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January 20, 1998

U.S. Department of Energy
Office of General Counsel
GCS-52
1000 Independence Ave. SW
Washington, DC 20585

RE: COMMENT BY ESMERALDA COUNTY, NEVADA CONCERNING THE CONTINUATION OR MODIFICATION OF DOE PRICE-ANDERSON ACT

Dear Sirs:

The DOE Price-Anderson indemnification is intended to provide coverage for contractors for the benefit of any victims of a nuclear accident or incident or a precautionary evacuation arising from activity under a DOE contracts. The public perception is that if there is a nuclear accident resulting in a dispersal of radioactive material, the cost to mitigate the effects would be extensive. Therefore, the provisions covered by the current Act should, at the very least, be maintained. We are concerned that if the DOE Price-Anderson indemnification is not continued, we will not have the proper protection should a severe accident occur when spent nuclear fuel is transported through our community on its way to Yucca Mountain. The maintaining of the DOE Price-Anderson indemnification becomes even more important with the privatization of the OCRWM transportation program. DOE cannot expect private contractors, and in particular carriers, to be able to afford adequate coverage from a private insurer.

It is felt that the elimination of the DOE Price-Anderson indemnification would significantly affect the ability of DOE to perform its various missions safely because it would affect the willingness of conscientious and reputable contractors to do work related to nuclear activities. If $8.96 billion is considered by Congress to be appropriate coverage in the event of a significant nuclear accident few, if any, trucking companies could afford that amount of coverage. Consequently, if DOE took the no indemnity or private insurance alternative, it is felt that the only contractors DOE might get to perform their nuclear activities would be small, less diligent companies that had nothing to loose. However, it would most likely be that companies like Lockheed Martin, General Electric, British Nuclear Fuels, etc would not risk the company assets to

participate in DOE contracts.

It is also felt that Price-Anderson Act provides a reasonable process for settling claims in the event of a nuclear accident or a necessary evacuation, such as occurred at Three Mile Island. If the Price-Anderson indemnification were eliminated, the ability of claimants to receive compensation for damages would, most likely, become more difficult. As present, it is up to a U.S. District Court in the district in which the nuclear accident occurs to expedite the legal proceedings and the distribution of compensation based on the existing circumstances. Without Price-Anderson indemnification, cases would have to go to litigation with potential appeals, which could greatly extend the time for distribution of needed compensation and greatly increase the cost to the victims as they would have to pay legal fees. DOE could require contractors to obtain private insurance, which most contractors have a lower limit than DOE Price-Anderson indemnification, but if it was in the billions of dollars, there would probably be few, if any, contractors willing to bid on DOE work.

DOE Price-Anderson indemnification should continue to cover DOE contractors and other persons even in the event of a nuclear accident resulting from their gross negligence or misconduct. Any victims of a nuclear accident does not know, nor does it matter, whether it was truly an accident or the result of gross negligence, the injury and/or damage is the same. Therefore, if the DOE Price-Anderson indemnification was not covered in the event of gross negligence on the part of the contractor, obtaining just compensation would probably be even more difficult than if the DOE Price-Anderson indemnification were eliminated, as any victims would have to prove gross negligence, which could be difficult. What needs to occur is that the DOE Price-Anderson indemnification continue and that DOE be very diligent in checking the background of potential contractor companies management and the companies past performance to assure that they are conscientious and reputable and then make them accountable for their work with oversight, rather than to abandon victims of a nuclear accident. The coverage should provide omnibus coverage and there should be no distinction on the basis of whether an entity is for-profit or not-for-profit. Again, the coverage is to provide compensation for any victims of a nuclear accident from DOE activities regardless of circumstances or the type of contractor.

The DOE Price-Anderson indemnification should definitely continue to cover transportation under DOE contract and should not be a variable depending on type of material, method of transport or jurisdiction, none of which affects the extent of damage from a nuclear accident. The local communities need the protection offered by the DOE Price-Anderson indemnification.

The coverage of the DOE Price-Anderson Act should not be modified to state that all legal liability damage from a nuclear accident be channeled exclusively to the operator of a facility. In the OCRWM Program in particular, transportation of the spend nuclear fuel will be the responsibility of DOE Regional Servicing Contractor and the operator of a facility (the utility) is not responsible for the shipment.

If there are ways that modifications to the Act could facility a more prompt process of payment and settlement of claims, then modifications should be made. It is believed that the largest claim against the Price Anderson Act was the Three Mile Island. It would be worthwhile to evaluate lessons learned from that experience to establish whether there are beneficial modifications to the Price-Anderson Act to facilitate

damage payments.

DOE should continue to be authorized to issue civil penalties against contractors for nuclear incidents resulting from the gross negligence or willful misconduct of a contractor. That represents the incentive for a contractor to perform nuclear related activities in a safe manner. It is not felt that DOE's ability to issue civil penalties affect their ability to attain safe and efficient management of DOE activities. If a contractor knows he can perform work at DOE nuclear facilities safely and efficiently, he would not avoid DOE contracts. By the same measure, gross negligence and willful misconduct should apply to all contractors, both for-profit and not-for-profit. Again, it does not matter to a victim of a nuclear accident if the contractor is for-profit or not-for-profit, any injury and/or damage is the same, so the same rules should apply.

DOE should not continue to have discretionary authority to provide educational nonprofit institutions with an automatic remission of civil penalties. These penalties are assessed for violations of nuclear safety and it does not matter who the contractor is, they should all be working to the same set of ground rules.

DOE should continue to have the authority to impose criminal penalties for knowing and willful violations of nuclear safety requirement by those covered by the DOE Price-Anderson indemnification. If a party willfully violates nuclear safety requirements, regardless of whether there is an accident or not, there should be criminal penalties for the willful violation of those safety requirements.

Sincerely,

Susan W. Dudley
Chairman

Gary O'Connor
Vice Chairman

Benjamin Viljoen
Member