladder,
9 premalignant; bilateral paralysis of vocal chords; swollen
10 glands; swollen tongue; kidney --

11 CHAIRMAN PALLADINO: What is this list that you're
12 reading?

13 MR. MARRONE: From a complaint that we received,
14 personal injury complaint.

15 CHAIRMAN PALLADINO: For TMI? That's all right. I
16 missed your connection. Go ahead.

17 MR. MARRONE: I was reading from a complaint
18 claiming injury as a result of TMI. And this -- of course, if
19 these cases were tried, they would be tried in that
20 jurisdiction where there are emotions running pretty, pretty
21 strong.

22 COMMISSIONER ASSELSTINE: But you're going to have
23 that problem, aren't you, whether the limitation is \$560
24 million? And certainly as far as you all are concerned, your
25 \$160 --

1 MR. SCHMALZ: Well, the limitation on liability is
2 not so much a -- the limitation on liability is not so much of
3 a concern from our point of view as insurers except that in
4 the absence of a limit, we probably will not be able to
5 provide insurance for the nuclear hazard, or certainly we
6 won't be able to provide as much or as cheaply.

7 And the other thing, of course, is that --

8 COMMISSIONER ASSELSTINE: Unless we channel
9 liability.

10 MR. SCHMALZ: Unless you channeled it, unless it was
11 statutorily channeled.

12 And the other point, of course, is that if it is a
13 demoralizing and crushing liability, it will adversely affect
14 safety and it will mean in the opinion of insurers that they
15 can't afford to risk as much.

16 CHAIRMAN PALLADINO: Let me allow Mr. Marrone to
17 make a comment, and then I think we ought to move on.

18 MR. MARRONE: My point in describing this is that if
19 there were a billion and a half or two and a half billion
20 dollars exposed to claims, some of which are worthy, some of
21 them or many less worthy, might not it be prudent to consider
22 that if there's going to be more than a billion or two and a
23 half billion, that Congress might desire to establish special
24 rules to make sure that the money is wisely used?

25 COMMISSIONER ASSELSTINE: I take it that sort of the

1 bottom line, as far as you all are concerned, is that there
2 ought to be a limit on liability, that ought to cap any
3 private sector financial responsibility, and the balance
4 beyond that really should be federal money, or the government
5 --

6 MR. SCHMALZ: Well, it should either be federal
7 money or a federally tailored program. I think Mr. Griffith
8 this morning said that the type of remedy that you would
9 fashion would depend on the circumstances, and it might not
10 necessarily be out of the general funds. It might be some ad
11 hoc mechanism for doing this.

12 COMMISSIONER BERNTHAL: I don't think anybody has
13 argued that federal money should pick up where the private
14 sector leaves off. What the argument --

15 COMMISSIONER ASSELSTINE: I thought Mr. Schmalz's
16 argument --

17 MR. SCHMALZ: I said there should be some financial
18 support or some support. Now the support would be in my
19 judgment a reasonable restriction on liability and a
20 reasonably fundable program.

21 COMMISSIONER ASSELSTINE: If you weren't going to
22 put the money on the federal government and you were going to
23 go back and try and collect it from the utilities, wouldn't
24 you get into the same kind of mess that the Congress got into
25 on TMI clean-up, where all of a sudden you were going back

1 after the fact and trying to get Congressmen and Senators from
2 other states that didn't have the accident to try and agree to
3 have their ratepayers come up with money to pay for those
4 kinds of things? It looks to me like the outcome would be
5 precisely the same as it was with the clean-up, for actually a
6 far lower amount of money, perhaps.

7 MR. SCHMALZ: Well, they have been developing a
8 retrospective program with respect to some Superfund
9 liabilities. So I think they have probably advanced a little
10 bit from that Three Mile Island proposition. I would hope so.

11 CHAIRMAN PALLADINO: Let me interrupt, and see if
12 Commissioner Bernthal has questions.

13 COMMISSIONER BERNTHAL: I have one dumb question,
14 first of all. Maybe a lot of mine are not very enlightened.
15 But I'm just curious. You've pointed that that you've been
16 considering or have considered at some point going from one
17 \$150 million to \$200 million in the private insurance pools.

18 Given the fact that we are now looking seriously at
19 at least \$2 billion overall indemnification -- and I
20 personally am not sure that that's an adequate number -- it
21 begins to become a pretty small number. Why should we attach
22 great significance at all to the private insurance pools here
23 at this point? Why should -- in fact, I might even go further
24 than that and just ask why we should even fool with it.

25 MR. SCHMALZ: Well, it's a good question. We came

1 into this program when there was no chance of the program
2 being started unless we did the unprecedented thing of
3 marshaling \$120 million, 60 million on liability and 60
4 million on property --

5 COMMISSIONER BERNTHAL: I understand that.

6 MR. SCHMALZ: Now we have gotten into various
7 assessment mechanisms and suggested kilowatt hour taxes or end
8 use taxes, different financing mechanisms.

9 The question is really whether you would like to
10 have an in-place mechanism such as responded to Three Mile
11 Island with \$160 or \$200 million that could get the program
12 off. We have teams of insurers organized, they're bound to
13 respond and so on. It saves you all that headache of getting
14 an organization set up.

15 We can't assume the whole risk, but we can give you
16 some help with that sort of thing if you think it's useful.

17 COMMISSIONER ASSELSTINE: You get money out fast and
18 process. I think that's useful.

19 MR. SCHMALZ: And we do that essentially for no
20 profit on the claims-handling. But there's a limit to how
21 much we can do for no profit.

22 COMMISSIONER BERNTHAL: Let me ask this, and I don't
23 even know how this thing works, I guess, beyond the \$160
24 million. Are you out of the picture after the \$160 million is
25 exhausted, or do you continue to perform that function before

1 --

2 MR. SCHMALZ: No, we will continue to perform it for
3 the Nuclear Regulatory Commission under our contract.

4 COMMISSIONER BERNTHAL: If you were out of the
5 picture, then, in principle, there would not be the
6 institutional structure for carrying that out?

