

PDR



CHAIRMAN

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 4, 1986

The Honorable Alan Simpson, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The following information is provided in response to your ten questions of July 7, 1986, concerning federal indemnification of public liability claims and Price-Anderson Act legislation. I trust it is responsive to your needs.

If my office can be of further help, please do not hesitate to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lando".

Lando W. Zech, Jr.

Enclosures:
As stated

cc: Sen. Gary Hart

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PDR COMMS NRCC
CORRESPONDENCE PDR

QUESTION 1.

Please list all NRC indemnity agreements pursuant to which the federal government has an obligation to indemnify the licensee for public liability claims and the amount of the potential federal liability in each such case. In addition, please identify the amount of financial protection that is required and the amount of financial protection that is actually carried by each such licensee.

ANSWER.

See attached charts.

Indemnity Agreements With Power Reactors Above 100Mw(e)

(These licensees are required to and maintain financial protection of \$665 million; potential Federal indemnity is \$500 million per nuclear incident)

Licensee

Alabama Power Company
 Arizona Public Service Company
 Arkansas Power and Light Company
 Baltimore Gas and Electric Company
 Boston Edison Company
 Carolina Power and Light Company (2)
 Cleveland Electric Illuminating Company
 Commonwealth Edison Company (5)
 Connecticut Yankee Atomic Power Company
 Consolidated Edison Company
 Consumers Power Company
 Detroit Edison Company
 Duke Power Company (3)
 Duxquesne Light Company
 Florida Power Corporation
 Florida Power and Light Company (2)
 Georgia Power Company
 Gulf States Utilities Company
 Indiana and Michigan Power Company
 Iowa Electric Light and Power Company
 Kansas Gas and Electric Company
 Long Island Lighting Company
 Louisiana Power and Light Company
 Maine Yankee Atomic Power Company
 Metropolitan Edison Company
 Mississippi Power and Light Company
 Nebraska Public Power District
 Niagara Mohawk Power Corporation
 Northeast Nuclear Energy Company
 Northern States Power Company (2)
 Omaha Public Power District
 Pacific Gas and Electric Company
 Pennsylvania Power and Light Company
 Philadelphia Electric Company (2)
 Portland General Electric Company
 Power Authority of the State of New York
 Public Service Company of Colorado
 Public Service Electric and Gas Company
 Rochester Gas and Electric Company

Note: The number in parenthesis represents the indemnity agreements in effect for each licensee-operator of the facility.

Sacramento Municipal Utility District
South Carolina Electric and Gas Company
Southern California Edison Company
Tennessee Valley Authority (2)
Toledo Edison Company
Union Electric Company
Vermont Yankee Nuclear Power Corporation
Virginia Electric and Power Company (2)
Washington Public Power Supply System
Wisconsin Electric Power Company
Wisconsin Public Service Corporation
Yankee Atomic Electric Company

Indemnity Agreements with Licensees Possessing Storage of Nuclear
Material (SNM) License Prior to Issuance of Operating License.

(These licensees are required to and maintain financial protection
of \$1 million; potential Federal indemnity is \$500 million per
nuclear incident)

Licensee

Carolina Power and Light Company
Commonwealth Edison Company
Illinois Power Company
Public Service Company of New Hampshire
Tennessee Valley Authority (2)
Texas Utilities Generating Company

Indemnity Agreements with Power Reactors Less Than 100 Mw(e)

(Potential Federal indemnity is \$500 million per nuclear incident)

<u>Licensee</u>	<u>Required Financial Protection</u>
Consumers Power Company (Big Rock Point)	\$44,400,000
Dairyland Electric Cooperative (La Crosse)	\$30,600,000
Detroit Edison Company (Fermi Unit 1)	\$665,000,000*
Pacific Gas and Electric Company (Humboldt Bay)	\$53,300,000
Philadelphia Electric Company (Peach Bottom Unit 1)	\$665,000,000*

*Fermi Unit 1 and Peach Bottom Unit 1 are single units of multi-unit large power reactor stations; the current maximum financial protection of \$665 million, which is that required of large power reactors, covers all of the reactors at the site.

