January 30, 1998

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

RE: University of California Comments on Price-Anderson Act Notice of Inquiry

The University appreciates the opportunity to comment on the Notice of Inquiry (NOI) concerning preparation of a report to Congress on the Price-Anderson Act. The NOI poses a number of questions that attempt to identify potential issues that might arise in developing the report. The University includes its general comments in this letter and offers its responses to the specific questions in an attachment.

The Price-Anderson Act provides an important guarantee to American citizens that they will be compensated for injuries sustained as a result of exposure to nuclear materials. This guarantee must remain in effect regardless of how the injury came about. Shifting responsibility for payment of claims from the United States to contractors undermines the certainty of compensation and is therefore inappropriate. Recent experience with large class claims, an example being claims arising from faulty breast implants, shows that the availability of bankruptcy protection can defeat the payment of adequate compensation to all harmed citizens. The United States government must remain the insurer for its people so long as nuclear materials are used in research, medicine, power production, and weapons, and so long as resulting waste materials must be transported and stored.

The question remains, however, if the United States does pay all compensation for nuclear incidents, should this remedy be exclusive, and should the government have a right of subrogation in those situations where fault can be assigned? It is our view that the remedy should remain exclusive and that there should be no subrogation, where the activity causing the harm was being conducted for the government. To do otherwise increases the cost of assigning fault and paying compensation – a cost which ultimately is returned to the American people in the form of higher prices for commercial goods and services or government contracts – and encourages the offending party to seek bankruptcy protection for large claims. A similar result occurs even with some limited level of financial risk such as a "deductible," except that there is a lessened probability of the use of bankruptcy to avoid liability.

If government contractors continue to be indemnified against third-party liability for nuclear incidents, how should contractors be held accountablefor their conduct? The Price-Anderson Act has existing provisions for criminal and civil sanctions. There are a two revisions which we would propose: (1) the criminal provisions should be moved to Title 18 of the United States Code, and should be modified so as to apply to anyone who intentionally harms another through the exposure to nuclear materials, regardless of whether they are a government contractor employee or not, and (2) civil and/or administrative sanctions be applied in those instances where no harm was actually done, but where the failure of a contractor to comply with nuclear safety regulations created a substantial risk of harm. The imposition of a civil fine or penalty against a not-for-profit contractor should be limited to those situations where the contract provides sufficient revenues to the contractor to pay civil fines and penalties in addition to its general and administrative expenses of performing the contract. Not-for-profit contractors have limited or no ability to apply non-contract revenues to

contract-related expenses.

Finally, the Price-Anderson Act should be modified to provide full indemnification of government contractors tasked to perform work overseas involving any nuclear materials, regardless of the ownership of such materials. Existing provisions give limited coverage for liabilities arising from U.S.-owned nuclear materials, and no coverage at all for liabilities arising from foreign-owned nuclear materials. Where the activity is being conducted at the direction of the United States government it is appropriate that the United States act as the insurer. Current and contemplated foreign nuclear activities are primarily related to nonproliferation and nuclear safety, and are of the highest national security interest. Even though U.S. citizens are not those primarily at risk, such activities are promoting a governmental purpose on behalf of U.S. citizens and for this reason the potential cost of indemnification is an appropriate taxpayer expense. There are other mechanisms that provide some form of coverage to contractors when the task is related to a specific activity such as nuclear non-proliferation. But contractor involvement overseas in reactor safety, waste cleanup and other civilian uses of nuclear materials, that are tasked by the United States as part of its foreign policy, are not covered by any statutory indemnity. As a consequence, either the prices of contracts are increased to insure against potential losses, or the contract work is limited to a small pool of contractors having the financial wherewithal to self-insure against large losses. Revising the Price-Anderson Act to fully indemnify overseas activities of government contractors would lower contract costs and expand competition for such work.

Again, thank you for the opportunity to have input into the development of the report. We look forward to viewing the responses of other DOE contractors to the questions and to the Department's report.

Sincerely,

original signed 1/30/98 by

V. Wayne Kennedy
Senior Vice President – Business and Finance

Attachment a/s

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