7 MR. MARRONE: Let me describe it. The first layer
8 of insurance is \$160 million. Our annual premium last year
9 was around \$35 million from the whole nuclear industry,
10 subject to a retro plan where up to 70, 75 percent of that is
11 returned.

12 And for the second layer, the retrospective rating
13 system, we provide an insurance policy, we collect the
14 premium. We also act as a financial guarantor. To the extent
15 the utility fails to pay its retro premium, like the reactor
16 that has the accident, if it has three reactors, one of them
17 has an accident, it might well be unable to pay its \$15
18 million -- five for each.

19 We have accepted financial responsibility for that
20 default up to a maximum of \$30 million for each accident.

21 And so the second layer is administered through the
22 insurance industry, and for that we don't charge a fee.

23 COMMISSIONER BERNTHAL: I did have one other
24 question I'd like to ask. Your statement here is replete with
25 references to catastrophic accidents in the nuclear industry,

1 and it takes as a given the fact or the proposition, I should
2 say, that the truly catastrophic accident -- I may not be
3 quoting exactly -- but words like that are in there, or that
4 that's a proposition that's accepted all around.

5 And yet, on the other hand, the technical experts in
6 the industry are urging us that the source term estimates are
7 much too high, at least a factor of 10, I think, is how it
8 goes, and very possibly a factor of 100. And I'm sure I
9 needn't tell you that if it really were a factor of 100 too
10 high, we could probably all forget this business and go home
11 because there would be no offsite consequences.

12 How do you square that with the language that you
13 used? Don't you accept their analysis of the situation, or
14 where are you as hard-nosed private sector insurers?

15 MR. SCHMALZ: Well, I'd say as hard-nosed private
16 insurers, we go out and test the world markets for what
17 capacity is available at what price. And the answers that we
18 get back gauge what we can offer.

19 Now you must realize that private insurers really
20 have an obligation to their other policyholders as well as
21 their stockholders, if they're stock insurance companies, but
22 their other policyholders to maintain the integrity of the
23 pooled funds. And they cannot afford to take a risk with
24 respect to nuclear power or nuclear insurance that they feel
25 is unreasonable in relation to the premium volume that they

1 receive.

2 COMMISSIONER BERNTHAL: So it has nothing to do with
3 risk estimates, it has to do with dollar value?

4 MR. SCHMALZ: It has to do with a combination of
5 risk estimates and dollar values. But our insurance is geared
6 to some reasonable limitation on liability. The liability
7 under our policies and, as I explained here, the liability to
8 the whole industry.

9 COMMISSIONER BERNTHAL: Did you have a comment?

10 MR. MARRONE: The insurance premium volume last year
11 was around \$35 million, and we were able to provide -- we, the
12 worldwide insurance market -- about \$190 million of just
13 liability capacity based on \$35 million of premium, a ratio
14 that might be \$6 or \$7 of capacity, \$6 or \$7 of capacity to \$1
15 of premium. And that's an extraordinarily high ratio of
16 insurance capacity, annual premium.

17 Normally -- well, normally, I guess there's not much
18 that would compare except maybe aircraft, where there might be
19 \$500 or \$600 million of annual premium, and maybe \$700 or \$800
20 million of -- \$500 or \$600 million of premium and maybe \$700
21 or \$800 million of capacity.

22 COMMISSIONER BERNTHAL: Well, let me just follow up
23 for a moment. Have you taken a serious look at the technical
24 claims being made now particularly by the industry about the
25 source term? Or does that essentially not enter into your

1 thinking?

2 MR. SCHMALZ: No, we certainly do look at that, and
3 that certainly gives us some comfort. And that would be the
4 sort of information, if we felt, you know, that we were
5 satisfied with, that we would pass on to our potential
6 suppliers, so we take that into account.

7 CHAIRMAN PALLADINO: You may be waiting for the NRC
8 to decide on the basis that it has what it conclusions it
9 draws from that.

10 MR. SCHMALZ: Yes, we certainly would.

11 CHAIRMAN PALLADINO: Well, let me suggest we go to
12 Commissioner Zech. We are way over time. We are almost
13 double our 20 minutes.

14 COMMISSIONER ZECH: Let me just ask one question, if
15 I may. Are there alternatives to the Price-Anderson system
16 which the insurance industry would prefer? And if I may make
17 a second part to that question, if the Price-Anderson system
18 disappeared for some reason or other, how would this affect
19 the level of liability which the insurance company could
20 provide in case of a nuclear accident?

21 MR. SCHMALZ: Well, I think that we would need
22 something like the Price-Anderson system, with those key
23 elements in it that I mentioned, or failing that, I think the
24 private market for nuclear insurance would virtually
25 disappear.

1 COMMISSIONER ZECH: So you're saying that the
2 Price-Anderson system or something similar to it is necessary?

3 MR. SCHMALZ: Is necessary if you want to have a
4 substantial --

5 COMMISSIONER ZECH: If you want the money to be
6 available in a prompt and full compensation manner?

7 MR. SCHMALZ: Yes. Yes. And, of course, we do not
8 directly concern ourselves here with property insurance, but
9 we do also make approximately \$585 million of property
10 insurance available. That, too, would disappear, because that
11 is really part of the total package.

12 COMMISSIONER ASSELSTINE: How does that differ, how
13 does this area differ say from commercial airlines? How do
14 you offer insurance for commercial airlines? How much do you
15 offer per incident, and why would you be willing to offer
16 insurance there, where there is no limit on liability, at
17 least domestically, and you wouldn't be willing to offer any
18 insurance in the nuclear area?

