STATEMENT SUBMITTED

BY THE

UNITED STATES NUCLEAR REGULATORY COMMISSION

TO THE

SUBCOMMITTEE ON

CAPITAL MARKETS, INSURANCE AND GOVERNMENT SPONSORED ENTERPRISES

OF THE COMMITTEE ON FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

PRICE-ANDERSON ACT

SUBMITTED BY
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Mr. Chairman, I am pleased to appear before you today as a representative of the United States Nuclear Regulatory Commission (NRC) to provide you information on a unique, nontraditional system that has evolved from Congress' initial enactment in 1957 of the "Price-Anderson Act". We hope that this information will assist the Committee in its consideration of the important insurance issues that are before you today. This testimony relates, of course, to the application of the Price-Anderson Act to the nuclear power reactors regulated by the NRC.

The Price-Anderson Act addressed an unusual insurance situation which needed to be resolved for Congress to succeed in its aim to have private sector development of peaceful uses of atomic energy. That situation can be simply described as one where (1) it was impossible to rule out the potential for an accident, which if it occurred could have catastrophic liability; (2) there was little or no experience and the possible costs of damages were uncertain; and (3) thus, neither industry nor private insurers were able substantially to absorb the risk.

Two paramount goals governed Congress' consideration of a solution to this predicament: that the solution would ensure the availability of adequate funds for the public to satisfy liability claims in a catastrophic nuclear accident and further, that it would permit private sector participation in nuclear energy by removing the threat of potentially enormous liability in the event of such an accident.

The original solution, as enacted in 1957, was characterized by its creation of a governmental role in providing indemnification and limiting liability and its application to all reactors as a further condition of licensing them. The licensing process itself provided substantial assurance that each reactor would be designed, built and operated to satisfy the government's high safety standards.

The original Price-Anderson Act approach included as a first layer a requirement that each power reactor licensee had to procure available financial protection (a requirement which as a practical matter meant the purchase of commercial insurance, the maximum then available being $60 million). That layer was then followed by indemnification by the United States itself to cover up to $500 million in liability over the amount covered by required commercial insurance. Aggregate liability for any single accident was by statute limited to the sum of the commercial insurance available and the governmental indemnity .

The aggregate liability included the liability of anyone who was found liable for any reactor accident, with the notable exception of an accident resulting from an act of war. This broad coverage is known as omnibus coverage. The statute also required a licensee to waive any immunities under State or Federal law. The omnibus nature of coverage was designed to serve many purposes: to assure the availability of funds to compensate for personal injury or damage to property of members of the public no matter who caused the accident; to permit suppliers and professionals to participate in the industry without fear of liability far out of proportion to any profit they might expect to gain; and to make possible efficiencies in the process of presenting, settling and satisfying claims. The mechanism for accomplishing these goals was incorporated in insurance contracts purchased by each reactor licensee and in required agreements of indemnification between the reactor licensee and the United States government.

While the Price-Anderson Act provided that liability was limited, the Report at the time of original passage noted that if actual damages were to exceed the available funds, i.e., the sum of commercial insurance coverage and government indemnity, “the way was left open for Federal contributions after further Congressional consideration.” S. Rep. No. 296, 85th Cong.,

1st Sess. 2, (1957). This concept, present at the outset, was later expressly included in Price-Anderson Act legislation and is often referred to as a "third layer" of funding.

While Congress has amended the Price-Anderson Act from time to time, it has done so cautiously so as to avoid upsetting the delicate balance of obligations between operators of nuclear facilities and the United States government as representative of the people. Before proceeding to discuss what are likely the most interesting and significant changes, I would note that Congress eliminated the requirement that non-commercial small educational and test reactors purchase insurance, but nonetheless, continued to have the United States indemnify each for $500 million once the small reactor licensee had paid out $250,000 in liability damages.

The most significant amendments to date were those that effectively removed the United States government from its obligation to indemnify any reactor up to a half billion dollars and, for commercial power reactors, placed the burden on the nuclear power industry. This was accomplished without any substantial alteration of the other elements that characterized the Price-Anderson scheme-- most particularly omnibus coverage and liability limited to the availability of funding-- and with increased protections for the public.

The first step in this direction occurred in the 1975 amendments, when Congress mandated that each large reactor, essentially each reactor providing power commercially, contribute $5 million to a retrospective premium pool. This retrospective "premium" was due if and only if there were to be damages from a nuclear incident that exceeded the maximum commercial insurance available. The limit of liability was then $560 million. Government

indemnification was phased out in 1982 when the potential pool and available insurance reached that sum.

In 1988, Congress increased the potential obligation of each reactor in the event of a single accident at any reactor to $63 million to be adjusted for inflation. The liability insurance available to comprise the first layer is now $200 million. When that insurance is exhausted each U.S. reactor licensee must pay into the pool up to $83.9 million, as adjusted for inflation, if needed to cover damages in excess of the sum covered by the first layer of insurance. The $83.9 million is payable in annual installments not to exceed $10 million. Today the first layer of commercial insurance and the second layer from the reactor pool together would make available well over $9 billion to cover any personal or property harm to the public caused by an accident.

Other features of the system as it exists today are worthy of attention without tracing their history. As I noted, from the outset the system provided that indemnified licensees waive immunities. An early amendment expanded the waivers so that in serious accidents, denominated “extraordinary nuclear occurrences” by the NRC, the defendants must also waive other defenses, including any more stringent statute of limitations for filing claims. The waivers in sum provide a result in the nature of strict liability where the claimants need prove only that the accident caused their injury; proof of fault is eliminated.

Under the limited experience to date, claimants have settled with insurance companies or filed suits in State or Federal court. Those sued under the Price-Anderson Act are entitled to have the lawsuit removed to the United States District Court where the accident occurred.

Punitive damages may not be awarded to any person on behalf of whom the United States is obligated to make payments under an agreement of indemnification that covers the accident at issue.

Price-Anderson Act coverage pertains to what is known as “third-party liability”. It does not cover property damage at the site of the reactor where the accident occurred. Nor does it cover those covered by workmen’s compensation. Reactor licensees obtain commercially available insurance to cover on-site property damage.

There are also statutory provisions covering case management, distribution of funds, allowance for legal costs and the preparation of reports to Congress in the event there is an expectation that liabilities will exceed the available sums. Congress expressly provided that proposed compensation plans should provide for full and prompt compensation (a third layer) and contain recommendations of possible sources of those funds.

The Price-Anderson system from its origins has contained specific, separate provisions to define coverage for Department of Energy (DOE) facilities and contractors. While the DOE coverage does not include a retrospective premium plan, the United States currently indemnifies DOE facilities and contractors up to the same sum available from power reactor retrospective payments and commercial insurance - - now set at $9. 5 billion.

Several bills to reauthorize the Price-Anderson Act are now before Congress. Without reauthorization, new reactors licensed after August 1, 2002 would not be covered by the Price-Anderson Act.

We hope that this brief overview of an intricate and complicated statutory program will assist you in achieving your purposes. Further exposition of the process and of model agreements for insurance and indemnification are available in the NRC regulations published at 10 CFR Part 140. We stand ready to answer any questions that you might have about the Price-Anderson Act.

Thank you Mr. Chairman. I welcome your comments and questions.