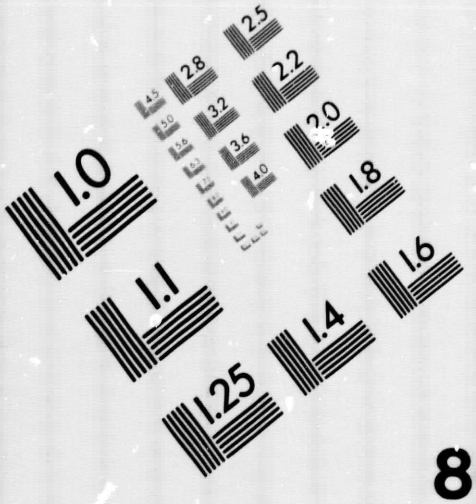

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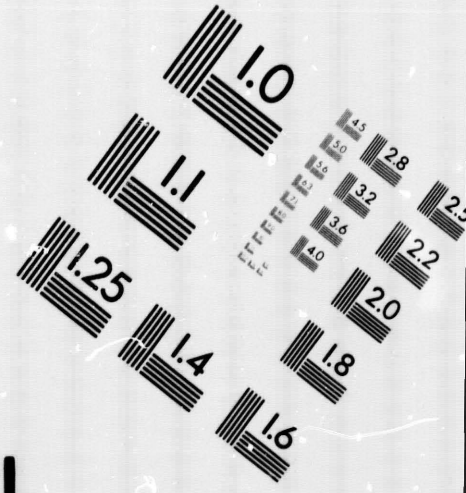

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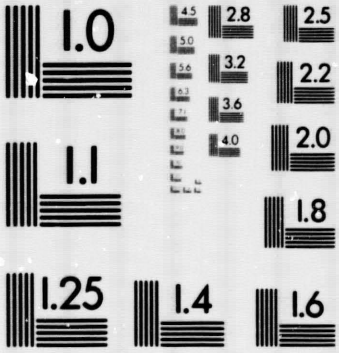

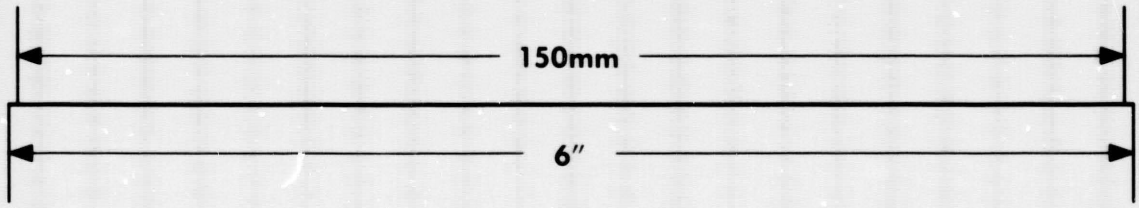

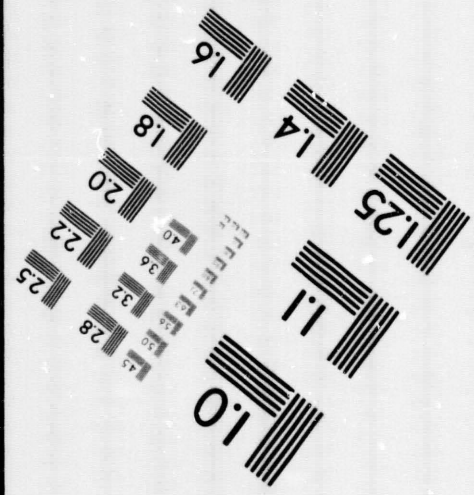

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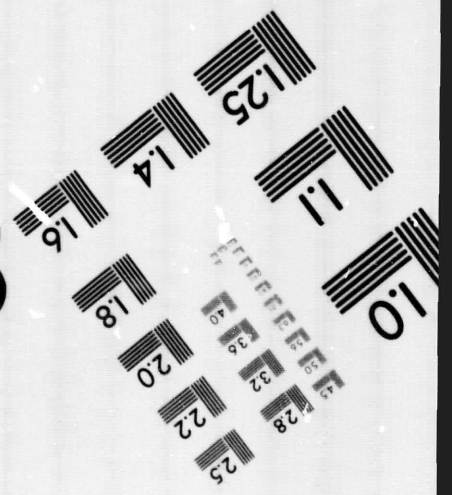

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April 10, 1986

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The Honorable Marilyn Lloyd
Chairman, Subcommittee on Energy
Research and Production
Committee on Science and Technology
House of Representatives

Dear Madam Chairwoman:

This letter responds to your request of January 7, 1986, for our interpretation of the Price-Anderson Act (Act), 42 U.S.C. § 2210. You asked what authority the Nuclear Regulatory Commission (Commission) would retain in the event that the Commission's indemnification authority expires on August 1, 1987. We believe that the Commission would retain its authority to require insurance coverage and to assess deferred premiums as provided by the Act. The Commission would lose its authority to enter into indemnification agreements with respect to licenses issued after August 1, 1987.