Indemnity Agreements With Non-Profit Educational Institutions

(Potential Federal indemnity is \$500 million per nuclear incident above \$250,000)

Licensee

Arizona, University of
Brigham Young University
California, University of (4)
Catholic University of America
Columbia University
Cornell University
Florida, University of
Georgia Institute of Technology
Idaho State University
Illinois, University of
Iowa State University
Kansas State University
Kansas, University of
Lowell Technologic Institute
Manhattan College
Maryland, University of
Massachusetts Institute of Technology
Memphis State University
Michigan State University
Michigan, University of
Missouri, University of (2)
New Mexico, University of
New York State University
North Carolina State University
Ohio State University
Oklahoma University
Oregon State University
Pennsylvania State University
Purdue University
Reed Institute
Rensselaer Polytechnic Institute
Rhode Island and Providence Plantations
Texas A & M University of
Texas, University of
Utah, University of
Virginia Polytechnic Institute
Virginia, University of
Washington State University
Washington, University of
Wisconsin, University of
Worcester Polytechnic Institute

Indemnity Agreements With Federal Agency Reactors

(Potential Federal indemnity is \$500 million per nuclear incident; no financial protection required)

Licensee

Armed Forces Radiobiology Research Institute
 U.S. Army Materials Research Agency
 U.S. Geological Survey
 National Aeronautics and Space Administration
 National Bureau of Standards
 Maritime Administration
 Veterans Administration Hospital

Indemnity Agreements With Non-Power Reactors

(Potential Federal indemnity is \$500 million per nuclear incident)

Licensee

Required Financial Protection

Aerotest Operations, Inc.	\$1,500,000
Battelle Memorial Institute	\$1,000,000
Battelle Memorial Institute	\$1,000,000
Dow Chemical Company	\$1,500,000
G. A. Technologies, Inc.	\$2,500,000
General Electric Company	\$18,500,000
Northrop Corporation	\$1,500,000
Rockwell International Corporation	\$1,000,000
Saxton Nuclear Experimental Corporation	\$6,300,000
Union Carbide Corporation	\$2,500,000
Westinghouse Electric Corporation	\$1,000,000
Westinghouse Electric Corporation	\$1,000,000

Indemnity Agreements With Plutonium Processing and Fuel Fabrication Facilities

(Potential Federal indemnity is \$500 million per nuclear incident)

Licensee

Required Financial Protection

Babcock & Wilcox Company	\$160,000,000
Babcock & Wilcox Company	\$160,000,000
General Electric Company	\$160,000,000
Exxon Nuclear Corporation	\$160,000,000
Westinghouse Electric Corporation	\$160,000,000

QUESTION 2.

Aside from the differences in the amount of indemnity required and the agency responsible for implementing the indemnity agreement, what differences, if any, are there in the indemnity obligations of the federal government under an indemnity agreement with a DOE contractor and an indemnity agreement with an NRC licensee?

ANSWER.

The legal obligations of the federal government are the same under both types of indemnity agreements. The major difference under the existing Price-Anderson system is that while contractor indemnification is the "primary" layer of insurance (because DOE contractors are not required to carry private insurance) and would be used to pay the first dollar of public liability, indemnity for large nuclear power reactors is now only a contingency fund since the primary and secondary layers of insurance required by Section 170b. have surpassed \$560 million.

QUESTION 3. (a) What is the intent, scope, and effect of section 170j. of the Atomic Energy Act with respect to the indemnity obligations of the federal government under an NRC indemnity agreement?

ANSWER.

This section allows the NRC to pledge the availability of funds from the United States Treasury in advance of any appropriation of those funds by the Congress.

- (b) In authorizing the NRC to "make contracts in advance of appropriations and incur obligations without regard to section 3679 of the Revised Statutes, as amended," what authority does this provision confer on the NRC that would not be available in the absence of this provision?

ANSWER.

Section 3679 is now codified as 31 U.S.C. 665, Antideficiency Act, and forbids government officers and employees from creating obligations for expenditures or entering into contracts for the payment of money in advance of appropriations "unless such contract or obligation is authorized by law." In the absence of Section 170j., NRC indemnity agreements would not be "authorized by law" and thus would contravene 31 U.S.C. 665.

QUESTION 4. What is the nature of the "obligation" that the federal government incurs when NRC enters into an indemnity agreement? Is the federal indemnity contemplated under these agreements a contractual entitlement?

ANSWER.

The obligation incurred by the federal government is set out in Article III of the indemnity agreement. See, e.g., 10 CFR 140.92. Section 1 of that article states:

The Commission undertakes and agrees to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear from public liability.

