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Via e-mail [Section934Rulemaking@Hq.Doe.Gov]

Ms. Sophia Angelini
Attorney-Advisor
Office of the General Counsel for
Civilian Nuclear Programs
GC-52
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

**Re: Comments In Response to Notice of Inquiry
Section 934 of the Energy Independence and Security Act of 2007**

Dear Ms. Angelini:

This letter constitutes the response of Exelon Generation Company, LLC and its operating unit, Exelon Nuclear Partners (referred to collectively as "Exelon"), to the Department of Energy's ("DOE") request for comments and information (July 27, 2010 at 75 Fed. Reg. 43945) to assist in DOE's development of regulations pertaining to Section 934 of the Energy Independence and Security Act of 2007 ("Act"), 42 U.S.C. § 17373. Specifically, DOE seeks comments on regulations implementing the United States' obligations under the Convention on Supplementary Compensation for Nuclear Damage ("CSC") and, more specifically, the retrospective risk pooling program pursuant to which nuclear suppliers reimburse the United States government for contributions to the international supplementary fund.

Exelon Generation Company, LLC owns and operates nuclear power plants at ten sites with seventeen reactors in Illinois, Pennsylvania, and New Jersey. Exelon Nuclear Partners ("ENP"), a business unit of Exelon Generation Company, offers a range of business services to existing and new nuclear owners and operators. ENP's services range from providing consulting assistance in the area of new nuclear development or with existing nuclear plant performance improvement from an experienced nuclear owner and operator perspective. The scope of services vary from limited time and material consultative engagements up to and including a comprehensive management contract in which ENP assumes responsibility for the day-to-day

management of a nuclear facility, which may include ENP assuming the role of the “operator” or facility licensee.

Exelon is a member of the Nuclear Energy Institute (“NEI”), the policy organization of the nuclear energy and technologies industry. NEI is submitting comments on behalf of its members potentially subject to the contingent cost obligations of the CSC. Exelon joins in and endorses NEI’s comments. Exelon submits additional comments not to express disagreement with NEI’s comments, but to add input in an area not addressed by NEI, specifically the definition and scope of “services” under Section 934 and as referenced in NEI’s comments.

General Background

Section 934 of the Act defines “nuclear supplier” to mean

a covered person (or a successor in interest of a covered person) that –

(A) supplies facilities, equipment, fuel, *services*, or technology pertaining to the design, construction, operation, or decommissioning of a covered installation; or

(B) transports nuclear materials that could result in a covered incident.

42 U.S.C. §17373(b)(7) (emphasis added). Nuclear suppliers must “participate in a retrospective risk pooling program . . . to cover the contingent cost resulting from a covered incident outside that United States that is not a Price-Anderson incident,” unless an exemption applies to that particular nuclear supplier. *Id.* at § 17373(e)(1). A nuclear supplier’s participation in, and amount of financial obligation under, the retrospective risk pooling program depends on a “risk-informed assessment formula” that takes into account a number of considerations, including the “nature and intended purpose of” and “the hazards associated with” the goods and *services* supplied by the nuclear supplier. *Id.* at § 17373(e)(2)(A-C). In determining the formula, the Secretary of Energy may “exclude . . . goods and *services* with negligible risk.” *Id.* at § 17373(e)(2)(C)(ii)(I)(aa) (emphasis added).

Exelon agrees with NEI’s suggested approach for identifying which entities fall within the definition of “nuclear supplier,” applying the six risk-informed factors, and applying the exclusions from the formula. However, Exelon is of the opinion that the DOE should provide guidance on the scope of “services” to be included in the risk-informed assessment formula.

Scope of the Term “Services”

As stated above, the term “nuclear supplier” includes an entity that provides “services . . . pertaining to the design, construction, operation, or decommissioning of a covered installation.” The term “services” is extremely broad and encompasses an unlimited number of activities pertaining or related to a nuclear power plant. For example, an architect that creates drawings for the design and construction of a nuclear reactor could be said to provide design

and construction services related to the operation of a nuclear reactor. In the same light, however, an entity that merely reviews the architect's drawings and makes suggestions with respect to moving a part or component can also be said to provide services related to the design and construction of a nuclear reactor. Similarly, an entity that writes a training program and procedures for the operators who operate the reactor and an entity that provides the trainers who actually train the operators can both be said to be providing training services to a covered installation, even though one entity is only preparing materials and the other entity actually trains the individuals who will operate the nuclear power plant. An entity that installs the computer programs used by the covered installation to compile and archive operating procedures, track radiation exposure, enter and track corrective actions, and other issues related to the operation of a nuclear power plant can be said to provide IT related services.

The term "services" should be defined consistent with the DOE's comment in the Notice of Inquiry reflecting its belief that the intent of the exemptions described in Section 934 (42 U.S.C. § 17373(e)(2)(C)(ii)(I)(aa-dd)) (75 Fed. Reg. 43950)

is to exclude from participation in the risk pooling program those nuclear suppliers that provide goods or services that are the least likely to result in a nuclear incident for which requests under the Convention for contributions to the international supplementary fund would be invoked. Stated otherwise, the contingent costs should be allocated among those suppliers that provide goods or services most likely to result in significant potential liability in the event of a covered incident.

Specifically, consulting or consultation type services limited to the evaluation of an issue and a recommendation for resolving or addressing an issue should be identified as being "least likely to result in" and having only a "negligible risk" with respect to causing a nuclear incident and excluded from the risk-informed assessment formula under Section 934(e)(2)(C)(ii)(I)(aa). Similarly, services related to making recommendations for performance improvements for outage duration, equipment reliability, license renewal, training program development and accreditation, procedure writing, oversight, accounting, IT, and related support type services should be deemed to have a "negligible risk" in causing a nuclear incident and excluded from the risk-informed assessment formula. Conversely, services whereby a nuclear supplier provides the direct management and oversight of the full facility or of the group of employees tasked with operating the reactor or for maintaining and repairing the structures, systems, and components for or related to the reactor and nuclear island should *not* be identified as having a negligible risk in causing a nuclear incident; those types of operating services should be included in the risk-informed assessment formula.

If nuclear suppliers that merely provide consulting services to a covered installation are not exempted as having a "negligible risk" in causing a nuclear incident, then Exelon requests that the DOE consider apportioning less risk to suppliers providing consulting services. Apportioning less risk to nuclear suppliers providing consulting services is consistent with the DOE's comments regarding apportionment of risk. This approach is also consistent with NEI's recommendation that nuclear suppliers that provide goods and services within or directly

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attached to the reactor vessel, equipment which controls the level of power in the core, and components that normally contain or come in direct contact with or control the primary coolant of the reactor core should bear more responsibility for a nuclear incident than other nuclear suppliers.

We appreciate your time and attention in this matter.

Very truly yours,



Tamra Domeyer
Assistant General Counsel, Exelon Nuclear