The Act provides a system of insurance to pay claims for personal injury and property damage resulting from a nuclear incident. The insurance scheme includes private insurance, deferred premiums paid by licensees, and government indemnification. The Act authorizes the Commission to require licensees to obtain the amount of liability insurance available from private sources (currently, $160 million). 42 U.S.C. § 2210(b). It also authorizes the Commission to require licensees to pay a deferred premium of up to $5 million per licensed facility in the event that public liability from any nuclear incident exceeds or appears likely to exceed the amount of private insurance available. Id. And, the Act requires the Commission, for licenses issued before August 1, 1987, to indemnify the licensee for liability which is in excess of the amount available from private insurance plus the deferred premiums. 42 U.S.C. § 2210(c).

In addition, the Act imposes a limit on aggregate liability per nuclear incident of $560 million or the amount of financial protection required of the licensee, whichever is greater. Because of the current number of licensees, each of whom must contribute a deferred premium of $5 million

per nuclear incident, the aggregate liability is now $640 million, $160 million available from private insurance, the remainder from the deferred premium.

The clear, unambiguous language of the statute provides the basis for our interpretation of the Act. The August 1, 1987, expiration dates contained in the Act apply only to those subsections in which they are located; i.e., those that give the Commission its indemnification authority. The subsections that grant the Commission its authority to require licensees to obtain private insurance coverage and to assess deferred premiums carry no expiration date.

The Commission disagrees with our interpretation of the Act. In a December 19, 1985, memorandum to the Director, Office of Congressional Affairs, the Commission's Deputy General Counsel concluded that "legislative history" indicates that the Act's provisions are so intertwined that they should stand or fall as a whole. The result, in the Commission's view, is that if the indemnification authority lapses, the entire Act expires. We, however, found nothing in the legislative history contradicting our interpretation of the Act.

Commission staff indicated to us that the Commission relies on two points made in the legislative history. First, the staff noted that congressional committee reports dating from 1957, when the Act was passed, to 1975, speak of the expiration or extension of "the Act," not "portions of the Act." See, e.g., S. Rep. No. 1027, 93d Cong., 2d Sess. 2 (1974) ("The Act is scheduled to expire on August 1, 1977"); Id. at 6 ("The bill provides for a 10-year extension of the * * * Act * * * * "). Commission staff stated that the use of the phrase "the Act" indicates that the Congress meant for the entire Act to survive or expire as a whole.

Indeed, until 1975, when the Congress added the deferred premium feature, the entire Price-Anderson scheme was interconnected; if the Commission's indemnification authority expired, the entire scheme expired. In its original form, the Act provided that the Commission could require, as a condition of a license, that each licensee obtain private insurance. Pub. L. No. 85-276, § 4, 71 Stat. 576 (1957). If a license did include such condition, the licensee was required to execute an indemnification agreement with the Commission. Id. And, the original version of the Act further provided

that the Commission shall agree to indemnify all licensees for which it required private insurance. Moreover, the ceiling on aggregate liability for a nuclear incident, the third major feature of the original Price-Anderson scheme, was also tied to the indemnification agreement. The original version of the Act placed a ceiling on aggregate liability for "persons indemnified" and defined "person indemnified" as a person with whom an indemnity agreement was executed. Id., § 3. Consequently, all of the major features of the Price-Anderson scheme were tied to the indemnification agreements and, thus, the Commission's authority to indemnify.

The legislation remained essentially unchanged from 1957, when it was originally enacted, through 1967, when it was reauthorized for another 10 years. However, in 1975, the Congress added a new feature--the deferred premium. Pub. L. No. 94-197, 89 Stat. 1111 (1975). The purpose of the deferred premium was to phase-out government indemnity: as more reactors were licensed and the sum of private insurance and deferred premiums equaled $560 million, the government would no longer be an indemnitor. At the same time, the Congress also removed the ties that had previously existed between private insurance, the ceiling on liability, and indemnification agreements. The Act still authorizes the Commission to require private insurance and assess deferred premiums. 42 U.S.C. § 2210(a), (b). However, the Act now reads that the Commission may, rather than shall, require licensees to enter into indemnification agreements. Id. Further, the tie between aggregate liability and indemnification agreements was severed by changing the definition of "persons indemnified" to persons either having an indemnification agreement with the Commission or otherwise required to maintain financial protection, i.e., private insurance and the deferred premium. Pub. L. No. 94-197, § 1, 89 Stat. 1111 (1975), 42 U.S.C. § 2014(t).

As a result of the 1975 amendments, the requirement for private insurance and the ceiling on liability are independent of and no longer connected to indemnification. Similarly, the new provision for deferred premiums is not tied to the Commission's authority to enter into indemnification agreements. Thus, even if indemnification authority expires in 1987, the Commission still may require private insurance and assess the deferred premium.

