January 30, 1998

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

Subject: Notice of Inquiry ("NOI") Concerning Preparation of a Report to Congress on the Price Anderson Act, 62 Fed. Reg. 68272 (Dec. 31, 1997)

Dear Sirs:

The United States Enrichment Corporation ("USEC") strongly supports extension beyond 2002 of the provisions of Section 170 of the Atomic Energy Act (the "Price Anderson Act") that provide for indemnification of contractors and others against any legal liability arising from a nuclear incident or precautionary evacuation arising from activity under a contract with the Department of Energy ("DOE").

Indemnification under the Price Anderson Act has proven to be a cost-effective means of encouraging contractors to undertake nuclear-related activities for, or supply goods to, DOE or at DOE sites while at the same time ensuring the U.S. public that adequate funds will be available to pay claims in the event of a nuclear incident in connection with such activities. Although the risk of a nuclear incident is small, the magnitude of any potential liability is so enormous that few contractors would run the risk of such liability without the type of financial guarantees provided by the Price Anderson Act. Those contractors that would be willing to undertake such risks would likely charge exorbitant fees for their goods and services as compensation for the risks. If contractors and subcontractors could obtain commercial insurance for such risks, the cost would be passed on to the U.S. government, through the increased cost to the government of the contractor's services. In any case, the financial capacity of the commercial nuclear insurance industry to accommodate claims for nuclear incidents is limited (policies generally are not written for more than $200 million) and it is uncertain whether commercial insurance would be available for all types of activities conducted at all DOE sites.

The availability of indemnification under the Price Anderson Act for contractors and others at the DOE-owned enrichment facilities operated by USEC is an essential element of the continued success of the enrichment enterprise. Over the forty-plus year life of these

plants, the surrounding communities, the private contractors that maintain, operate and supply the facilities and the customers who deliver uranium to USEC for processing have relied on Price Anderson protection.

Price Anderson indemnification is also essential for the success of USEC's privatization. Twice -- once in 1992 and again in 1996 -- the U.S. Congress passed, and the President signed, USEC privatization legislation providing that the lease between USEC and DOE is a contract for purposes of Section 170d of the Atomic Energy Act of 1954, as amended, and thereby subject to a DOE Price Anderson indemnification against public liability arising from activity under that lease. The continued applicability of the Price Anderson indemnification after privatization ensures the public that privatization will not diminish the ongoing responsibility of the U.S. government for nuclear incidents at the DOE plants. It is consistent with the requirement that USEC's privatization "protect the public health, safety and the environment." 42 U.S.C. § 2297a.

Attached are USEC's comments to the specific questions raised in the NOI. In general, USEC sees no reason to make major changes to the Price Anderson Act. It has functioned effectively for over forty years, and has achieved its twin purposes of protecting the public against catastrophic losses while at the same time encouraging the growth and development of the nuclear industry.

USEC does not believe that there have been any major changes within the industry since the Act was last amended in 1988 that merit altering the scope and applicability of the DOE indemnification provisions. The few changes that we recommend are intended only to clarify the applicability of Price Anderson Act indemnification to incidents occurring outside the United States.

USEC appreciates the opportunity to provide this input to DOE and stands ready to provide any additional assistance or information that DOE may require.

Sincerely,

Donald J. Hatcher
Director of Risk Management

Attachment

USEC RESPONSE TO DOE QUESTIONS

Questions 1-7, 12, 14-17, 21, 23-28, 30-34: Price Anderson protection is a proven mechanism to protect the public interest and should be continued without substantial changes.

Question 8: USEC believes that the elimination of DOE Price-Anderson indemnification would affect the willingness of existing and potential contractors to perform activities for DOE. USEC's view is based upon USEC's experience with contractors who inquire about the availability of the indemnification for activities at the DOE enrichment facilities operated by USEC.

Question 9: As stated in USEC's cover letter, USEC believes that contractors would either decline to supply goods or services to DOE facilities or charge increased fees for their goods and services as compensation for the increased risk. USEC's view is based on its own experience with contractors at the DOE enrichment facilities operated by USEC.

Question 10: The ability of claimants to be compensated for their claims would be limited by the balance sheets of the potential defendants and the availability of commercial nuclear liability insurance. It is unlikely that these sources would equal the amount of indemnification available through the DOE Price Anderson indemnification.

Question 11: USEC cannot comment upon the potential availability of insurance. As noted in the cover letter, however, USEC's experience has been that commercial nuclear liability insurance is generally not available for amounts in excess of $200 million. Further, this insurance represents the total amount available within the insurance pools to cover claims. Therefore, if three potential defendants each have a $200 million policy, the total amount for which the insurer(s) would have to pay out under all three policies is capped at $200 million. In addition, it is not certain that insurance would be available up to $200 million (or at all) for all DOE activities.

Question 13: USEC believes the same financial protection afforded contractors for incidents within the United States should apply to incidents outside the United States. From a contractor's perspective, the need for nuclear

liability protection is not less when their services are performed outside the United States. (Note, that while the channeling of legal liability in many countries pursuant to the Vienna and Paris Conventions may limit the possibility that a contractor will be held liable for an incident under those countries' laws, there is still a risk of lawsuits brought in U.S. courts in connection with incidents occurring abroad.)

Question 18: The Price Anderson Act indemnification should apply to the clean up of DOE's sites. Contractors are being asked to clean up DOE sites, sometimes using advanced technology developed specifically for the site. Nuclear risks associated with clean up activities would be covered by the Price Anderson indemnification. There is no basis for limiting such coverages. Price Anderson should apply to DOE contractors at all sites.

Question 19: Price Anderson should apply to DOE clean up sites. Contractors are being asked to clean up DOE sites, sometimes using advanced technology developed specifically for the site. Further, mixed waste creates the same societal problems as other radioactive waste; there must be financial security to compensate for damage. Price-Anderson protection is required.

Question 20: USEC believes the DOE indemnification should apply to any activity undertaken by a private party under U.S. government sponsorship (such as in the implementation of an international agreement to which the United States is a party) that serves an important national objective, such as nuclear non-proliferation, nuclear risk reduction or improvement of nuclear safety.

Question 22: Any revision of the Price Anderson Act to address nuclear incidents occurring in the exclusive economic zone (EEZ) of the United States should consider the manner in which the EEZ is treated in the Convention on Supplementary Compensation for Nuclear Damage. This Convention provides that responsibility of the Installation State extends to any nuclear installation under its authority or control. Certain installations within a nation's EEZ may be considered to be within the authority of the Installation State.

Question 29: USEC has no comment with respect to the imposition of penalties on DOE contractors at DOE sites. However, DOE should not impose penalties on activities that are regulated by the NRC or other governmental agencies. DOE has recognized the importance of avoiding dual regulation at the GDPs and should ensure that DOE contractors are not subject to dual regulation by DOE and the NRC or other agencies. This will become increasingly important as more DOE sites are regulated by other agencies.