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February 23, 2015

Dr. Steven P. Croley  
General Counsel, GC-1  
Forrestal Building Room 6A-245  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: Notice of Proposed Rulemaking on  
Convention on Supplementary Compensation for Nuclear Damage  
Contingent Cost Allocation,  
Docket Number DOE-HQ-2014-0021 and RIN 1990-AA39 =  
Request for Extension of Public Comment Period

Dear Dr. Croley:

On behalf of the Contractors International Group on Nuclear Liability (CIGNL), this letter is being sent to request an extension to Monday, May 18, 2015 of the public comment period on the U.S. Department of Energy (DOE) Notice of Notice of Proposed Rulemaking (NOPR) on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation. 79 Fed.Reg. 75076 (Dec. 17, 2014) and 80 Fed.Reg. 4227 (Jan. 27, 2015).

#### **CIGNL's Interest**

CIGNL's current members are as follows: The Babcock & Wilcox Company; Bechtel Power Corporation; CB&I; Centrus Energy Corp.; GE Hitachi Nuclear Energy LLC; and, Westinghouse Electric Company LLC. Each company expects to be affected by the Department's CSC contingent cost allocation.

CIGNL is an *ad hoc* nongovernmental group of major U.S. nuclear suppliers formed in 1993 to promote more widespread adherence to the international nuclear liability conventions and adoption of domestic nuclear liability laws. In particular, CIGNL actively promoted ratification of the CSC by the United States after it was signed in 1997, because CIGNL believed the CSC would help open international nuclear export markets to the United States. CIGNL worked closely with the Administration and Congress in securing the ratification of the CSC in 2006 and enactment of implementing legislation in 2007. CIGNL also has been working closely with the U.S. Government, the International Atomic Energy Agency (IAEA) and others to

encourage more States to join this important Convention, noting it will enter into force on April 15, 2015 following Japan's recent acceptance.

In November 2010, CIGNL submitted comments intended to provide preliminary observations on the Department's earlier Notice of Inquiry (NOI) in this rulemaking. 75 Fed. Reg. 43945 (Jul. 27, 2010); 75 Fed. Reg. 51986 (Aug. 24, 2010); and, 75 Fed. Reg. 64717 (Oct. 20, 2010). On March 2, 2011, representatives of CIGNL met at the Forrestal Building with DOE officials at their invitation to discuss CIGNL's November 2010 written comments. On February 10, 2015, CIGNL submitted questions and topic suggestions for the Department's February 20, 2015 public workshop, in which it participated.

CIGNL's core objective in this proceeding is to ensure that the final rule adopted by the Department provides for a fair, risk-informed assessment of the exposure that will provide an adequate base of suppliers to meet the U.S. contribution to the international supplementary fund under the CSC, without discouraging U.S. trade in nuclear goods and services. This includes fashioning a definition of "nuclear supplier" that includes as wide a range of companies as possible (*i.e.*, more than the 25 projected in the NOPR), along with a reliable assessment cap, so that the contribution of any individual company in any sector of the U.S. nuclear industry is predictable and not disproportionate to the risk associated with the goods and services provided by that company.

### **Complexity of NOPR**

The February 20<sup>th</sup> DOE workshop confirmed the complexity of the issues presented by the NOPR. These, for example, are in the areas of covered nuclear suppliers, covered transactions, a retrospective premium payment cap, information collection, access to information, dispute resolution, and risk allocation. As evident on the face of the NOPR and corroborated during the DOE workshop, suppliers would be challenged to calculate the in-scope total(s) of their exports to CSC Member States (dating back as far as 1960), which would result in unreliable total(s) for the U.S. nuclear industry, aggregated or by sector (for the same period). As proposed, the DOE rule would not enable U.S. suppliers to calculate, plan for or insure against their risk exposure under the rule, considering that suppliers cannot currently evaluate their potential liability under either Alternative 1 or 2 of the NOPR.

In light of Congress's expectation that the CSC would establish a predictable legal framework that will ensure prompt and equitable compensation in the event of a nuclear incident, 42 U.S.C. §17373(a)(1)(C), DOE should give major suppliers that would be subject to it an extended opportunity to develop comments on how the rule could be revised to be simpler, more transparent, equitable and to provide greater certainty to those who will be asked to pay the U.S. share of foreign incident costs.

### Conclusions

CIGNL appreciated the opportunity to participate in the Department's public workshop on the CSC Contingent Cost Allocation, and had urged DOE to fully consider CIGNL's questions and suggested topics and to publish further information in the Federal Register addressing each of them well before March 17, 2015 when written comments from the public currently are due on the NOPR. From what we heard at the workshop, this does not appear likely, which increases the difficulty of preparing joint written comments by CIGNL, an *ad hoc* group of six major U.S. nuclear suppliers.

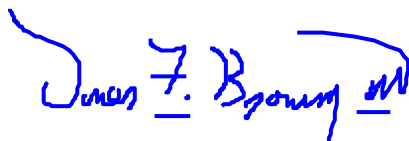
The discussion in the workshop confirmed that there are a number of points of complicated information that the industry needs to provide useful comments on to DOE. Giving more time for comments would make it more likely that information useful to DOE can be developed. It further would be beneficial if the Department would hold a second workshop before written comments are due, because it could serve to narrow the issues.

It is recognized that the CSC will enter into force on April 15<sup>th</sup>, but that should not preclude an extension, since it is highly unlikely there could be any call for contributions to the CSC international fund in the near future. First, there would have to be a nuclear incident in another CSC Member State; and, then, there would have to be some judicial determination by the courts of the accident State that covered damages could exceed the 300 million Special Drawing Rights threshold for any contributions to be required.

For the foregoing reasons, CIGNL respectfully requests that the public comment period on the DOE Notice of Notice of Proposed Rulemaking on the CSC Contingent Cost Allocation be extended to Monday, May 18, 2015 and that DOE consider holding a second workshop before written comments are due.

Please contact me if you have any questions. Thank you.

Very truly yours

A handwritten signature in blue ink that reads "Omer F. Brown, II". The signature is written in a cursive style with a large initial "O" and "B".

Omer F. Brown, II  
Counsel for  
Contractors International Group on Nuclear Liability

cc:  
Ben McRae, GC-72, DOE  
Anita Capoferri, GC-72, DOE  
Sophia Angelina, GC-72, DOE