

**Testimony of
Mr. John Bradburne
President and CEO, Fluor Fernald, Inc.**

**On Behalf of
Energy Contractors Price-Anderson Group**

**Before the
Committee on Energy and Natural Resources
United States Senate**

May 24, 2001

**Testimony of
Mr. John Bradburne
President and CEO, Fluor Fernald, Inc.**

**On Behalf of
Energy Contractors Price-Anderson Group**

**Before the
Committee on Energy and Natural Resources
United States Senate
May 24, 2001**

Mr. Chairman and Members of the Committee, my name is John Bradburne and I am President and CEO of Fluor Fernald, Inc. I am here this morning representing fellow Department of Energy contractors through the Energy Contractors Price-Anderson Group.¹ We appreciate this opportunity to testify before your Committee and for the fact that you have scheduled this hearing about extension of the Price-Anderson Act ("Price-Anderson").

Price-Anderson Act authority of the Department of Energy (DOE) provides indemnity protection for nuclear risks associated with DOE contracts and is to expire on August 1, 2002. We are here today to ask for its renewal. We support extension, sooner rather than later, to ensure there is not a break in this vital authority next year.

Protection of the public has been the principal purpose of Price-Anderson. Failure to extend Price-

¹The Energy Contractors Price-Anderson Group is an *ad hoc* group composed of Battelle Memorial Institute; BNFL, Inc.; BWX Technologies, Inc.; Fluor Corporation; Johnson Controls World Services Corporation; Nuclear Fuel Services, Inc.; Washington Group International Inc.; and, USEC Inc. Each of these entities now is covered by one or more nuclear hazards indemnity agreements with the U.S. Department of Energy (DOE) under Section 170d of the Price-Anderson Act.

Anderson would result in substantially less protection for the public in the event of a nuclear incident at a DOE site or in transportation. Moreover it would greatly inhibit the Department of Energy in attracting and hiring the kinds of contractors needed to tackle some of the tough work that lies before them.

For almost 45 years, through Price-Anderson, the Congress has been able to ensure the availability of adequate funds to the public (now about \$9.4 billion) in the unlikely event of a catastrophic nuclear accident. In addition, other benefits to the public include such provisions as emergency assistance payments, consolidation and prioritization of claims in one court, channeling of liability permitting a more unified and efficient approach to processing and settlement of claims, and waivers of certain legal defenses in the event of a large accident ("extraordinary nuclear occurrence").

The 1988 Price-Anderson Amendments Act required DOE and the Nuclear Regulatory Commission (NRC) to submit to Congress reports containing their recommendations for continuation, repeal or modification of the Price-Anderson Act. The DOE Report was submitted to Congress in March 1999 recommending an extension. NRC's Report, which also strongly recommended an extension (with relatively minor changes), was filed in October 1998.

The 1999 DOE Price-Anderson Report makes five basic recommendations, which we support:

(1) DOE indemnification of its contractors for nuclear risks should be continued without substantial change, because it is "essential to DOE's ability to fulfill its statutory mission."

The Report further makes the point that DOE indemnification guarantees the availability of funds to ensure prompt and equitable compensation for the public, provides for consolidating claims in one federal court, and minimizes protracted litigation. DOE goes on to state that Price-Anderson indemnification is cost-effective, pointing out that DOE payments to date "have not been significant."

(2) The amount of DOE indemnification (about \$9.4 billion) should not be decreased.

(3) DOE indemnification should continue to provide broad and mandatory coverage of activities conducted under contract for DOE.

(4) DOE should continue to have authority to impose civil penalties on for-profit contractors, subcontractors and suppliers for nuclear-safety violations.

(5) The 1997 International Atomic Energy Agency Convention on Supplementary Compensation for Nuclear Damage (CSC) should be ratified, and conforming amendments to the Price-Anderson Act should be adopted. (Technically, U.S. ratification of the CSC would have little impact on the portions of the Price-Anderson Act applicable to indemnification of DOE contractors. The CSC is of more relevance to commercial nuclear activities, which would enjoy substantial benefits from its ratification by the United States

and other countries. For example, the CSC would provide a portion of the funds for a power plant accident in the United States through international contributions.)

This year, we have seen several comprehensive energy bills containing nearly identical Price-Anderson extension provisions introduced: S.388, S.472, and S.597. These are based on last year's bipartisan bill, S.2162 (106th Congress), introduced by Senator Frank Murkowski (R-Alaska) and Senator Jeff Bingaman (D-New Mexico). We support extension of the DOE contractor provisions of these bills whose simplicity, similarity and bipartisan nature reflect a consensus on a simple extension of Price-Anderson. We further note that the President's National Energy Policy Report also supports extension of the Price Anderson Act.