The remaining sections of Article III specify the conditions and limitations on this obligation. The indemnity agreement obligates the federal government to supply funds to pay valid claims for "public liability", on behalf of "persons indemnified", in the event of a "nuclear incident". These three terms are defined in Section 11 of the Atomic Energy Act, subsections w, t, and q respectively.

The indemnity agreement is a contract between the licensee and the federal government commencing and terminating as set out in Article VII of the agreement. This article also states that termination of the agreement does not affect the obligations of either the licensee or the federal government for nuclear incidents which occur during the term of the agreement.

QUESTION 5. (a) Under what circumstances and for what type and amount of "public liability claims" is the federal government obligated to pay claims under such indemnity agreements?

ANSWER.

See response to Question 4. The indemnity obligation is triggered by a "nuclear incident." The amount of public liability would be determined by the courts under applicable State law.

- (b) Within the aggregate limit on liability, does the federal government have any discretion to determine the amount of indemnity that it will provide, following a court award, or is it bound by the court's judgment?

ANSWER.

In our view the federal government has no such discretion. The determination of the amount of public liability is made by the courts under State law. In cases determined to be an "extraordinary nuclear occurrence," or where it is possible that public liability will exceed the limitation on liability, a federal district court will preside. In other cases State courts could adjudicate some claims. When claims determinations are judicially complete (including any appeals), the federal government is obligated under the indemnity agreement to pay them on behalf of persons indemnified.

- (c) Does the federal government have any discretion to determine the type of damages it will pay and will not pay, following a court award, or is it bound by the court's judgment?

ANSWER.

In our view the federal government has no such discretion. The indemnity agreement states that the federal government will hold the indemnified party "harmless" from public liability. The determination of the latter is made by the courts under State law. However, the federal government presumably could appeal in the courts a determination of "public liability" which it believed to be contrary to the language or intent of the Price-Anderson Act.

- (d) Does the federal government have any discretion to determine the timing for the payment of such claims (i.e., could the federal government spread the payment of claims out over a period of years, to minimize the budgetary impact), following a court award, or is it bound by the court's judgment?

ANSWER.

The federal government would be bound by the court's judgment. However, the government could petition the court for such an arrangement. In any practical situation, it is likely that determination of public liability would be spread out over a number of years as various classes of claims are heard and adjudicated. Following the Three Mile Island accident, three years were needed to settle certain class action claims and five years for the court to reach judgment on other economic claims, while other personal injury claims are still pending.

QUESTION 6. (a) Where federal indemnity is required, how are valid public liability claims paid? From what source of funds?

ANSWER.

With respect to large power reactors, private insurance, currently set at \$160 million, is used first. The secondary layer, consisting of pro-rata contributions from utilities operating nuclear power plants, is used next. Since federal indemnity has been phased out with respect to these NRC licensees, indemnity funds would be used only to cover defaults in excess of \$30 million in the secondary layer, with a right of subrogation against the defaulting utilities.

With respect to other NRC licensees who do not carry the primary and secondary layers of insurance, indemnity funds would be used from the first dollar of public liability. The source of such funds would be appropriations from Congress.

(b) What role does Congress play in paying such claims?

ANSWER.

The Congress would have to appropriate funds from the United States Treasury to pay public liability claims adjudicated by the Courts.

- (c) Is the NRC required to use whatever appropriated funds are available, even though such funds are appropriated for some other program, project, or activity, for the payment of such claims?

ANSWER.

Funds appropriated by the Congress for specific purposes could not be used to pay public liability claims. Unrestricted funds could be used for the purpose, but such use would adversely affect the ability of the NRC to continue its mission. The NRC would request special appropriations to cover indemnified public liability claims accepted by the courts.

- (d) Does section 170j. require resort to such appropriated funds, or is this a matter of discretion for NRC to determine?

ANSWER.

Section 170j. does not require use of NRC appropriated funds. However, public liability claims covered by an indemnity agreement must ultimately be paid by the federal government. As stated in the response to question 6(c), the NRC would seek special appropriations for any indemnity payments which would otherwise substantially affect the NRC budget.

- (e) In the absence of a decision to employ available appropriated funds, either as a matter of discretion or because the statute required such funds to be used, what additional sources of money are available to discharge the federal government's obligation to indemnify such claims?