19 MR. SCHMALZ: Well, the premium flow is different,
20 the accidents are fairly predictable in the aircraft, and
21 statistically they are fairly predictable, and quite frankly,
22 there is political risk in the nuclear insurance business
23 because if we did have another severe accident, you in your
24 wisdom might very well decide that you've got to pause
25 everything for quite a while. And that cuts off the premium

1 flow, of course.

2 CHAIRMAN PALLADINO: Do you have more?

3 COMMISSIONER ZECH: No, thank you, Mr. Chairman.

4 CHAIRMAN PALLADINO: Well, thank you very much,
5 gentlemen. I know we all have more questions, but we'll take
6 advantage of going on and then maybe coming back if there is
7 some burning question.

8 MR. MARRONE: Thank you very much for giving us this
9 opportunity.

10 CHAIRMAN PALLADINO: Thank you.

11 Now the next panel is Jerry Salzman.

12 [Laughter.]

13 COMMISSIONER ASSELSTINE: Guy will make it a panel.

14 CHAIRMAN PALLADINO: Jerry, I don't want to preempt
15 anybody's else question, but could you explain to me in simple
16 terms why the cap makes a difference on -- I forgot now --

17 MR. SALZMAN: On the omnibus coverage?

18 CHAIRMAN PALLADINO: Yes.

19 MR. SALZMAN: I don't understand. Perhaps Guy could
20 -- we had always assumed that omnibus coverage would stay in
21 there even under the proposal --

22 CHAIRMAN PALLADINO: What do you mean by omnibus
23 coverage?

24 MR. SALZMAN: That it would cover anyone who may be
25 liable. The suppliers, the utilities, anyone who may be

1 liable. And there was never any intent in our proposal not to
2 have the omnibus coverage continue. And we would think that
3 it is basically a drafting operation to get the language
4 right, to continue the omnibus coverage.

5 CHAIRMAN PALLADINO: Okay. Well, I couldn't
6 understand the earlier explanation, and I think you have
7 helped me already.

8 MR. CUNNINGHAM: Mr. Chairman, let me address that
9 for you briefly, if I might.

10 As Mr. Gleason pointed out, no member of Congress
11 has introduced the Commission's proposal. In point of fact,
12 no one has ever translated the Commission's proposal into
13 legislative language. So the point hasn't been addressed. It
14 could be addressed in one of two ways:

15 One is, as we've talked about, the channeling of
16 liability. That would make it clear you look to the fund and
17 only to the fund.

18 CHAIRMAN PALLADINO: You look to the fund and only
19 to the fund? Is that what channeling liability means? I was
20 going to ask that question.

21 MR. CUNNINGHAM: Right. It will say it is the
22 liability of the operator, he becomes the person indemnified
23 and so forth.

24 Now another option is -- as a different way of
25 stating that, would be a simple provision which would say

1 satisfaction of the public liability of any person indemnified
2 shall be exclusively from the fund.

3 In theory, the persons indemnified could be people
4 other than the operator, but you have said only the fund is
5 used to pay that liability.

6 So there are ways to handle it. It's a drafting
7 question, and since the proposal hasn't been put into
8 statutory language yet, it hasn't been addressed.

9 CHAIRMAN PALLADINO: So at least in intent we do
10 want to maintain the omnibus coverage?

11 MR. SALZMAN: Absolutely. Sure.

12 CHAIRMAN PALLADINO: Okay. Thank you. Why don't I
13 let you go on.

14 MR. SALZMAN: I know you have many questions and the
15 time is late. The questions that were submitted by
16 Commissioner Zech I think particularly focused what much of
17 the arguments are about and what we are trying to defend here,
18 and with your permission I'd like to just go and read the
19 questions and answers, and we are available to answer them one
20 by one if you want to go further into them or into additional
21 questions that you have.

22 The first question was:

23 What bearing does the extension of the
24 Price-Anderson Act have on the NRC's responsibilities to
25 assure that the public health and safety is protected?

1 The answer:

2 The Staff does not believe that the extension of the
3 Price-Anderson Act has a bearing on the NRC's responsibilities
4 to assure the public health and safety is protected. The
5 financial protection provided for under the act has never been
6 viewed as a substitute or supplement to the NRC's health and
7 safety responsibilities such as standards-setting, licensing,
8 inspection and enforcement.

9 The second question:

10 What aspects of the Price-Anderson Act system are of
11 particular significance to NRC from a regulatory standpoint?

12 Some of this you'll see was covered in the exchange
13 of questions and answers we've already heard.

14 Beyond the response to the first question, the
15 significance to the NRC of the Price-Anderson Act pertains to
16 protection of the public in a broader sense, particularly the
17 objective of providing timely and full compensation to anyone
18 injured as a result of an accident covered by the provisions
19 of the act. One need only look at the experience of the Three
20 Mile Island accident and contrast the smooth operation of the
21 public compensation mechanism provided by the nuclear
22 insurance pools under the Price-Anderson Act with the
23 difficulties in clean-up of TMI-2 that were compounded for
24 many years by the failure to have in place a system to provide
25 adequate funds for on-site decontamination and clean-up. It

1 would be easy to see that if the mechanisms under the
2 Price-Anderson Act had not been in place with respect to
3 public liability, that a whole new area of complications with
4 even greater detrimental impacts on the public would have
5 arisen than was the case with respect to decontamination and
6 clean-up.

7 [Commissioner Roberts left the meeting.]

8 Third, has the Staff conducted any studies or
9 analysis on the preferred approach to assure timely
10 availability of funds to assure full compensation?

11 Answer:

12 Those studies and analyses carried out by the Staff
13 in NUREG 0597 and in the more recent information included with
14 the Chairman's testimony before the House Subcommittee on
15 Energy and the Environment focused on the commission's
16 December 1983 recommended position as the preferred approach
17 to ensure the timely availability of funds for full
18 compensation. Since results of these studies show that an
19 annual assessment of \$10 million per reactor per year would
20 not place unusual financial stress on most utility licensees,
21 there is every reason to believe that the payment of these
22 retrospective premiums would be available to pay public
23 liability claims in a timely manner.