Without Price-Anderson protection, most private contractors and suppliers could not prudently take the financial risks associated with assisting DOE to perform its vital cleanup, national defense, and other missions. Price-Anderson indemnification is not a "subsidy" to DOE contractors and suppliers. It simply is the only viable substitute for the commercial insurance that prudent contractors doing work for the Federal Government would purchase, *if they could*, to protect themselves, and the public.

Attached to the 1999 DOE Report to Congress is a letter from American Nuclear Insurers (ANI) indicating that commercial insurers are not in a position to guarantee that any nuclear liability insurance would be written for DOE facilities. It further states that even if it were, it could not replace the \$9.4 billion of indemnity granted under the Price-Anderson Act, since ANI has been

limited to nuclear liability limits of only \$200 million.

In any case, ANI observed that it would be much easier for it to write nuclear liability insurance for new DOE facilities than for existing ones. The insurers said, for facilities which have, in some cases, operated for decades, ANI "would have obvious concerns about picking up liability for old exposures, which may well preclude insurability." Even if some limited private insurance were available for some DOE nuclear activities, it would not protect against all nuclear hazards, and would increase Government costs substantially, as the DOE Report to Congress observes. Few nuclear claims have ever been paid by the Government, so DOE has concluded it is cost-effective for the Government to continue to self-insure the nuclear risks associated with its own activities.

With regard to safety, Price-Anderson indemnification does not provide a disincentive to safety any more than the purchase of liability insurance by an individual or a corporation provides a disincentive to safety. There are existing criminal laws to punish egregious behavior. Furthermore, in the 1988 Amendments, Congress added enhanced criminal and civil penalty provisions to further encourage DOE "contractor accountability." These provisions, which now are being rigorously enforced, were added to enable DOE to impose civil fines of up to \$110,000 per day and increased criminal penalties for violations of DOE nuclear safety rules. DOE also can hold contractors accountable by other actions, such as award-fee reductions, stop-work orders, contract modification, and contract revocation.

There would be strong reluctance on the part of existing and potential contractors to do nuclear

business with the Department if authority to enter into Price-Anderson indemnity agreements were discontinued. The strong reluctance, if not refusal to do business, would apply especially to contractors whose nuclear activities are only a small percentage of their overall businesses. This would lessen competition and otherwise increase costs to the Government. The strong resistance also would extend to subcontractors and equipment suppliers, including many small businesses throughout the country, who might be held liable for an accident but not have the financial resources to cover that liability or the legal defense costs associated with such litigation.

Reducing the number of potential contractors and suppliers to DOE would obviously have an adverse impact on their costs. Of even greater concern would be the potential adverse impact upon the overall quality and safety levels of DOE contract work since the most qualified and most safety conscious contractors and suppliers would most probably be the first to abandon DOE work because of inadequate liability protection.

Contractor coverage prior to Price-Anderson often was inconsistent, subject to individual contract idiosyncrasies, inapplicable to subcontractors, and subject to the availability of appropriated funds. Subsection 170d was carefully designed to correct many of these deficiencies and to provide a uniform system of public protection. Without Price-Anderson, DOE would be faced with performing its missions with small, lightly capitalized contractors or Federal employees. In those situations, the public would not be as well protected. Contractors without assets could not pay claims. Use of Federal employees would mean that the Federal Tort Claims Act would apply, which would eliminate jury trials and the possibility of class actions, and require the submission of

individual administrative claims.

The Price-Anderson system specifically was developed to provide assurance that significant sums of money would be available over an extended period of years to make prompt payment to victims in the remote case of a nuclear accident. The only fundamental change since the original adoption of Price-Anderson in 1957, has been the revolutionary change in the American tort system, most of which has occurred over the last twenty-year period. This change has increased greatly the unpredictability of the probable dollar damages resulting from any major accident, whether it is nuclear or non-nuclear in nature. This makes a system such as Price-Anderson only more essential for the period beyond 2002.

Unlike NRC-licensed nuclear power plants that are "grandfathered" under Price-Anderson (*i.e.*, their coverage lasts for the duration of their license), DOE sites and facilities are not. Most DOE contracts expire in five years or less. Indemnity in DOE contracts signed or extended prior to the Act's expiration will remain in effect for the duration of the contract, but contracts entered into or extended after that date will have no indemnity. There are major DOE contracts that will be coming up for renewal as early as September 2002. Therefore, it is critical to the public to have Congress renew the Act before its 2002 expiration.

In conclusion, the Price-Anderson indemnity system should be continued in substantially its present form. It should also be clarified that the Act does apply to the new National Nuclear Security Administration. After nearly forty-five years of Price-Anderson Act indemnification,

private industry has assumed, as Congress intended, a larger role in assisting the Federal Government in carrying out its own nuclear activities without any significant damage or injury to the public. In other words, Price-Anderson contractor indemnification is a system that has worked well. It should promptly be extended again.

Thank you again for this opportunity to testify before your Committee.