In addition, the staff points to statements made in a 1975 markup of bills to amend the Act. Jt. Comm. on Atomic Energy, 94th Cong., 1st Sess., Open Markup on H.R. 8631 and S.2568: Price-Anderson Act Amendments (Jt. Comm. Print 1975). During the markup session, Congressman McCormack, a member of the Joint Committee, offered an amendment to state in the Act itself that when government indemnity is eventually withdrawn from the insurance program, the balance of the program would remain intact. Id. at 47. The bills before the committee proposed to establish the "deferred premium" feature of the Price-Anderson insurance scheme. That feature, it was argued, would eventually result in the elimination of government indemnity; as more reactors are licensed, the total amount of deferred premiums ($5 million per licensed facility) increases, eventually covering the aggregate liability fixed by the Act for a nuclear incident ($560 million or the amount of financial protection required of the licensee, whichever is greater). Mr. McCormack indicated that this would happen in five to ten years. He explained that his amendment would provide a statement that the rest of the program would continue indefinitely. Congressman McCormack said,

> "If we put a cutoff date for the entire act in the bill as we now have, this means that another Congress in the future * * * will have to go through this all over again to see how and in what manner. It will be forced to reenact something * * * ."
>
> Id.

Senator Pastore, the Joint Committee Chairman, argued against Congressman McCormack's amendment, but not the reason for the amendment. He said that the amendment "might lead to some problems in changing the bill drastically," and suggested that some similar expression of intent be provided in the committee report:

> "I think what we ought to say here is write in the report that the pitch of this legislation is to get the Government out of the industry and that is the indemnity, but once we are out of it, it doesn't necessarily mean that you [nuclear industry] are out of it."
>
> Id.

Senator Baker argued against the amendment because it might be perceived as a fundamental change to the bill, necessitating further hearings and resulting in further delay:

> "The primary objective is to do something, whether it's to not pass the bill or pass it.
>
> "* * * I fear the suggestions he [Congressman McCormack] is making here will be thought of as fundamental changes in the design and concept of the proposal * * * ."
>
> Id. at 48.

Senator Pastore agreed, and suggested that the amendment might open the bill to new hearings "and all that." Id.

Congressmen Lujan and Anderson also criticized Mr. McCormack's amendment, but not his intent. Congressman Lujan said, "* * * I am just a bit afraid [the amendment] would not allow the government [indemnification] to continue if it proved to be necessary." Id. And, Congressman Anderson indicated that the amendment might be "involving us unnecessarily in controversy that has hopefully been resolved by the provisions now in the law for a mechanism that we will phase out Government responsibility by 1985." Id. at 49.

The Joint Committee did not vote on the amendment. Because of the various criticisms, Mr. McCormack withdrew it before a vote was taken.

Commission staff believes that this legislative history indicates congressional intent that the entire Act would expire in 1987. The Commission, accepting an apparent assumption made by Mr. McCormack that the bill before the Committee included an expiration date for the entire Act, not just the Commission's indemnification authority (see Mr. McCormack's statement which we quote on page 4), evidently interprets the Committee's criticism of and inaction with regard to Mr. McCormack's amendment as indicating the Committee's intent that the entire insurance scheme would expire when the indemnification authority expired.

We believe it is inappropriate to attribute to the full Congress any intention one might infer from a committee "non-vote" on an amendment offered at a bill markup session. Even if we could, there is no confirmation in the legislative history of Mr. McCormack's understanding of the bill. It is certainly not clear from the statements made during the discussion of Congressman McCormack's amendment that the Joint Committee shared his interpretation of the bill. In fact, Senator Pastore seemed to read the bill differently; he stated that the bill would "get the government out" of the insurance scheme, but would not allow the industry out of the scheme. (See Senator Pastore's remarks which we quote in page 5.) He suggested that the Committee make that point in its report on the bill.

The Committee adopted the Chairman's suggestion and included in its report the following:

> "The Joint Committee wishes to stress that there are a number of features of the Price-Anderson Act which should be viewed as permanent. These include the mandatory insurance coverage, * * * and the mandatory retrospective [deferred] premium system. * * * The provision for termination in 1987 should be viewed as a device to insure that Congress will reassess the situation prior to that time and make revisions as required, rather than as congressional intent to provide for an eventual termination of the federal regulation of nuclear liability insurance."
>
> S. Rep. No. 454, 94th Cong., 1st Sess. 9 (1975).

The report indicates to us that the full Committee did not follow Mr. McCormack's interpretation of the bill, and intended that under the bill before it, certain features of the insurance scheme would remain even when the indemnification authority expired in 1987.

Congressional intent becomes clear, we believe, when one contrasts the indemnification provision of the Act with the provisions establishing the other features of the insurance

scheme. The Act provides that "[t]he Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1987," agree to indemnify the licensee. 42 U.S.C. § 2210(c). However, the the Act provides no expiration of the Commission's authority to require licensees to maintain private insurance protection, 42 U.S.C. § 2210(a), and to pay deferred premiums, 42 U.S.C. § 2210(b), (the two features the Committee report described as "permanent"), nor does it provide for expiration of the limitation on aggregate liability, 42 U.S.C. § 2210(e).

We recognize, however, that the Commission disagrees with our position and intends to implement the Act consistent with its interpretation. We understand that there are several bills to amend the Act currently pending before the Congress. The Congress may wish to address this issue as it considers these bills.

Sincerely yours,

Milton J. Socolar

Acting Comptroller General
of the United States

END