24 Fourth. In the Staff's view, what size fund should
25 be adequate to assure timely and full compensation?

1 COMMISSIONER BERNTHAL: Can I just interrupt here on
2 question 3, because it's not just your statement here, but we
3 have many, many times here heard the proposition implied that
4 this billion dollars a year would ensure timely compensation.
5 And yet I have to wonder in the case of a truly catastrophic
6 accident, why would that even be adequate? Why is there the
7 presumption that that would be timely at all?

8 MR. SALZMAN: Well, Commissioner Bernthal, I have
9 been thinking seriously about the point that you raised at the
10 hearings before Commissioner Udall to both the adequacy --

11 COMMISSIONER BERNTHAL: He's the chairman. But
12 that's all right.

13 MR. SALZMAN: -- both to the adequacy of the billion
14 dollars and also the billion dollars a year being a big pocket
15 that will continually be replenished and will be paid out.

16 It's easy to think of a billion dollars in some
17 sense as a big number and as a small number, and focusing on
18 it as a small number, even with a run-away jury and the worst
19 thoughts we can give to it, a billion dollars is still an
20 award to 1000 people of \$1 million each every year. And it's
21 hard to think about spurious claims being awarded for 1000
22 people at \$1 million a year, year after year after year.

23 COMMISSIONER BERNTHAL: But it's very easy to
24 imagine running up a billion dollar bill, and I suppose the
25 resources could be marshalled for property clean-up, but in

1 fact that is the more likely large economic consequence of a
2 nuclear accident. I think that's a point that's perhaps not
3 often realized.

4 MR. SALZMAN: That's right. And now the utilities
5 and the insurance pools have come up with the wherewithal for
6 a billion dollars in onsite clean-up.

7 COMMISSIONER BERNTHAL: No, no, I'm not talking
8 onsite clean-up.

9 MR. SALZMAN: Okay. On offsite, you could very well
10 have a billion dollars. If we're talking about NUREG 0597
11 proposal of \$1 billion, and \$2 billion figure that
12 Commissioner Zech and Commissioner Roberts had talked about, I
13 think some of the difference we're seeing is simply
14 arithmetic. The Staff had done its calculations based on 100
15 reactors at \$10 million each.

16 The Simpson-McClure bill does it on 115 reactors at
17 \$15 million each. It comes out to \$1.9 billion. It's the
18 same, just the assumptions are changed, but the arithmetic is
19 the same.

20 So whether it's \$1 billion or \$2 billion, it's all a
21 question of whether you count 100 reactors or 115 reactors,
22 and whether your retro is \$10 million or \$15 million.

23 COMMISSIONER ASSELSTINE: The difference being under
24 NUREG 0597 it keeps going. So if that's not adequate the
25 first year, then it keeps going.

1 MR. SALZMAN: But even if we were to forget that
2 part of the NRC's proposal and simply look at it as a one-year
3 basis, we said \$1 billion and Simpson-McClure said \$2
4 billion. But the difference is simply in arithmetic. We
5 counted 100 reactors, they counted 115. We counted \$10
6 million retro, they counted 15. If you do the multiplication,
7 we would come out exactly the same.

8 COMMISSIONER ASSELSTINE: And the \$2 billion you
9 have to put aside, that's all you have. You have to put aside
10 part of that money for latent claims.

11 MR. SALZMAN: Oh, yes, absolutely, but I was just
12 trying to get it down to the simple difference between the one
13 and two billion. We're really talking about the same thing.

14 COMMISSIONER BERNTHAL: Yes. I don't dispute that,
15 but my point is it seems to me that the more desirable feature
16 is to have something perhaps considerably larger available in
17 the first two or three years, especially in the first year.

18 MR. SALZMAN: It could be done. If it is decided by
19 Congress that what they really want is a limitation of
20 liability, absolutely, you could take the NRC's proposal in
21 0597 and just run it out some number of years, and so that the
22 utilities would know, okay, I'm in it for just five years or
23 ten years or something and that's it. Yes.

24 COMMISSIONER ASSELSTINE: But it's going to take a
25 while, if you have that kind of an accident, I would think,

1 to process the claims, even the near-term claims. And I'm not
2 sure you'd get all of those processed within that first year,
3 and particularly property damage claims may extend out a few
4 years when you have that extra money available.

5 [Commissioner Roberts rejoined the meeting.]

6 MR. SALZMAN: Yes. When we had worked on the annual
7 retrospective premium proposal, we went it out to our
8 insurance consultant, Prof. Long at Indiana University, and
9 one of the points he raised was that the flow of money coming
10 in over the years would probably be about the same as the
11 claims. They won't all come crashing in on the first year,
12 but they will be spread out, and it's probably reasonable that
13 the payments would be spread out.

14 COMMISSIONER BERNTHAL: Well, where it peaks is
15 another question, but I will bet you that it peaks somewhere
16 in the first very few years. And in the case of a large
17 accident with a massive contamination of property, that would
18 surely -- or it seems to me most likely would be the source of
19 large claims.

20 COMMISSIONER ASSELSTINE: Except I think you're
21 going to have lots of latent claims down the road, too. If
22 you have that kind of release, you're going to have widespread
23 public exposure and you're going to have latent claims down
24 the road.

25 COMMISSIONER BERNTHAL: I don't agree with that, but

1 let's leave that alone. I doubt that you'll have widespread
2 public exposure.