ANSWER.

For accidents involving only NRC licensees (i.e., neither the DOE nor a DOE contractor is involved), the only source of funds would be a supplemental appropriation authorized by the Congress from the U.S. Treasury.

QUESTION 7. Under what circumstances, if any, is the judgment appropriation (31 U.S.C. 1304) available to pay public liability claims for which the federal government has incurred an obligation under the Price-Anderson Act to indemnify such claims? Has the judgment appropriation ever been used to pay such claims?

ANSWER.

The cited statute applies only to judgments against the United States. Price-Anderson Act claims adjudicated in the courts would be against "persons indemnified," which does not include either NRC or DOE. Therefore, this statute could not be used as authority for the disbursement of indemnity funds. Should the government fail to disburse the funds, suit could be brought against the United States in the Court of Claims. Judgments rendered by that court against the United States would be paid out of the judgment appropriation.

To our knowledge this statute has never been used in the Price-Anderson context.

QUESTION 8.

Under what circumstances, if any, is NRC authorized to meet obligations incurred pursuant to contracts of indemnification through the borrowing of funds? Is this borrowing subject to Congressional approval, either through the appropriations process or otherwise? Please identify all such authorities available to NRC.

ANSWER.

NRC has no borrowing authority. Any payment of claims under the Price-Anderson Act would come from appropriated funds.

QUESTION 9. (a) What happens if the federal government does not fulfill its obligation to indemnify public liability claims, through any of the options discussed above? What recourse does the accident victim have against the federal government?

ANSWER.

Should the government fail to pay indemnity claims adjudicated by the courts, it is in default. We are unaware of any cases where the federal government has refused to pay a court judgment after all appeals have been exhausted. The claimant could seek recourse directly from Congress, or could pursue a constitutional case before the Supreme Court of the United States.

(b) What recourse does the accident victim have against any of the indemnified parties?

ANSWER.

There would be no separate right of action by a claimant against a person indemnified.

(c) What other recourse, if any, does the accident victim have?

ANSWER.

None. See answer to 9(a).

QUESTION 10. Under what circumstances, if any, may a person who may otherwise be legally liable for public liability claims following a nuclear incident, but who is indemnified by the omnibus coverage of an indemnity agreement, be held liable for the payment of such public liability claims under the existing Price-Anderson Act?

ANSWER.

None.

Docket Nos.: STN 50-456
and STN 50-457

Mr. Dennis L. Farrar
Director of Nuclear Licensing
Commonwealth Edison Company
Post Office Box 767
Chicago, Illinois 60690

Dear Mr. Farrar:

SUBJECT: REVISIONS TO THE BRAIDWOOD SECURITY PLANS

Enclosed is a listing which incorporates the latest revisions to the approved physical security plans. This listing is a chronology of the approved plans' evolution and should be maintained with the safeguards plans. All open safeguards licensing items have been closed.

Janice A. Stevens, Project Manager
PWR Project Directorate #5
Division of PWR Licensing-A

Enclosure: As stated

cc: R. F. Skelton, NMSS
J. L. Gibson, SSPD

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Docket Nos.: STN 50-456
and STN 50-457

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PWR Project Directorate #5
Division of PWR Licensing-A

Enclosure: As stated

cc: R. F. Skelton, NMSS
J. L. Gibson, SSPD

BRAIDWOOD STATION, UNITS 1 AND 2

The approved security plans for Braidwood Station consist of the amendments, revisions, and changes listed below. The Security Personnel Training and Qualification Plan and the Safeguards Contingency Plan are Appendices of the Security Plan. As requested in Commonwealth Edison's letter dated April 22, 1983, Revision 6 is to be considered "the initial formal submittal."

"BRAIDWOOD STATION SECURITY PLANS "

Revision 6, dated April, 1983 (by letter dated April 22, 1983) as revised by:

- Revision 7, dated August, 1983 (by letters dated September 19 and October 28, 1983)
- Revision 8, dated October, 1983 (by letter dated November 17, 1983)
- Revision 9, dated August, 1984 (by letters dated September 24 & 25, 1984)
- Revision 10, dated February, 1985 (by letter dated February 25, 1985)
- Revision 11, dated May, 1986 (by letter dated May 27, 1986)

Mr. Dennis L. Farrar
Commonwealth Edison Company

Braidwood Station
Units 1 and 2

cc:

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