

July 2, 1998

FOR: The Commissioners

FROM: L. Joseph Callan /s/  
Executive Director for Operations

Karen D. Cyr /s/  
General Counsel

SUBJECT: NRC'S 1998 REPORT TO CONGRESS ON THE PRICE-ANDERSON ACT

## PURPOSE:

To request the Commission's approval to submit to the Congress the attached report on the need for extension and modification of the Price-Anderson Act.

## BACKGROUND:

Section 170p of the Atomic Energy Act of 1954, as amended in 1988, requires the Commission to submit to the Congress by August 1, 1998, "a detailed report concerning the need for continuation or modification of the provisions of [the Price-Anderson Act], taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and [which] shall include recommendations as to the repeal or modification of any of the provisions of the [Act]." The report pertains only to issues in the NRC's regulatory domain and focuses on nuclear power plants. The report does not discuss issues relating to Department of Energy (DOE) contractor activities indemnified under Subsection 170d of the Atomic Energy Act, which are the subject of a separate report by DOE and outside the scope of this report.

Part 1 of the report provides an overview of the Price-Anderson Act and its amendments through the 1988 extension of the Act and an update on legal issues pertaining to nuclear insurance and indemnity. Part 2 of the report addresses those issues identified in Subsection 170p relating to the need for continuation or modification of the Act. Part 3 of the report considers other relevant issues, such as scientific and legal proof of causality and international agreements. Part 4 contains conclusions and recommendations. Part 5 is the list of references. Appendix A contains an update of affordability studies of retrospective premiums.

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## DISCUSSION:

The Price-Anderson Act was enacted into law on September 2, 1957, as Section 170 of the Atomic Energy Act, to meet two basic objectives:

- (1) Remove the deterrent to private sector participation in atomic energy presented by the threat of potentially enormous liability claims in the event of a catastrophic nuclear accident.
- (2) Ensure that adequate funds are available to the public to satisfy liability claims if such an accident were to occur.

The Price-Anderson Act has been successful in removing impediments for firms to enter, and then remain, as participants in the civilian nuclear sector. Companies representing both utilities and support service and equipment suppliers indicated that they would likely not participate in the nuclear industry without some method of liability limitation, such as that provided under the Price-Anderson Act. Public testimony submitted during its initial enactment and its subsequent renewals supported this viewpoint.

The Act requires licensees to provide financial protection. Financial protection under the Act means the ability to compensate those harmed by a nuclear accident (including costs of incident response or precautionary evacuation) and to meet the costs of investigating and defending claims and settling suits for such damages. The scope of Price-Anderson coverage includes any nuclear incident in the course of transportation of nuclear fuel to a reactor site; the storage of nuclear fuel at a site; the operation of reactors, including discharges of radioactive emissions or effluents; the storage of nuclear wastes at reactor sites; and the transportation of radioactive material from reactors.

The Price-Anderson system channels to the licensee the obligation to pay compensation for damages and provides "omnibus" coverage. This means that the same protection available for a covered facility extends through indemnification to any person who may be legally liable, regardless of the identity of the person liable or his relationship to the licensed activity. Thus, those who are harmed are assured of the availability of funds to pay their claims, and firms that contribute in some manner to the construction (including design), operation, and/or maintenance of covered licensees are all protected. Because Price-Anderson channels the obligation to pay compensation for damages, a claimant need not sue all of these parties but can bring its claim to the reactor licensee.

Key parameters of Price-Anderson are the spectrum of licensees covered, the range of costs covered, and the amount of coverage provided. Each of these parameters is discussed in the report.

Covered licensees include all production and utilization facilities; however, commercial nuclear power reactors have been the primary focus of the legislation and the reports to Congress. This report anticipates, however, that new regulatory responsibilities for DOE activities or facilities may be assigned to the Commission and recommends that Price-Anderson implications be addressed when each such assignment is made.

