

**U.S. Department of Energy
Rulemaking on
Convention on Supplementary Compensation for Nuclear Damage
Contingent Cost Allocation,
79 Fed.Reg. 75076 (December 17, 2014),
80 Fed.Reg. 4227 (January 27, 2015),
80 Fed.Reg. 12352 (March 9, 2015),
and
81 Fed.Reg. 51140 and 51193 (August 3, 2016)**

**Docket Number DOE-HQ-2014-0021
and
Regulatory Information Number (RIN) 1990-AA39**

**General Statement
of
Contractors International Group on Nuclear Liability
for
September 16, 2016 Public Workshop**

The Contractors International Group on Nuclear Liability (CIGNL) hereby submits its general statement for the September 16, 2016 public workshop on the U.S. Department of Energy (DOE) Rulemaking on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation. 79 Fed.Reg. 75076 (Dec. 17, 2014); 80 Fed.Reg. 4227 (Jan. 27, 2015); 80 Fed.Reg. 12352 (Mar. 9, 2015); and, 81 Fed.Reg. 51140 and 51193 (Aug. 3, 2016).

CIGNL's Interest

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 consistent 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 and others to encourage more States to join this important Convention, noting it entered into force on April 15, 2015 following Japan's acceptance.

CIGNL's current members are as follows: AECOM; Bechtel Power Corporation; BWX Technologies, Inc.; Centrus Energy Corp.; Fluor Corporation; GE Hitachi Nuclear Energy LLC; and, Westinghouse Electric Company LLC.

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 and participated in the Department's February 20, 2015 public workshop, and submitted detailed written comments to DOE in April 2015 on the Department's Notice of Proposed Rulemaking (NPR). On September 7, 2016, CIGNL submitted questions and topic suggestions for this public workshop.

Recognizing the difficult task that DOE faces and the considerable uncertainty about how to implement the 2007 legislation, CIGNL and each of its members respectfully reserve our rights to provide additional comments, collectively or individually, as this rulemaking proceeds.

Workshop Agenda

Given the complexity of the issues presented by the NPR and the fact that the DOE workshop is scheduled for only three hours, CIGNL reiterates, as set out in CIGNL's September 7, 2016 submission, it would be advisable for DOE to address as many of CIGNL's questions as possible at the public workshop and then to publish further information in the Federal Register addressing each of them before written comments from the public are due on the draft Collection Form on October 3, 2016.

General

CIGNL's core objective in this proceeding still 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.

CIGNL asks that the Department indicate when and how it plans to complete this rulemaking, by laying out a schedule and indicating whether there will be any opportunity for the public to provide additional comments before promulgation of a final CSC Contingent Cost Allocation Rule.

As stated in CIGNL's April 2015 Comments, one of the most important features of this DOE rulemaking implementing the CSC must be the establishment of a "cap" or maximum contribution of \$5 million that a company would be required to make and the right-sizing of the pool, which, by all accounts, should encompass even more suppliers than the 150 indicated in the latest Federal Register notices.

As to the estimates in the Department's August 3 Federal Register Notice, 81 Fed.Reg. 51193, that the draft data collection form could be completed in 5 burden hours per response at a cost of \$1,500 per Respondent, CIGNL submits that these estimates are much too low. While the individual response times and costs would vary by Respondent, each CIGNL member now estimates the figures would be significantly higher for each CIGNL Respondent and be dependent upon the level of details with respect to nuclear exports DOE ultimately requests.

CIGNL's interest in submitting questions and topic suggestions for the September 16, 2016 public workshop is to ensure that the DOE rulemaking facilitates the fulfillment of the CSC's promised opening up of trade for the United States in foreign markets. To the extent the rulemaking burdens the U.S. industry with the specter of uncertain and uninsurable costs or provides incentives not to export, it will defeat the purpose behind the CSC.

As further stated in CIGNL's April 2015 Comments, 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 consider revising the rule 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. If such rulemaking cannot be completed under the current provisions of the 2007 CSC Contingent Cost Allocation Act, DOE should seek statutory amendments.

Conclusions

CIGNL appreciates the opportunity to participate in the Department's public workshop on the CSC Contingent Cost Allocation, and urges 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 October 3, 2016 when the next round of written comments from the public currently is due on the rulemaking. Additionally, if, on the basis of the discussion in this

workshop, it appears that there are a number of points of information that the industry needs to provide useful comments on to DOE, the Department should consider extending the deadline for comments until after such information has been provided. Finally, as key questions presented and issues identified by CIGNL and others were not answered in the NOPR in 2014 and 2015 or at the DOE workshop in 2015, it would be advisable for DOE to publish a supplemental proposed rule for stakeholder review and comments.