3 CHAIRMAN PALLADINO: But if the source term is
4 reduced significantly, then maybe that won't be such a big
5 problem.

6 Can we go ahead?

7 COMMISSIONER BERNTHAL: Yes.

8 MR. SALZMAN: Let's see. Had I completed No. 4?

9 In the Staff's view, what size fund would be
10 adequate to assure timely and full compensation?

11 The Staff does not know whether any size fund could
12 be established in advance as being adequate to assure timely
13 and full compensation. As pointed out in NUREG 0957, it may
14 be very difficult to reach a consensus in any single figure
15 for a revised level of the limitation and the revised level
16 might not prove sufficient to cover all public liability
17 claims in every potential accident situation. The inability
18 to assign in advance an ultimate figure to the limitation of
19 liability contributed toward initiating an alternative that
20 would provide a large source of funds to meet all potential
21 claims without putting the burden of miscalculation of the
22 limitation on either the victims or the taxpayers, and led to
23 the recommendations in NUREG 0957.

24 No. 5. Why should active participants in the
25 nuclear industry, such as vendors, architect-engineers and

1 construction contractors get a free ride under the
2 Price-Anderson system?

3 NUREG 0957 points out that requiring nuclear
4 operators to enter into retrospective insurance agreements --
5 that's wrong, it should be nuclear participants enter into
6 retrospective insurance agreements would increase the funds
7 available to pay public liability claims. It also pointed
8 out, however, that suppliers entered the nuclear industry
9 without any such requirement, and that to apply it now to
10 existing plants would create a burden suppliers may not have
11 accepted, had they known it would be imposed.

12 Furthermore, if the same assessment were used for
13 utilities, it would represent a much larger proportional share
14 of the total costs of products supplied by a particular vendor
15 than would the assessment on a utility.

16 Just to illustrate what I mean on that last point,
17 in Appendix C to 0957, we do a typical reactor in 1981 dollars
18 which was something like \$1.1 billion in total cost, of which
19 something like \$125 million was the NSSS system. So \$5
20 million against \$125 million is quite different than \$5
21 million against the \$1.1 billion. It's a much bigger impact
22 when you have only four NSSS vendors, for example, as opposed
23 to multiple utilities.

24 This system that we came up with, even a
25 retrospective system of 1975, could really only work in the

1 United States where you have many, many utilities to spread
2 the risk. It wouldn't work, say, in Japan where there are
3 just two or three.

4 COMMISSIONER BERNTHAL: How could you possibly
5 retrospectively expand it in any case? There would surely be
6 all sorts of Constitutional and other issues raised, I would
7 think.

8 MR. SALZMAN: Now if they knew in advance, if you
9 had started off with a system that applied it to AEs and
10 applied it to NSSS vendors, they could have put it in their
11 costs and this would have been passed on, anyway.

12 COMMISSIONER BERNTHAL: Exactly.

13 COMMISSIONER ZECH: Mr. Chairman, I appreciate the
14 work the Staff has done to answer these questions. I think
15 they are pretty important questions. I certainly want to
16 review all your responses carefully, but in view of the time
17 limitation, perhaps we'd be better off just to review these
18 later on and let the Staff give us any thoughts they might
19 have in summary and provide just a little bit of time for our
20 questions.

21 I just offer that as a suggestion.

22 CHAIRMAN PALLADINO: Are there any particular ones
23 of these questions that --

24 MR. SALZMAN: I think there are a couple that I want
25 to point to, yes.

1 CHAIRMAN PALLADINO: I think if we just --

2 COMMISSIONER ZECH: However they want to highlight
3 them, yes. I appreciate the effort that's gone into them, and
4 I want to study them carefully, and I will, but I don't know
5 that you need to read every one here at the time. I thank you
6 for the effort.

7 MR. SALZMAN: Let me just read one or two, then.

8 No. 8. "Why does the Staff believe it equitable to
9 place substantial limited liability in the form of
10 retrospective premiums on a utility with a large number of
11 operating plants? Why should the ratepayers served by such a
12 utility be subjected to prolonged payoffs for the acts or
13 omissions of a utility which has the accident?"

14 Answer: "The key phrase in this question appears to
15 the Staff to be 'prolonged payoffs.' The question of equity
16 with respect to retrospective premiums placed on a utility
17 with a large number of operating plants for the acts or
18 omissions of another utility which has the accident was
19 addressed and presumably resolved when the utility industry
20 supported the 1975 Amendments to the Price-Anderson Act, which
21 first introduced the idea of retrospective premiums for
22 nuclear liability.

23 "In fact, the use of similar assessments for nuclear
24 property insurance, including as an inherent element the
25 placement of a greater burden on utilities with a larger

1 number of operating plants, was put into place by the
2 utilities themselves without any federal legislation prior to
3 the Price-Anderson Amendments.

4 "Admittedly, the potential for retrospective
5 premiums to continue to be paid over a number of years
6 introduces a new element that is probably unique in any
7 enterprise. The question of whether it is equitable cannot be
8 viewed in isolation. Rather, the question should be whether
9 it is more or less equitable than paying the burden -- than
10 have the burden fall on the taxpayers or the victims of the
11 accident."

12 And the other one I wanted to answer was No. 9:
13 "Why does the Staff believe that the balance in the
14 Price-Anderson Act system is maintained by an approach which
15 permits unlimited liability, albeit with an annual cap, waiver
16 of defenses, and a long statute of limitations?"

17 Answer: "The Staff does not believe that the
18 balance in the Price-Anderson Act that was established in 1957
19 would be maintained under the approach recommended in
20 NUREG-0957. However, the 1957 balance was modified in the
21 1965 Amendments to the Act when government indemnity was
22 lowered as private insurance was increased; in the 1966
23 amendments to the Act, when the concept of waivers of defenses
24 was introduced; and in the 1975 amendments to the Act, when
25 government indemnity was phased out as the retrospective layer

1 of insurance increased.

2 "What is sought here in the recommendations of
3 NUREG-0957 is a new balance where the potential burden of the
4 victims and the taxpayers is assumed by the utilities and
5 their ratepayers."