With respect to what costs are covered by the Act, personal injury and property damage were from the outset the principal costs covered. The report recommends only that Congress may want to make clarifying amendments regarding coverage of legal defense costs and preclusion of punitive damages in Price-Anderson lawsuits.

Coverage under Price-Anderson has increased multifold for large power reactors. Since its original enactment, the Price-Anderson Act has required as financial protection that each commercial nuclear reactor be insured to the maximum available level of primary insurance. (Primary insurance is furnished on a per site basis). Early on, there was provision for a federal indemnity layer above the primary insurance layer. As the private insurance market increased the maximum available level of primary insurance it offered, each licensee of a nuclear reactor increased its coverage level. Although initially based solely on available commercial insurance, the required amount of financial protection currently is the sum of both the commercial primary insurance layer and a secondary retrospective assessment layer, first mandated by the 1975 Amendments. That sum at any given time also establishes the legal limit on liability. The retrospective premium layer is supported by licensee obligations to pay a pro-rated share of damages in excess of the primary insurance amount up to a specified limit per reactor per incident. For commercial power reactors, the Federal indemnification was, as a practical matter, replaced in 1982 by the substantial amount of required financial protection provided by both the primary insurance layer and the increased number of licensees that were obligated to contribute retrospective premiums under the Act.

In order to make an even larger pool of funds available to pay public liability claims, the 1988 Amendments increased maximum secondary insurance assessments from the \$5 million established in 1975 to \$63 million per reactor per incident, to be payable in annual installments of \$10 million or less and adjusted for inflation at 5-year increments. With the increase in 1988 of the maximum available level of primary insurance to \$200 million from \$160 million, combined maximum primary and secondary insurance coverage totaled \$7.34 billion for each active reactor, of which \$7.14 billion came from the secondary insurance program. This larger pool of funds was expected to make the compensation system more equitable, reliable, and efficient. Congress did not identify either the rationale for the particular number chosen (i.e., \$63 million) or a target for the aggregate limit on liability.

With the August 1, 1998, inflation adjustment required by Subsection 170t, the maximum retrospective premium will be \$83.9 million per reactor per incident. As of this date, the nuclear power industry is expected to be insured per incident to a maximum of \$9.43 billion (i.e., maximum available primary insurance coverage of \$200 million plus maximum available secondary insurance of \$9.23 billion [i.e., 110 units multiplied by \$83.9 million each]). If the number of participating nuclear power reactor units decreases faster than the rate of inflation, this dollar figure will almost certainly represent the industry's highest nominal level of insurance funding, absent further changes to Price-Anderson. Nonetheless, even with a future reduction in participating reactors, the aggregate amount of coverage will remain a substantial sum for years to come.

Congress has long recognized that a nuclear incident might involve damages in excess of the limit of liability. In the 1975 amendments, Congress explicitly committed to protect the public from the consequences of a disaster of such magnitude. Congress enacted statutory provisions in 1988 commencing formal consideration of how to provide full and prompt compensation to the public for all public liability claims resulting from such a disaster and establishing a process for the preparation of compensation plans after any nuclear incident involving damages that are likely to exceed the applicable limit on liability. (See Sections 170 I and o).

### **Principal Issues Bearing on the Need to Continue Price-Anderson**

In reporting on the need to continue or modify its provisions, the Price-Anderson Act requires NRC to consider the condition of the nuclear industry, the state of knowledge concerning nuclear safety, and the availability of private insurance for liability claims. The report addresses these three considerations in turn.

### **Condition of the Nuclear Industry**

At the time of the submission of the 1983 report to Congress on the Price-Anderson Act, the nuclear power industry was undergoing substantial change. Mandatory backfits were increasing the costs of reactor construction and operation. No new reactors had been ordered, and existing orders were being canceled. Since then, the pace of backfits has slowed, operating costs have decreased, and reactors have steadily increased electricity generation. Nevertheless, the total number of reactors is expected to decrease over time, thereby lessening the size of the available secondary retrospective assessment layer for power reactors.

