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STATEMENT OF
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ENERGY AND MINERALS DIVISION
BEFORE THE
SUBCOMMITTEE ON ENERGY RESEARCH AND PRODUCTION
HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY
ON
IMPACTS OF THE PRICE-ANDERSON ACT ON NUCLEAR
RESEARCH AND DEVELOPMENT



Madam Chairman and Members of the Subcommittee:

We appreciate the opportunity to be here today to discuss Price-Anderson insurance coverage for the Department of Energy's (DOE's) nuclear research and development operations. At your request, we have just completed a review of the extent to which DOE's nuclear operations are covered by the Price-Anderson Act and the necessity for continuing such protection. A report on our findings is being released this afternoon. This report and an earlier one we issued in August 1980 on Price-Anderson coverage for commercial nuclear facilities 1/ form the principal basis of my statement.

The Price-Anderson Act not only covers DOE nuclear facilities but is probably unique in its application of what is commonly referred to as "umbrella coverage." In addition to covering prime contractors responsible for operating the facilities within the

1/"Analysis of the Price-Anderson Act," EMD-80-80, August 18, 1980.

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DOE nuclear energy complex, the act also covers subcontractors, vendors, suppliers, architect-engineers and transporters who perform work in connection with a particular prime contractor's nuclear activity. Moreover, the act even covers past work that could cause an accident at some future date. Thus, the contractor who performed past work would be covered even though there is no existing contract. Under the umbrella coverage, members of the general public would be covered even if a nuclear accident was caused by a terrorist or saboteur. Accordingly, the public would be compensated, regardless of who causes an accident at a nuclear facility covered under the Price-Anderson Act or during the transportation of nuclear material to or from that facility. This coverage applies equally to both nuclear facilities licensed by the Nuclear Regulatory Commission (NRC) as well as those operated for the DOE by private contractors.

Currently, DOE has 75 prime contracts containing specific Price-Anderson indemnity agreements. These prime contracts provide coverage for about 280 different nuclear facilities. In contrast, there are 178 NRC licensed facilities covered by the act. Moreover, there are about 71,000 subcontractors performing work for various DOE nuclear facilities that are also covered by the act.

Over the past 3 months, we reviewed the act and its major provisions as it pertains to DOE's nuclear energy research and development activities. As a result of our work, we believe

the liability protection provided DOE contractors by the Price-Anderson Act should be continued. We arrived at this conclusion after carefully considering the current U.S. position to foster the development of nuclear energy and the availability of other forms of insurance for nuclear activities.

The liability protection provided DOE contractors by the Price-Anderson Act still appears to be necessary because many of the reasons for originally passing the act still exist today. For example, catastrophic nuclear accidents causing severe public consequences could still occur; sufficient private insurance to cover such consequences is still unavailable; and, based on our discussions with DOE and contractor officials and officials from private companies outside the DOE-nuclear complex, it appears that private industry is still unwilling to assume the risks of such accidents without the kind of financial protection the act now provides. Furthermore, the public is provided greater financial protection as a result of the act than without it.

Although the Price-Anderson Act places a cap on the amount the public could collect for damages resulting from a nuclear accident, it does assure that some funds will be readily available when needed. Without the Price-Anderson Act, victims of nuclear accidents would have to sue for damages, a process that could take several years. And, even then, the right to sue does not guarantee one's ability to collect. Without any protection--Government or private insurance--a catastrophic nuclear accident could bankrupt a contractor, and thus, injured members of the

public would have no assurance they could recover adequate compensation, if indeed they could get any at all.

Even if DOE nuclear contractors were covered by the more conventional self-insurance policies of the Federal Government-- as is now done for some DOE non-nuclear contractors--the public would receive less financial protection than that currently provided for catastrophic nuclear accidents by the Price-Anderson Act. Such shortcomings would generally include the following:

- Public compensation would be subject to the availability of appropriated funds. As a result, the amount of coverage would be uncertain. Under the Price-Anderson Act, the public is assured of up to \$500 million for DOE-related accidents.
- Protection from the actions of subcontractors and suppliers would not automatically be provided through Government self-insurance. On the other hand, the Price Anderson Act's umbrella coverage provides this unique feature.
- Certain contractor actions, such as acts of willful misconduct or gross negligence, could void Government self-insurance coverage. Thus, victims of a nuclear accident would be left without any coverage under these circumstances.
- Victims of a nuclear accident would have to establish that the accident occurred because of some fault on the part of the contractor. The Price-Anderson Act provides protection regardless of why the accident occurred.

In our earlier report on the Price-Anderson Act as it applies to NRC licensed facilities, we concluded that removing the act's protection for commercial facilities without replacing it with comparable liability insurance coverage would not be in the Nation's best interest. We believe the same is true for DOE contractor activities. However, in examining the act's provisions, we found some inadequacies that, in our opinion, need to be corrected to provide a more equitable scheme of protection for nuclear accidents. Specifically, we identified three problems.

First, the total amount of money available to the public to cover catastrophic accidents is greater for an accident occurring at a commercial nuclear facility than at a DOE-owned, contractor-operated facility. Currently, the difference is \$60 million. But, beginning in about 1982 when 80 power reactors are operating, each additional commercial power reactor that comes on line will increase the difference by \$5 million per reactor. Consequently, by 1987, when the Price-Anderson Act is due to expire, the difference could be as much as \$330 million. In our opinion, it is difficult to justify two different levels of public financial protection depending upon such an arbitrary distinction as whether a nuclear accident occurs at a commercial-licensed activity or a Government-contractor operation.

Second, as a result of the legal limit on liability, the public's potential loss from a nuclear accident continually increases as inflation erodes away the assured level of financial protection. While the act assures \$500 million will be available

in the event of a nuclear accident, the public is not guaranteed that it will receive additional compensation should damages exceed the limit, only that Congress will consider providing additional compensation. Also, while the total amount of available funds has remained the same over the years, the potential costs of a catastrophic accident have risen due to inflation. As a result, the public receives less financial protection today than it did in 1957 when the act was passed. For example, \$500 million in 1957 dollars is only worth about \$183 million today. Or to be equivalent to the 1957 coverage afforded by the act, the limit would have to be increased to about \$1.4 billion. Consequently, for such a scheme to be equitable to both the industry and the public, we believe the limit on liability should be increased.

Finally, because the definition of a nuclear incident is unclear, we were unable to determine whether the act's protection would cover the costs of an evacuation prompted by a radiation release that appeared imminent but did not occur. As now written, the act defines a nuclear incident as an occurrence causing damages as a result of the radioactive properties of nuclear materials. It is not clear, however, whether the definition is broad enough to cover liability resulting from an occurrence where a precautionary evacuation is ordered but no release actually occurs. Such a situation is not specifically addressed by the act or its legislative history. This uncertainty applies equally to commercial licensees and Government contractors. However, according to NRC officials, commercial licensees carry protection through private insurance for such evacuation costs. DOE contractors

on the other hand, are not required to carry private insurance, and thus, it is uncertain whether any evacuation costs would be covered. In fact, we believe that such costs for DOE contractor facilities may not be included under the protection afforded by the act. In our opinion, the language in the act should be clarified to permit public compensation for precautionary evacuations.

Madam Chairman, this concludes my prepared statement. I would be pleased to respond to any questions the Subcommittee may have.