6 I'll just stop right there, and you can ask whatever
7 questions you have.

8 CHAIRMAN PALLADINO: I have two questions, Jerry,
9 that I wanted to ask.

10 Do you have any particular comments on the Senate
11 bill, S. 1225?

12 MR. SALZMAN: Yes, Mr. Chairman. We have done an
13 analysis which has been included in the draft of the testimony
14 that we have sent down to you. In general, we support that
15 bill and find many good features about it. There is nothing
16 that we necessarily do not support, although we raise some
17 reservations about how the mil per kilowatt hour plan would
18 work, both in terms of its timeliness, especially if you had a
19 number of reactors shut down immediately after an accident,
20 and also in terms of what its general benefit is, instead of
21 just continuing, say, the NRC's proposal over a number of
22 years with a cutoff that way.

23 CHAIRMAN PALLADINO: But doesn't it suffer also from
24 the fact that after the accident, if it's a tremendous one,
25 that exceeds the capacity available, that the President has to

1 ask Congress to do something more? Doesn't it suffer the same
2 thing that the TMI-2 cleanup suffers?

3 MR. SALZMAN: Well, if you're going to have a
4 limitation of liability and you're going to rely on language
5 such as presently found in the Act, that Congress will review
6 the situation, I think the Simpson-McClure bill goes much
7 further in nailing down exactly what the President will look
8 at and what Congress will look at and putting in an
9 accelerated schedule.

10 So I think to that extent, it's better.

11 I notice that in the section-by-section analysis of
12 the bill, there is some suggestion that Congress and the
13 President will look at various sources of funds. And what we
14 asked there is, what are these sources of funds?

15 At an NGA meeting a few weeks ago, the National
16 Governors Association, when this was addressed by a
17 Congressional staff representative, he suggested that these
18 sources of funds might include taxpayer funds, but they might
19 also include a higher retrospective premium after the fact, or
20 even going back to the person who had the liability -- the
21 supplier, the AE, or the utility. And we suggest that this be
22 made clear in advance before people really start signing off
23 on this proposal.

24 CHAIRMAN PALLADINO: Well, this is why I was asking
25 earlier, wasn't that uncertainty greater -- a greater

1 deterrent to those schemes than do ours?

2 MR. SALZMAN: It occurred to me it was, but I'll
3 just have to --

4 COMMISSIONER ASSELSTINE: Well, isn't the Chairman
5 right? You're right that there are expedited procedures in
6 the bill. But all those expedited procedures do is get you to
7 a vote in a hurry.

8 MR. SALZMAN: Yes.

9 COMMISSIONER ASSELSTINE: And they don't dictate the
10 outcome of that vote.

11 MR. SALZMAN: That's right.

12 COMMISSIONER ASSELSTINE: And isn't it, in essence,
13 the same kind of debate that occurred over the TMI-2 cleanup
14 and that ultimately led to the absolute impasse and the
15 failure to be able to move on the Hill on anything?

16 MR. SALZMAN: The only difference is that here, at
17 least, this Congress is saying that they think this is
18 something that should be addressed by a future Congress.

19 In the TMI cleanup, there was never any intention
20 ever shown by any Congress that it was a matter of national
21 law.

22 COMMISSIONER ASSELSTINE: Sure. But it's well
23 settled that one Congress certainly can't bind a future
24 Congress.

25 MR. SALZMAN: That's right.

1 COMMISSIONER ASSELSTINE: And this Congress can say
2 all it wants, but --

3 CHAIRMAN PALLADINO: Well, can I ask another one?
4 In studying the financial impacts on the \$10 million annual
5 limit on liability, what consideration was given to the impact
6 of possible plant shutdown following an accident?

7 MR. SALZMAN: We -- I can't say that we looked at
8 that specifically at all. We looked at balance sheet
9 questions, and the question last year that was raised in the
10 Udall hearings was, where is the Staff's analysis of what the
11 impact would be? And we did the only thing we could do, which
12 is look at what's in writing, what's on the balance sheets,
13 and we saw a very large earnings level, a very large cash
14 flow. We looked at three years, 1981 to 1983, which included
15 a very bad year in 1981 and a relatively good year in 1983 and
16 found that the variations from '81 to '83 were even greater
17 than any of the impacts would have been on these retrospective
18 plans.

19 So as to what the impact would be on the shutdown,
20 it's hard to say. But when you look at the numbers, the big
21 numbers in these utilities, as you heard Mr. Griffith say --

22 CHAIRMAN PALLADINO: Well, you might want to think a
23 little more about that.

24 MR. SALZMAN: We could only speculate, though.
25 That's the trouble. It's all speculation.

1 We were able to deal with hard numbers when we
2 looked at the balance sheets. But the sorts of things that
3 Mr. Griffith was talking about today, which may be true, we
4 have no way of saying yes or no.

5 CHAIRMAN PALLADINO: I'm going to take the privilege
6 of one other question, and then we'll go on.

7 The point was made that nobody has introduced a bill
8 based on our report. Now when we wanted other bills
9 introduced, we went to our appropriate committee and said, "At
10 least as a courtesy, won't you introduce our bill?"

11 Should something like that be proposed here? I
12 don't know the protocol or what our responsibilities are in
13 this area.

14 MR. CUNNINGHAM: Well, this case is slightly
15 different than the one where we wanted a report. The report
16 we submitted in 1983 was pursuant to a request of Congress.
17 They didn't ask us for legislation; they asked for a report.

18 COMMISSIONER ASSELSTINE: In fact, a requirement in
19 the Act.

20 MR. CUNNINGHAM: Now if the Commission feels that it
21 wants its proposal enacted into law, it has the option, of
22 course, of writing a draft bill and requesting that it be
23 introduced.

24 CHAIRMAN PALLADINO: All right. Maybe that's enough
25 for now.

1 Okay. Tom?

2 COMMISSIONER ROBERTS: Quick question. I want to
3 make sure I understood what you said.

4 You said that in the Simpson-McClure bill, you did
5 consider that other plants would be closed down, but you
6 didn't in the '83 report?