The expected lessening may be affected by any or all of the following factors:

- (1) Lack of new reactor units;
- (2) Operating license renewal;
- (3) Aging of reactor unit components;
- (4) The economics of reactor units; and
- (5) Introducing competition into the electrical power industry.

**Lack of New Reactor Units.** The economics of nuclear energy was premised on its providing baseload power, not augmenting peakload power needs. Until demand growth outstrips current additions to the U.S. electrical grid, few opportunities will exist for new nuclear reactors. The NRC is not reviewing any construction permit applications and expects none in the foreseeable future, although applications for standardized design approvals that could be

used for future plants have been approved. Those utilities that might build nuclear power plants are subject to financial, load growth, political, regulatory, and other constraints on their decisions to develop more nuclear facilities.

**License Renewal.** The Atomic Energy Act and NRC regulations limit commercial power reactor licenses to 40 years, but also permit the renewal of such licenses for up to an additional 20-year period. The 40-year term was originally selected on the basis of economic and antitrust considerations, not technical limitations, but once selected, the design of several system and structural components were engineered on the basis of an expected 40-year service life. One renewal application has been docketed, and others are expected.

**Aging.** Aging degradation may affect a broad range of plant systems, structures, and components. When the first reactors were constructed, some reactor components were expected to last over 60 years, but major components were expected to last at least 40 years. Operating experience indicates that the expectation was unrealistic for some major plant components due to aging degradation. Decisions to manage aging degradation will reflect economic factors. An aggressive maintenance program is expected to effectively manage the effects of aging but may outstrip a utility's ability to pay for the program and still earn an acceptable return.

**Economics.** Utilities are continuing to seek further cost reductions from existing reactors. Future cost reductions will result from (1) smaller labor pools, (2) reduced total capital expenditures, and (3) more efficient reactor electrical generation. If operating a reactor does not produce a reasonable return the reactor may be closed down.

**Deregulation and Restructuring.** The electric utility industry has entered a period of economic deregulation and restructuring that is intended to lead to increased competition in the industry. If operating reactors are not cost-competitive, deregulation may lead to more premature closures of power-generating assets than would otherwise have occurred in the absence of competition. Restructuring may affect some licensees' ability to pay retrospective premiums if and when needed.

### **Impacts of Reactor Retirement on the Price-Anderson System**

More than one-third of current U.S. nuclear capacity will reach the end of the initial license period by 2013. While only 5 reactor licenses will expire by 2008, in the following 5 years an additional 29 reactors will reach the end of the 40-year license (i.e., a total of 34 reactors by 2013). In addition, owing to reactor economics produced by the costs of aging of the reactors before license renewal, and competition, some level of *early* retirement prior to license expiration is now expected. Since the 1983 Report to Congress, 10 units have been retired early. Experts currently project between 5 and 25 early reactor retirements, depending on assumptions.

The number of reactors participating in the Price-Anderson system is important because most of the total financial coverage derives from the secondary insurance layer. The greater the number of participating reactors, the greater the coverage and the higher the liability limit. As the number of reactors decreases due to retirement without replacement, the amount of coverage, along with the liability limit, will decline until Federal indemnification is triggered again. The return of Federal indemnification is not likely to occur until sometime after 2020, unless many reactors retire early without replacement.

Legislative options to address the decline in coverage include (1) maintaining in real dollars the current \$9.43 billion of coverage, (2) letting the aggregate amount of coverage decline as reactor units retire, or (3) setting the aggregate coverage at another (perhaps risk-related) value. (The report does not speculate as to what an appropriate "risk-based level" would be.)

To maintain in real dollars the 1998 level of \$9.43 billion per incident in insurance coverage, each remaining reactor unit would need to increase its individual coverage level to offset each retirement. By 2008, maximum secondary assessments must increase by between 10 and 28 percent in real terms to maintain current aggregate levels of coverage, assuming the maximum level of primary insurance remains at the \$200 million level. Increasing the primary level of coverage will mitigate one time and only to a small degree the need to increase the maximum levels of secondary assessments. By 2013, the maximum secondary assessment must increase by between 58 and 120 percent to maintain the current aggregate level of coverage. Therefore, a doubling of the amount of the secondary layer of coverage (and corresponding doubling of the current annual retrospective assessment) by 2013 may be required to maintain current funding levels in real dollars.

