

Nuclear Radiation: Law Suit Directed Against Japan's TEPCO

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Japan: TEPCO trips, but will it fall?

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The nuclear plant operator may be “too big to fail,” but that doesn’t mean it won’t.

TOKYO, Japan — Tokyo Electric Power Co., the beleaguered operator of the stricken Fukushima Dai-ichi power plant, is taking hits on all sides.

Massive compensation payments, financial uncertainty and now a legal challenge calling for its license to be revoked, have the company all but pinned. And the fate of the company, as it struggles to contain the world’s [worst nuclear disaster since Chernobyl](#) [3], remains largely uncertain.

On Monday, TEPCO shares fell 28 percent on the Tokyo Stock Exchange to a record low after media reports over the weekend suggested that the company could be forced to delist from the market. The nosedive caused trading of the company’s stock to be automatically suspended by the market’s “circuit breakers,” which kick in when share prices drop suddenly.

Once the world’s largest private utility company, TEPCO has lost \$36 billion in market value since the beginning of the crisis, and last month posted the largest loss ever by a non-financial company in Japan, 1.258 trillion yen (\$15 billion) — which didn’t take into account compensation payments.

TEPCO is also forecast to have an operating loss of 570 billion yen this financial year ending in March 2012, again before factoring in compensation.

The issue of payments by TEPCO to evacuated residents, local businesses, fishermen, farmers and the many others affected by the Fukushima crisis, remains almost as foggy as the financial future of the company. The government is insisting there will be no cap put on the amount of compensation that TEPCO could be liable for — expected to total trillions of yen.

Discussions are still ongoing between the utility, the government and the banks — major holders of TEPCO equity and debt — as to who will be liable and for how much.

And for now at least, compensation isn't the biggest threat to TEPCO's bottom line.

"Although it's the compensation payments that are getting all the attention, it's the extra fuel which TEPCO will have to acquire to generate electricity that will be its biggest cost in the short-term," said Penn Bowers, an analyst at the Tokyo investment firm CLSA. He was referring to the extra power TEPCO will have to generate at its thermal stations to make up for the shortfall from the offline nuclear reactors.

But the company — which supplies electricity to a third of Japan's population — almost certainly falls under the "too big to fail" category.

Bowers believes the government of Prime Minister Naoto Kan will eventually cap the compensation payments, "once it becomes politically viable to do so. This happened on Kan's watch so he has to appear to be tough on TEPCO."

The legal framework for the Japanese nuclear industry, established in 1961, actually provides immunity from liability for power plant operators when accidents are "caused by extraordinary natural disasters." This is an argument TEPCO looks certain to fall back on when the compensation claims start to mount and the cash begins to run out.

"The government is playing a game to make it look like the taxpayer won't be paying for all this in the end," said Bowers.

The utility and government are now facing their first legal challenge over the current crisis.

Takanori Eto, a recent graduate of the University of Tokyo's law school is in the process of filing suits in the Tokyo District Court asserting that TEPCO's licenses to operate the Fukushima Dai-ichi plant, the nearby Fukushima Daini plant and Tokai Mura facility, were granted illegally.

"There have been legal challenges to the operating licenses in the past claiming that minimum safety standards were not being met. But the courts ruled that licenses were legal according to the standards set by the Nuclear and Industrial Safety Agency," said Eto. "On March 11 we discovered that those standards and safety inspections were completely inadequate."

Eto has filed another suit claiming that the operation of the plants is also unconstitutional because the now uninhabitable areas around Fukushima created by the crisis contravene Japanese citizens' rights to choose where they live.

"If this suit is successful and the operation of nuclear plants is deemed to be against the constitution because of the very real possibility of accidents, it should be applicable to every reactor in Japan, and to any applications for new facilities," said Eto.

TEPCO has now joined the ranks of the likes of BP, Union Carbide and Exxon, whose corporate identity has become globally synonymous with massive environmental destruction.

While the ongoing crisis at Fukushima still has the potential to eclipse even the huge damage wrought on the Gulf of Mexico, Bhopal in India and the Alaskan coastline, the corporations responsible are still in business. BP is posting record profits, Union Carbide — a subsidiary of Dow Chemicals and Exxon Mobil (formed by a 2001 merger) — runs oil

refineries in Japan and even supplies fuel to TEPCO.

With nationalization looking less and less of a possibility, the most likely outcome for TEPCO is it will become a kind of “zombie company” that generates profits only to pay back its creditors and the government, as well as make compensation payments.

It will have to be enabled to continue in some form, both to supply electricity to the greater Tokyo area, which accounts for 40 percent of Japan’s GDP, and to pay the growing compensation claims by the tens of thousands of people whose lives have been blighted by Fukushima.

The initial hearing for Eto’s law suits will be on June 23 in the Tokyo District Court.

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