

White Pine County
Board of County Commissioners

February 10, 1998

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

Subject: Department of Energy (DOE) Price-Anderson Act Comments from White
Pine County, Nevada

Dear Mr. Fygi:

Thank you for providing White Pine County with the opportunity to comment concerning the continuation or modifications of the provisions of the Price-Anderson Act. We understand that these comments will be used to assist the Department of Energy in preparing a required report to Congress. You will note in reviewing our comments that the views of many "Affected Units of Government" in Nevada are similar to each other and that we have worked together in developing comments. In fact, many of our comments will be identical to those made by other Nevada counties. We believe that continuation of Price-Anderson coverage is essential.

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 contract. If there is a nuclear accident resulting in a dispersal of radioactive material, the cost to mitigate the effects could 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 if spent nuclear fuel is transported through or near our community on its way to Yucca Mountain, if it should be found suitable. Maintaining 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 mission's safety 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 smaller, less diligent companies that had nothing to lose.

It is also felt that DOE Price-Anderson 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 much more difficult. At 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 lawyer fees.

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 victim 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 victim would have to prove gross negligence, which could be difficult.

The DOE Price-Anderson indemnification should continue to provide omnibus coverage and there should be no distinction on the basis of whether an entity is for-profit or not-for-profit. The coverage should apply for all DOE activities and the coverage is to provide compensation for any victim 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 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.

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

DOE should continue to be authorized to issue civil penalties against contractors for nuclear incidents resulting from gross negligence or willful misconduct. This would represent the incentive for a contractor to perform nuclear-related activities in a safe manner.

DOE should not continue to have discretionary authority to provide educational nonprofit institutions with an automatic exemption from civil penalties. These penalties should be assessed for violations of

nuclear safety, and no 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 requirements 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 these safety requirements.

Thank you for providing the opportunity to comment.

Sincerely,

Carol McKenzie
Chairman
White Pine County Board
of Commissioners