Alternatively, holding the current \$200 million primary insurance and the current \$83.9 million maximum assessment levels constant in real terms, maximum available insurance funds in real terms will decline to \$7.58 billion by 2008, and will amount to \$4.48 billion by 2013, assuming a high early retirement scenario occurs (i.e., only 88 and 51 reactor units operating in 2008 and 2013, respectively). These are large sums of money, much greater than the levels of claims payments incurred to date. Funding levels between \$4.5 and \$6 billion (low early retirement scenario) by 2013 should be ample, based on experience to date. Accidents with greater offsite consequences are conceivable, with correspondingly higher amounts of potential public liability claims.

To summarize, in the near term, the threat posed to the Price-Anderson system by reactor retirement without replacement is not critical. In the long run, reactor retirement without replacement may erode the financial protection available or require retrospective payment levels that may be difficult for utilities to afford or both. However, based on an analysis provided in Appendix A to the report, the staff believes that most utilities should be able to absorb with little distress a doubling of the current \$10 million level of potential annual

retrospective assessment payments to \$20 million. This alteration would maintain the availability of large sums at the outset to pay immediate assistance and other types of claims while not increasing the total premium that could be charged.

### **State of Knowledge of Nuclear Safety**

**Safety Performance of Nuclear Power Reactors.** In terms of public health consequences, the safety record of the U.S. nuclear power industry has been excellent. The only incident in U.S. reactor history (approximately 2,000 reactor-years) that may result in injury to the public was the 1979 accident at TMI. Public exposure to radioactive materials released during that accident, in which half the reactor core melted, is expected to cause fewer than five deaths from cancer in a population expected to experience approximately 500,000 cancer deaths from other causes. A September 1990 independent study found no concrete evidence that the TMI accident has affected cancer rates in the area immediately surrounding the plant.

The NRC monitors the performance of the 110 commercial nuclear power plants currently licensed for operation in the United States. Tools currently used in monitoring licensee performance include a set of eight Performance Indicators, the Systematic Assessment of Licensee Performance, and the Senior Management Meeting ("Watch List" and "Declining Trends List"). These tools generally document improving trends in measured safety performance and high levels of that performance.

**Potential for Occurrence of Accidents.** The state of knowledge of nuclear safety requires consideration of various types of possible accidents that may pose a public risk. Probabilistic risk assessment (PRA) is an analytical process that can estimate quantitatively the potential public risk, considering the design and the operational and maintenance practices of a plant. In 1975, the NRC completed the first study of design-basis accidents postulated for commercial nuclear power plants: WASH-1400, the Reactor Safety Study. WASH-1400 documented the evaluation of the probability of postulated accident sequences at two nuclear power plants that could lead to core damage. The evaluation showed that accident probabilities were higher than previously believed but that the offsite consequences (to the public and the environment) were significantly lower.

In NUREG-1150, the 1990 update of the Reactor Safety Study, the NRC used improved PRA techniques to assess the risk associated with five nuclear power plants, including the two plants originally evaluated in WASH-1400. In general, the central estimates (means, medians) of the distributions reported in NUREG-1150 are lower in magnitude than those predicted in earlier studies, such as WASH-1400, but the uncertainty ranges remain large.

At this point, the interaction between nuclear accident risk and Price-Anderson can still be summarized as follows: Although the two layers of insurance should provide ample liability protection for most postulated nuclear power plant accidents, a very low probability remains that a very high consequence accident could result in public liability claims far exceeding the present and projected amounts of nuclear liability insurance.

