



Western Interstate Energy Board/ WINEB

January 30, 1998

Alberta
Arizona
British Columbia
California
Colorado
Montana
Nebraska
Nevada
New Mexico
Oregon
Saskatchewan
Utah
Washington
Wyoming

Mr. Ben McRae
U.S. Department of Energy
Office of General Counsel
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Dear Mr. McRae:

Enclosed are the comments of the Western Interstate Energy Board's High-Level Radioactive Waste Committee on the Department of Energy Office of General Counsel's Notice of Inquiry concerning the preparation of a report to Congress on the Price-Anderson Act.

The Committee appreciates the opportunity to provide input during the Department's process of developing its report on the Price-Anderson Act, and also appreciates that the comments submitted will be made available for review on the Internet. The Committee strongly recommends that DOE also make available to the public a draft of the report prior to its final submittal in August.

Sincerely,

[signed]

Ken Niles, Co-Chair
High-Level Radioactive Waste Committee

[signed]

Captain Allan Turner, Co-Chair
High-Level Radioactive Waste Committee

Jeff Burks
Chairman

Douglas C. Larson
Executive Director

Price-Anderson Act Comments

The High-Level Radioactive Waste Committee of the Western Interstate Energy Board is pleased to provide the Department of Energy with the following recommendations regarding potential revisions to the Price-Anderson Act (the Act). The Committee believes that the Price-Anderson Act must be continued and that the Act must also continue to cover all DOE spent fuel and high-level radioactive waste activities. The Committee believes that Price-Anderson coverage will become more and more critical with the significant increase in potential radioactive waste shipment numbers which can be anticipated in both the near and long term. This increase in shipments is likely to stem from a variety of sources, including the decommissioning and decontamination of nuclear reactors, DOE and Department of Defense environmental restoration activities, shipments to the Waste Isolation Pilot Plant in New Mexico, and shipments of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act.

The Committee believes that the following amendments to the Price-Anderson Act should be enacted:

Private Independent Spent Fuel Storage Installation Coverage

The Act should be amended to make clear that Price-Anderson coverage will apply to nuclear incidents related to the transportation or storage of radioactive waste to and from a private independent spent fuel storage installation. The Committee believes that such coverage may not be guaranteed under the Act as it is currently written. Failure to guarantee this coverage would mean that in the event of an accident arising from the transportation of radioactive waste to a private storage facility, injured persons would be forced to rely on receiving compensation from the assets of the responsible private parties and any insurance policies the responsible parties voluntarily purchased. The Committee recommends that the Act be amended to ensure the compensation of parties injured by radioactive waste shipments to a private independent spent fuel storage installation by requiring the Nuclear Regulatory Commission (NRC) to indemnify all of its licensees, even those for which no financial protection is required.

Transportation To and From an Independent Spent Fuel Storage Installation

The Act should be amended to clarify that precautionary evacuations along radioactive waste transportation routes will receive Price-Anderson coverage when radioactive materials are transported from any independent spent fuel storage installations to a repository. As currently written, the Act excludes shipments from an independent spent fuel storage installation by providing coverage only for radioactive material shipments “to or from a production [weapons material] or utilization [power plant] facility.”

In addition, the Act should be amended to provided coverage for radioactive waste transportation incidents in the event that DOE operates an independent spent fuel storage installation itself. The Committee believes that under the current provisions of the Act, coverage would be unavailable to parties injured by an incident involving shipments between a DOE-operated independent spent fuel storage installation and a DOE-operated repository.

Coverage Regardless of Theft, Sabotage, or Diversion

The Act should be amended to 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, for example, stolen and later released. Injuries resulting from such a release would not be compensated for under the current Price-Anderson system. The Committee believes that it is highly unlikely that the victims would ever be compensated for such injuries, since their sole source of compensation would be the thieves or saboteurs who diverted the materials.

Waiver of Immunities

The Committee believes that the Act should be amended to require the Department of Energy to order its nuclear waste contractors to waive charitable and governmental immunity defenses for all nuclear incidents involving high-level radioactive materials, including spent nuclear fuel and high-level radioactive waste. Currently, the Act only requires such waiver of defenses for “Extraordinary Nuclear Occurrences” (ENOs). However, under the terms of the Act, DOE or the NRC determine “as appropriate” whether or not an incident involving radioactive materials is considered an ENO. The Committee believes that, especially with regard to shipments of high-level radioactive waste materials, more clarity in the Act is needed to ensure that injured parties are properly compensated.

Proof of Causation

Congress should consider whether the Act should be amended to provide a uniform legal approach for establishing the causation of injuries related to the transportation of radioactive waste. Currently, a claimant’s ability to show proof of causation is determined under state law, which can vary from jurisdiction to jurisdiction. However, a person injured through exposure to radiation from a nuclear transportation accident may have great difficulty in proving that the accident was responsible for their illness when the same illness can also be caused by a number of other factors. In order to provide the greatest level of protection to injured parties, the Act should be amended to incorporate two new features: 1) mandate the allowance of evidence which is usually considered persuasive within the medical field, even though it may not meet the existing judicial standards of proof (as an example, courts would be allowed to consider epidemiological studies measuring the frequency of a disease in various geographic areas and determine whether there is a correlation between the frequency of the disease and other factors); and 2) mandate the adoption of a statistical probability standard of causation where courts would be allowed to consider the statistical probability that an accident caused the claimant’s injuries, and award damages based on this probability.

Solvency of the Price-Anderson System

DOE’s report to Congress should address the future solvency of the Price-Anderson system. The Committee believes that with the current onset of electric industry restructuring across the nation, many nuclear power plants may become economically unviable, and may be forced to shut down. DOE’s report should address how such shutdowns could affect the ability of the Price-Anderson system to provide adequate compensation to persons injured by an incident involving nuclear materials.

The Committee believes that the following provisions of the Price-Anderson Act should be maintained:

Public Liability

The Act should continue to define public liability to include “any legal liability” for “all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or a precautionary evacuation.” The Committee believes that state and local governments should continue to be able to get reimbursed for costs such as police, ambulance, fire protection, securing the accident site, confining materials to the accident site, and conducting evacuations.

Use of State Tort Law

The Committee believes that the Act should continue to allow the tort law of the state in which a radioactive waste incident occurs to govern with respect to determining liability and damages. An exception to this recommendation involves proof of causation issues (see discussion above).

Other Provisions

The Committee believes that the Price-Anderson indemnification system should provide maximum coverage for potentially injured parties, and should therefore continue to provide omnibus coverage. It should not be restricted to DOE contractors, subcontractors, and suppliers.

Also, the Committee sees no reason for the Price-Anderson system to treat privatized arrangements which are closer to contracts in the private sector (such as fixed-priced contracts), differently than the traditional “management and operating” contract utilized by DOE and its predecessors in the past.