7 MR. SALZMAN: Yes, because of the way the obligation
8 works. In Simpson-McClure the charge is made per kilowatt
9 hour generated.

10 COMMISSIONER ASSELSTINE: At least part of it, yes.

11 MR. SALZMAN: Yes, the one mil per kilowatt hour,
12 the third layer. If a plant is not operating, it's not
13 generating any kilowatt hours, so you can't collect any mils
14 from that plant or any others that are shut down.

15 The retrospective premium plan, even today under the
16 existing Price-Anderson Act, charges all reactors who have
17 operating licenses, whether they are operating not.

18 COMMISSIONER ROBERTS: Thank you. Okay.

19 CHAIRMAN PALLADINO: Jim?

20 COMMISSIONER ASSELSTINE: It looks like the Staff
21 has done a good job on the questions, and I want to read the
22 rest of the answers.

23 COMMISSIONER BERNTHAL: I've got a question or two.
24 Since we've had an earlier discussion about it, I'm curious
25 to hear your quick, abbreviated thoughts on whether there is a

1 Constitutional issue, or whether or not that, a fundamental
2 issue underlying the change from a capped liability to at
3 least an annual cap on liability in lieu of calling it
4 unlimited liability.

5 MR. SALZMAN: Well, can I give a layman's answer
6 first, and then turn to Guy.

7 COMMISSIONER BERNTHAL: It would probably be best to
8 give a layman's answer.

9 MR. SALZMAN: I think there's definitely an equity
10 question, and you are changing the rules of the game. The
11 same thing, as Commissioner Asselstine pointed out, happened
12 in 1975, and the way we worked around the Constitutional
13 question was to redefine "financial protection" to include
14 this new second layer. And so the way --

15 COMMISSIONER BERNTHAL: But it was not such a
16 fundamental change, I think.

17 COMMISSIONER ASSELSTINE: Sure it was.

18 MR. SALZMAN: Well, at the time they considered that
19 it was.

20 COMMISSIONER ASSELSTINE: You bet.

21 MR. SALZMAN: And I understand that there were some
22 utilities that were considering going to court on the
23 Constitutional question, and other utilities prevailed and
24 talked them out of it.

25 COMMISSIONER ASSELSTINE: Because before '75, all a

1 utility had to do was buy insurance. All they had to do was
2 pay their insurance premium, and that was it.

3 MR. CUNNINGHAM: Yes, I think that's a key point.
4 There was a Constitutional question in 1975, but no one
5 pursued it. I think essentially a bargain was reached and
6 said, "The deal is a pretty good one." That question can be
7 raised again.

8 COMMISSIONER ASSELSTINE: Right.

9 COMMISSIONER BERNTHAL: And so at least there is
10 still a question?

11 MR. SALZMAN: Yes. The Columbia Study points out
12 that there is still a question.

13 COMMISSIONER BERNTHAL: Finally, I want to get to
14 what, for me, has been one of the very persuasive issues here,
15 and that is what the tort law system demonstrably has done in
16 many other cases, quite outside the nuclear industry, and
17 promises, I suspect, to do in the future, where by the
18 mechanism you propose here, you set up a billion dollar pot of
19 gold forever and ever that can support a whole new industry of
20 legions of lawyers supporting themselves forever under
21 Price-Anderson.

22 What's your response to that? And given that I
23 suspect we all have some agreement that the claims that are
24 provable, at least, are likely to peak somewhere in the --
25 certainly, I should think within the first five years -- yet

1 you are providing the incentive to go on ten, twenty, up to
2 thirty years, in fact, given the statute of limitations under
3 your proposal.

4 MR. SALZMAN: Oh, yes. It's even longer than that.
5 It's really indefinite, so long as people continue to come up
6 with claims.

7 I guess the answer to that is --

8 COMMISSIONER ASSELSTINE: Well, it's governed by the
9 statute of limitations.

10 COMMISSIONER BERNTHAL: I thought it was thirty
11 years.

12 MR. CUNNINGHAM: Under the proposal, the '83
13 proposal. It's twenty now.

14 COMMISSIONER BERNTHAL: Yes.

15 MR. SALZMAN: But I guess the only answer I can
16 think of is that, if put aside legitimate claims and go to
17 spurious claims, I think paying a million dollars a year to a
18 thousand claimants for spurious claims, as bad as our legal
19 system may be, even beyond the worst thing to comprehend, and
20 I just can't imagine juries and judges doing it year after
21 year after year for spurious claims.

22 Perhaps you can. Those are big numbers. Those are
23 -- what are they going to claim for a million dollars --

24 COMMISSIONER BERNTHAL: It's not really a very good
25 defense of your case, though.

1 COMMISSIONER ASSELSTINE: Well, the burden of proof
2 is on the plaintiff. The plaintiff has to prove that he or
3 she was injured and that the injury was caused by the
4 accident.

5 COMMISSIONER BERNTHAL: But I think we've learned
6 and we've heard and the record shows that that happens less
7 and less, that, in fact, there is less and less of the real
8 proof of claims. It's much easier --

9 MR. CUNNINGHAM: But I think the answer to
10 Commissioner Bernthal's question is, you have to concede that
11 under this system with a bigger pot of money, there is the
12 potential for more litigation.

13 COMMISSIONER ASSELSTINE: Sure.

14 MR. CUNNINGHAM: The question is the tradeoff
15 between the bigger pot of money and the question of whether
16 you otherwise have an adequate fund for full compensation. I
17 mean, if you have the big pot of money, you have to concede
18 that there is the opportunity for more litigation.

19 CHAIRMAN PALLADINO: Okay. Lando?

20 COMMISSIONER ZECH: Just for a comment. Let me
21 thank the Staff for the effort that went into providing these
22 answers, and I intend to review them carefully.