#### **Availability of Private Nuclear Liability Insurance in the U.S.**

The Price-Anderson Act motivated the private insurance industry to develop a means by which nuclear power plant operators could meet their financial protection responsibilities. The insurance industry chose the "pooling" technique. Pooling provides a way to secure large amounts of insurance capacity by spreading the risk of a small number of exposure units (i.e., reactors and other nuclear-related risks) over a large number of insurance companies. American Nuclear Insurers (ANI), an insurance industry pool, currently writes all nuclear liability policy limits up to \$200 million. In 1998, ANI's members retained 31.1 percent of the liability exposure under each policy and ceded 68.9 percent to reinsurers around the world. This approach allows ANI to marshal the resources of the worldwide insurance community and spread the uncertainties of the risk over a very large financial base. A portion of the reinsurance ceded by ANI is currently being ceded to Nuclear Electric Insurance Limited, a nuclear utility mutual (or "captive") insurance company incorporated with limited liability under the laws of Bermuda.

Insurers and other observers believe that the Price-Anderson Act has been an important element in enabling insurers to provide stable, high-quality capacity for nuclear risks. The Price-Anderson Act has encouraged maximum levels of insurance for the nuclear risk in the face of normally overwhelming obstacles for insurers, that is, catastrophic loss potential, lack of credible predictability, small spread of risk, and limited premium volume. This successful insurance has been accomplished for more than 40 years without interruption and without the "ups and downs" (or market cycles) that have affected nearly all other lines of insurance business.

The amount of available primary coverage has not risen since 1988, when Congress vastly increased the amount of funding available under the retrospective assessment layer; however, ANI has stated that it could more than likely increase the available primary coverage. There reportedly is little demand from within the nuclear industry to increase the primary insurance limits. Although such increases would contribute only marginally to the total aggregate coverage, given the larger amount provided by the retrospective assessment layer, an increase to about \$350 million (to account for inflation since 1988) would provide a substantial cushion for accidents comparable to TMI. Although ANI does not need Commission approval or congressional legislation to increase the primary insurance level, the staff believes that this capacity should be increased, if possible.

**Claims History Under Price-Anderson.** From 1957 to December 1997, claims for 195 alleged incidents involving nuclear material under various liability policies were filed. Most, but not all, of the reported claims experience is related to NRC indemnified nuclear facilities. The insured losses and expenses paid through this period total approximately \$131 million. Of this amount, about \$70 million (\$42 million in indemnity and \$28 million in expenses) arose out of the accident at TMI-2 that began on March 28, 1979.

#### **Other Relevant Price-Anderson Issues**

##### **State of Scientific Knowledge of Causality and Legal Issues as to Proof of Causation**

A recurring issue related to compensating victims of radiation exposure is the identification of persons who, in fact, have been harmed when releases or exposure levels are low or when evidence of harm is not contemporaneous with exposure. The report reviews the current state of scientific knowledge for identifying radiation-induced harm and those exposed, as well as current legal issues relevant to compensation.

**State of Scientific Knowledge.** Since the last NRC Report to Congress on the Price-Anderson Act, the knowledge base for identifying biological effects and other indicators of radiation exposure has expanded substantially. A significant change that has occurred is the overall increase in the estimate of lifetime cancer risk attributable to a given radiation dose. This increase is due primarily to reassessments of radiation dosimetry at the Hiroshima and

Nagasaki atomic bomb sites. Another significant change--attributable both to new studies of the atomic bomb survivors and to advances in biological science--is the ability now to generate estimates of the effects of radiation on the mental development of the fetus. Notwithstanding these gains in the knowledge base, however, much still is unknown about the biological effects of radiation. For example, we do not know exactly how a given individual will react to a given type and amount of radiation.

