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January 30, 1998

U.S. Department of Energy
Office of General Counsel, GC-52
1000 Independence Avenue, S.W.
Washington, DC 20585

Attention: Mr. Ben McRae or Ms. Jeanette Helfrich

Attached are comments from the State of Nevada on the December 31, 1997 *Federal Register* "Notice of Inquiry Concerning Preparation of a Report to Congress on the Price-Anderson Act."

As noted in the State's comments, we are concerned that the specified comment period of 30 days may have been too short to allow adequate coverage of the questions and associated issues contained in the Notice. Nevada recommends that DOE consider extending the comment period or reissuing the Notice for additional comments to assure that affected parties have adequate time to fully respond to the Notice and provide more comprehensive and substantive responsive comments to the questions posed.

Nevada also requests that DOE consider releasing the actual Report in draft form for comment prior to its being finalized and submitted to Congress.

Thank you for the opportunity to comment.

Sincerely,

Joseph C. Strolin
Administrator, Planning Division

JCS/js

Attachment

**STATE OF NEVADA COMMENTS ON THE
U.S. DEPARTMENT OF ENERGY OFFICE OF GENERAL COUNSEL
NOTICE OF INQUIRY CONCERNING PREPARATION OF A REPORT
TO CONGRESS ON THE PRICE-ANDERSON ACT**

**Prepared By
The Nevada Agency for Nuclear Projects**

In response to the Notice of Inquiry that was published in the *Federal Register* on December 31, 1997, the State of Nevada offers the following general comments:

The Price-Anderson Act must be continued

Given the state of decline that currently characterizes the commercial nuclear power industry, one of the original purposes of the Price-Anderson Act (PA), encouragement of the growth of the nuclear industry, may not be as important as it appeared to be in the 1950s. However, the aging of commercial reactors, the potential development and operation of new, first-of-a-kind federal and private SNF storage and disposal facilities, and the potential for major, unprecedented SNF and HLW shipping campaigns make it imperative that adequate insurance coverage be maintained to protect the public as well as state and local governments in the event of nuclear accidents. DOE should strongly and aggressively recommend the continuation of Price Anderson coverages.

Price-Anderson Indemnification must to apply to all DOE activities

PA indemnification of DOE activities was one of the key modifications that were made when the Act was re-authorized in 1988. Given the major role DOE is expected to play in the management of commercial SNF over the next 50 - 100 years and the extensive clean-up and management activities at DOE sites around the country, continued coverage of DOE and DOE contractor activities under PA must be a cornerstone of any renewal of the Act.

Price-Anderson coverage should extend to the transport of SNF to and from private interim SNF storage facilities to the same extent as it applies to other covered activities

Nevada strongly supports the recommendation of the Western Interstate Energy Board (WIEB) High-Level Radioactive Waste Committee that the Act should be amended to assure that Price Anderson coverage applies to nuclear incidents related to the transportation of radioactive waste to and from any private interim storage facility. As currently written, the Act may be construed as not guaranteeing such coverage.

The Price-Anderson Act should establish a uniform legal approach for determining causation in the event of injuries and health effects resulting from a nuclear accident

Nevada supports amending the Act to provide for uniform approaches to establishing causality that recognize the importance of statistical standards of causality and the use of medical evidence that includes epidemiological studies in demonstrating causal links between any nuclear incident and the frequency of disease. Advances in information technology and in the field of epidemiology permit the establishment of causal linkages that are more readily available and scientifically justifiable. Recent cases involving states' litigation of claims involving tobacco-related health effects may provide useful examples in this regard.

Price-Anderson coverage should apply regardless of theft, diversion, or sabotage

Nevada supports the recommendation in the WIEB comments that the Act needs to specifically require insurance and indemnity agreements to extend coverage to all liability from the release of radioactive materials regardless of whether they have been diverted from the course of transportation. Under the current provisions of the Act, coverage for transportation accidents will end if the radioactive material is stolen and later released. Injuries resulting from such a release may not be compensated for under the current Price Anderson system.

The statutory limit on liability should be increased commensurate with the rate of inflation or some other reasonable indexing formula

The current statutory liability limit of \$8.96 billion was established 10 years ago and, at the time, represented a significant increase over the prior limit. While almost \$9 billion is a considerable sum, the costs of a major nuclear accident involving contamination and long-term health and environmental consequences, especially in a large metropolitan area, could conceivably exceed the current cap. Some method of automatically adjusting the cap from year to year (or at certain predefined intervals) to take account of inflation (and other factors that might influence the upper limit of necessary coverage) would assure that the statutory limit continues to be adequate.

DOE should consider extending the comment deadline for the Notice

Given the very short time period provided in the *Federal Register* Notice and the fact that most interested parties, including the State of Nevada, affected local governments, and other western states, did not learn of it until several weeks after the December 31, 1997 publication date, DOE should consider extending the comment period or reissuing the Notice for additional comments. The issues related to PA re-authorization are legally complex and technical. A thorough review of the Act and its implementation over the past 10 years would require considerably more time than provided by the Notice.

The comments provided herein are intended to be general in nature and address only broad issues of concern with respect to the Act. Due to time and resource constraints, we did not attempt to address the DOE General Counsel's list of questions in a detailed and specific manner or in the context of specific sections/provisions of the Act.

Endorsement of WIEB Comments

The State of Nevada endorses the comments on the Notice of Inquiry submitted by the WIEB High-Level Radioactive Waste Committee. The WIEB Committee has been involved with issues related to Price-Anderson Act insurance coverage and indemnification and SNF and HLW transportation since its inception in the early 1980s. WIEB is an excellent resource for and repository of information on the history and workings of Price-Anderson and the perspectives of western states on the issues associated with it.