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MEMORANDUM

To: Sophia Angelini, Attorney-Advisor
Office of the General Counsel for Civilian Nuclear Programs, GC-52
U.S. Department of Energy (DOE), 6A-167
1000 Independence Ave., SW
Washington, DC 20585

From: James A. Schoettler
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6903 Rockledge Drive
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Re: DOE Notice of Inquiry on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation – March 25, 2011 Meeting with USEC

On March 25, 2011, representatives of USEC met at the Forrestal Building with DOE officials at their invitation to discuss USEC's November 30, 2010 written comments on the DOE Notice of Inquiry on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation. 75 Fed. Reg. 43945 (Jul. 27, 2010). This summary of the meeting is being provided to memorialize the discussions in accordance with DOE's Guidance on Ex Parte Communications. 74 Fed. Reg. 52795 (Oct. 14, 2009).

The USEC representatives who attended were James A. Schoettler, Jr., Assistant General Counsel and Donald Hatcher, Director of Risk Management.

The DOE officials who attended were Benjamin McRae, Anita Capoferri and Sophia Angelini, Office of the General Counsel and Sean Tyson, Office of Nuclear Energy.

USEC began the meeting with a summary of its November 30, 2010 comment, and in particular, the following points made by USEC in the comment:

First, any rule adopted by DOE to implement Section 934 of the Energy Independence and Security Act of 2007 ("Section 934") should limit the liability of individual companies to no more than $5 million per incident. A limit of this type will ensure that liability under Section 934 does not burden any one company with a disproportionate share of the contingent costs to be paid by industry under Section 934.

Second, any rule adopted by DOE must employ a "risk informed" formula for purposes of allocating the contingent cost. This is required by the express terms of Section 934. In its November 30, 2010 comment, USEC proposed an approach that would ensure that the implementing rule used a risk-informed formula, and thereby would meet the statutory requirement. However, no matter what approach was taken in the rule adopted by DOE, it must allocate the contingent cost on a risk basis to meet the terms of Section 934 and cannot base allocation primarily on non-risk factors such as revenue.

Third, any rule adopted by DOE should require all suppliers to pay something. While a *de minimus* threshold could be adopted for small exporters, in general all must pay since all potentially benefit from the CSC. The relative shares among companies can and should be adjusted based on risk, but in no event should a company be permitted to escape liability completely (except in the case of a *de minimus* threshold).

Fourth, whenever allocating the contingent cost in a future rule, DOE should look back from the date of the incident giving rise to the call for funds under the CSC to the date the CSC came into force to capture all companies who exported to the CSC countries during that period. This will ensure that all companies who enjoyed the legal benefit of the CSC, even if they did not export to the country in the year when the incident occurred, will share in liability for the contingent cost. As a transition rule, in the first ten years after the CSC enters into force, the DOE should look back ten years to ensure it has an adequate base upon which to allocate the contingent cost.

Fifth, only companies who export to CSC countries should be considered to be subject to paying a share of the contingent costs. A company that only exports to non-CSC countries should not be subject to paying an allocation.

Finally, further data needs to be collected prior to the promulgation of even a draft rule. Experts are available to make a judgment of the relative risk of a call for funds under the CSC associated with each segment of the industry (e.g., front end, reactors, back end and transportation) and the relative risk among suppliers or groups of suppliers within each category. The DOE should hire such consultants to provide the DOE with further information to use in fashioning a rule to implement Section 934.

The balance of the meeting was taken up with discussion of USEC's proposal for a possible approach to developing a risk-informed formula, as more fully set out in its November 30, 2010 comment. DOE indicated that it may request additional comment from industry in the future and USEC responded that at the present time, USEC intended to provide additional information in response to that request either individually or in collaboration with other suppliers.