**Legal Issues Relating to Proof of Causation and Damages.** The 1988 Amendments committed Congress to providing "full compensation" to those injured as a result of a nuclear accident or a precautionary evacuation. Since Price-Anderson was first enacted, the resolution of the extent of proof required to establish compensable injury was left to state law. As it may often not be possible to establish by a preponderance of the evidence that later appearing health effects were caused by exposure during the accident (as opposed to other environmental or genetic factors), state tort law governing the degree of proof of causation required to establish entitlement to compensation may result in the denial of compensation to individuals with latent health effects. This issue was reviewed in detail by the Presidential Commission on Catastrophic Nuclear Accidents, which was established by the 1988 Price-Anderson Amendments "to study means of fully compensating victims of a catastrophic nuclear accident that exceeds the amount of aggregate public liability." The *Report to the Congress of the Presidential Commission on Catastrophic Nuclear Accidents* was published in August 1990. Following submission of its report, the study commission terminated, as specified by Congress.

The system as it exists today is able to provide ample and prompt compensation for public liability injuries and other economic losses directly connected to a serious nuclear accident. If a serious accident should occur where latent effects are scientifically shown to be probable, the court with jurisdiction would be expected to do its best to satisfy statutory requirements that funds be allocated for latent injury claims. However, there may be difficulties in establishing sufficient proof to sustain a claim that latent injuries are, in fact, caused by the nuclear accident. Despite potential difficulties with regard to proving causation, the staff believes that it is premature to modify the causation and proof of damages provisions of the Price-Anderson Act.

### **Issues Raised by the Convention on Supplementary Compensation for Nuclear Damage**

The United States has signed, but not yet ratified, the Convention on Supplementary Compensation for Nuclear Damage. The Convention is a new international instrument on civil nuclear liability that in large part is modeled after the Paris and Vienna Conventions on Nuclear Liability, which were, in turn, rooted in the earlier Price-Anderson Act. The new Convention overlaps and replicates many provisions in Price-Anderson and does not conflict with Price-Anderson provisions in any significant way. A "grandfather" provision permits the United States to become a party without amending the Price-Anderson Act's idiosyncratic provisions, designed principally to accommodate our Federal system. Thus, virtually no changes in any aspect of the Price-Anderson Act are required for the United States to ratify the Convention. Any modifications to the Price-Anderson Act would necessarily take into account U.S. obligations under the Convention. Failure to extend the Price-Anderson Act to cover future as well as existing plants would be inconsistent with an intent to ratify and thus would likely be of concern to other signatories and the interested international community.

### **Conclusions and Recommendations**

The structured payment system (currently billions of dollars) created to meet the two objectives stated in the Price-Anderson Act has been successful. It has operated for more than 40 years with minimal cost to the taxpayer. The Price-Anderson system has functioned well in connection with the payment of claims arising out of the TMI accident in 1979, the only major accident situation in which it was called upon. Regardless of the degree of early retirement of nuclear reactors, Price-Anderson will continue to make a large sum of funds available to victims of nuclear incidents for at least the next decade.

In considering the future direction of the Price-Anderson Act, the Congress has before it a range of possible actions, from termination of the Act (which would not terminate Price-Anderson coverage in connection with currently licensed facilities) to its extension unchanged. The staff believes that in view of the strong public policy benefits in ensuring the prompt availability and equitable distribution of funds to pay public liability claims, the Price-Anderson Act should be extended to cover future as well as existing nuclear power reactors. The staff believes that the same amount, type, and terms of public liability protection should be provided for future and existing plants.

The report reviews issues associated with Price-Anderson litigation and reveals that no legal problems in the current text require remedial legislation. For completeness, these recommendations repeat NRC's longstanding position on punitive damages and designate provisions in which clarification might be useful. For convenience, brief notes are included here as identifiers.