23 I would just like to say that, you know, I think
24 it's important that we all focus on what are our
25 responsibilities in this area. As regulators, you know, we

1 are looking out for the public interest, and I think that's
2 where we have got to focus. I think the Price-Anderson Act is
3 indeed a Congressional action that is very important to the
4 public, but we as regulators, we've been asked to comment on
5 it, of course, and that's why we're involved in it.

6 But it seems to me that we ought to keep our focus
7 on what is the public interest? How is the public best
8 served? And although others in the financial world can give
9 us advice and counsel and provide their insights, and industry
10 also, I think it's important that we, as regulators, try to
11 keep remembering that we're looking out for the public
12 interest. And as far as I'm concerned, I'm just trying to
13 focus on -- and I know all my fellow Commissioners are trying
14 to focus on, too -- how is the public interest best served?

15 And full and timely compensation is what we're
16 after, in case we have one of these accidents, which we hope
17 we'll never have, but we recognize that it is a remote
18 possibility.

19 So I think we ought to focus all our efforts on our
20 own responsibilities for the public health and safety and try
21 not to get too involved on expertise which is others, but to
22 listen to their advice and counsel and do the best we can to
23 keep in mind the public, who are our responsibilities to
24 protect.

25 So that's what I'm trying to do. But I thank you

1 very much for your effort and your support in providing
2 answers which do look very thoughtful to me.

3 Thank you, Mr. Chairman.

4 CHAIRMAN PALLADINO: Thank you.

5 I have a brief set of closing comments I'd like to
6 make.

7 First, I'd like to thank all of today's participants
8 for the time that they've spent with us. I believe the
9 meeting has been a very useful endeavor; at least I learned a
10 few things.

11 COMMISSIONER ASSELSTINE: I agree.

12 CHAIRMAN PALLADINO: Let me suggest as a next step
13 that each Commissioner submit to the Secretary a statement of
14 whether or not he support some or all of the recommendations
15 in the Commission's 1993 report on Price-Anderson. I suggest
16 that these statements be submitted sometime tomorrow, if it's
17 possible, and that we meet to affirm in a public session the
18 Commission's position, as soon as time is available on our
19 schedule.

20 Now the reason I say this, we were severely
21 criticized, at least in one hearing, for the informality of
22 the way we reached our conclusions. So I was trying to say,
23 well, if you could at least give me -- give the Secretary a
24 statement, we can determine whether or not we have support.

25 And then we also were severely criticized, another

1 aspect of our informality, that we didn't affirm it in a
2 public session. And since we're having more hearings on this,
3 I think there would be some desirability to affirm our
4 position.

5 So could I at least suggest that each one of you
6 send in -- and I will also -- send a statement to the
7 Secretary, so we see where we stand?

8 COMMISSIONER ASSELSTINE: Yes.

9 COMMISSIONER BERNTHAL: Joe, I have to say, I feel
10 no need to give profuse apologies for the Commission's
11 actions.

12 In the first place, we are not the ones that are
13 going to make the decision on this. I think Commissioner Zech
14 asked a germane question when he inquired as to the regulatory
15 impact of this issue. We're asked for our opinion on this.
16 We gave our opinion.

17 And I might just point out, in the six days
18 preceding that hearing on the Hill, this Commission had a
19 little business. We lifted the suspension on the TMI
20 shutdown. We met twice in closed session, I believe, on
21 Shoreham. We licensed two plants at full power, with
22 considerable complications, as I recall, and that ain't a bad
23 piece of work for six days. And I'm not surprised at all that
24 there was some difficulty, even though I was unhappy about it
25 as well, that we came before the Congress not entirely

1 prepared to present a collegial position, given the
2 constraints under which we operate.

3 CHAIRMAN PALLADINO: I appreciate the
4 accomplishments, and I am not apologizing for what we did.
5 But Congress always asks, "What have you done for me in the
6 last hour?"

7 COMMISSIONER BERNTHAL: Sure.

8 CHAIRMAN PALLADINO: I still would suggest that we
9 do send a memo to the Secretary, at least stating the position
10 in regards to --

11 COMMISSIONER ASSELSTINE: Yes.

12 COMMISSIONER ROBERTS: I'll be happy to do it. I'm
13 not at all sure I can do it tomorrow.

14 CHAIRMAN PALLADINO: All right. The only reason I
15 was suggesting tomorrow was that perhaps we could do something
16 Monday to affirm it. But we don't have to do it before we go
17 to the next hearing on Price-Anderson, which I think is
18 Tuesday.

19 COMMISSIONER ASSELSTINE: Well, I think if we could,
20 though, that would be wise. However the decision was reached,
21 the fact is, something was given to the committee at the last
22 hearing that purported to represent a majority position. And
23 when we got to the hearing, it wasn't at all clear that that
24 statement was accurate or correct. And we ought to endeavor
25 to do the best we can to make sure that whatever statement we

1 make to them about what the Commission's position is is right.

2 COMMISSIONER BERNTHAL: That part of it, I agree
3 with and, in fact, I think I said at the outset of my comments
4 on the Hill, that I was chagrined that we didn't really have
5 a coherent collegial position to present.

6 All I'm saying is that it seemed to me it was rather
7 understandable in view of the circumstances.

8 COMMISSIONER ZECH: Well, let me just say, I would
9 like to support Commissioner Bernthal's views. I think he has
10 stated them very well.

11 I do agree, though, with the thought that we can
12 probably do a better job, and I think that's what we're trying
13 to do. And so I think we can leave it at that and march on.

14 CHAIRMAN PALLADINO: All right. I would appreciate
15 it if the notes could be sent by tomorrow. But if you can't,
16 Monday morning, before noon, would be also very helpful.

17 Okay. Anything more that we should say?

18 Well, thank you very much, and we will stand
19 adjourned.

20 [Whereupon, at 5:28 o'clock, p.m., the Commission
21 meeting was adjourned.]

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Name of Proceeding: Discussion of Commission Position of
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Docket No.:

Place: Washington, D. C.

Date: Thursday, June 20, 1985

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