### **Recommendations**

- (1) Congress should extend the Price-Anderson Act for only 10 years, in view of the changes taking place within the nuclear power industry. 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. While existing nuclear power plants would remain covered in any event, the Act should be extended to cover future nuclear power plants, and the existing limit of liability provisions should be maintained. Any changes in the Act should also be applicable to existing nuclear power plants.
- (2) Congress should amend the Act to raise the maximum retrospective premium installments that can be charged from the present \$10 million per reactor per incident per year to \$20 million per reactor per incident per year. An increase in the size of the annual installments to \$20 million would increase the amount of funds available shortly after a nuclear accident to pay public liability claims but should not jeopardize the financial viability of the participating utilities since the total retrospective premium stays the same.
- (3) No further changes to the causation and proof of damages provisions of the Price-Anderson Act should be made at this time.
- (4) Congress should investigate with nuclear liability insurers the potential for increasing the private insurance capacity made available through the insurance pools for the basic layer of insurance. This capacity has not kept pace in recent years with inflation and should be increased if possible.
- (5) Congress may wish to clarify its intent on the following issues that have been or can be sources of uncertainty in implementing Price-Anderson:

- (a) Whether the prohibition on payment of punitive damages extends to every case in which the defendant is indemnified under Price-Anderson or only when government indemnification payment would otherwise actually be required. (The Commission has supported the first formulation largely because punitive damages can undercut uniform federal regulatory standards by punishing activities that were within legal limits or assessing penalties that exceed the Commission's enforcement standards. The Commission also supports a bar on punitive damages because under the Price-Anderson system, the weight of punitive damages would not be felt by the licensee whose facility suffered the accident. Rather, the "punitive" effect would fall on every reactor licensee and could cause an unwarranted strain on the retrospective premium pool.)
  - (b) Whether a nonprofit NRC licensee may be indemnified for legal costs incurred in connection with the settlement of a claim. (The interest in this issue was occasioned by the Commission's published decision denying the claim of the Trustees of the University of California at Los Angeles See *In re Regents of the University of California*, CLI-97-6, 45 NRC 358 (1997).
  - (c) Whether a public liability lawsuit arising or resulting from a nuclear incident may be filed in a tribal court. (The report notes that the Supreme Court recently denied a certiorari petition seeking reversal of the U.S. Circuit Court of Appeals decision which held that remedies must be exhausted in tribal courts through any appellate process there before a U.S. court may consider the matter. See *Kerr-McGee Corp. v. Kee Tom Farley*, 115 F.3d 1498 (10th Cir. 1997), cert. denied S.Ct. (1988). Decisions have recently been rendered elsewhere relating to this issue. See *El Paso Natural Gas v. Neztosie*, 136F.3d 610 (9th Cir.1998) (consolidating 2 appeals from U.S. D.C. (Ariz)). Further judicial developments may avoid or suggest consideration in connection with Price-Anderson renewal legislation.
- (6) Any modifications to the Price-Anderson Act should take into account any potential U.S. obligations under the Convention on Supplementary Compensation for Nuclear Damage.
  - (7) Price-Anderson implications of any new regulatory responsibility for DOE activities or facilities that Congress may assign to NRC should be addressed in the enactment creating the NRC's specific authority for that regulatory oversight of DOE activities or facilities.

RECOMMENDATION:

That the Commission approve the Report to Congress and the proposed letters to Congress forwarding the report.

L. Joseph Callan  
Executive Director for Operations

Karen D. Cyr  
General Counsel

Attachments: [1. Report to Congress on the Price-Anderson Act](#)  
[2. Proposed Letters to Congress](#)

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ATTACHMENT 2

The Honorable Albert J. Gore, Jr.  
President of the United States Senate  
Washington, D.C. 20510

Dear Mr. President:

I am forwarding the U.S. Nuclear Regulatory Commission's Report to Congress on the Price-Anderson Act. This report is required by Section 170p of the Atomic Energy Act of 1954, as amended.

The report addresses the condition of the nuclear industry, the state of knowledge of nuclear safety, the availability of private insurance, and other relevant topics. The report conveys the Commission's recommendations concerning the need for continuation and modification of Section 170 of the Act, the Price-Anderson provisions.

Sincerely,  
Shirley Ann Jackson

Enclosure: Report to Congress on the Price-Anderson Act

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The Honorable Newt Gingrich  
Speaker of the United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

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Sincerely,  
Shirley Ann Jackson

Enclosure: Report to Congress on the Price-Anderson Act