

STATEMENT OF THE NUCLEAR ENERGY INSTITUTE, INC.

February 20, 2015 U.S. Department of Energy Public Workshop

DOE Notice of Proposed Rulemaking:

Convention for Supplementary Compensation for Nuclear Damage Contingent
Cost Allocation

Docket Number DOE-HQ-2014-0021; Regulatory Information Number (RIN)
1990 –AA39

February 13, 2015

NEI Statement
DOE Notice of Proposed Rulemaking on Contingent Cost Allocation

The Nuclear Energy Institute, Inc. (NEI)¹ appreciates the opportunity to participate in the U.S. Department of Energy's (DOE) February 20, 2015 public workshop on the Convention on Supplementary Compensation (CSC) Contingent Cost Allocation. NEI and its members have a keen interest in the outcome of DOE's rulemaking to establish the retrospective risk pooling program required by Section 934 of the Energy Independence and Security Act of 2007 (EISA). See 79 Fed. Reg. 75076 (Dec. 17, 2014). Given that the potential impact of this rulemaking on U.S. nuclear suppliers ranges from 67-150 million dollars, it is critically important that any final rule be based on sound and supportable principles of equity, and sufficient information to justify specific choices among alternative approaches.

NEI and its supplier members recognize the difficulty of developing a proposed rule that is consistent with EISA's directives. To assist DOE in its efforts NEI offered several recommendations in response to DOE's 2010 Notice of Inquiry (NOI). Those comments emphasized the importance of DOE's obtaining additional data as a prerequisite to structuring a viable program. We also advocated inclusion of specific features related to equitable distribution of risk among participants, a clear formula that would allow suppliers to understand the range of their potential liability, a cap on individual supplier liability, and insurability of the risk.

Although DOE's 2014 Notice of Proposed Rulemaking (NOPR) defines some critical terms and concepts and addresses some of the other points raised in NEI's previous comments, we are concerned that DOE's proposal, as outlined in the NOPR, would not result in a workable final rule. To be "workable," the rule must allocate costs equitably among affected nuclear suppliers, be straightforward, transparent, and predictable, and facilitate an insurable approach to government reimbursement. The U.S. program implementing EISA should encourage nuclear suppliers to pursue international business opportunities rather than dissuade them from entering into or remaining in the now vast and growing international nuclear market. The participation of nuclear suppliers in foreign power projects, and particularly in emerging markets, promotes international safety and security.

Although there are many issues to be discussed during the workshop, we believe priority should be given to (1) the cost, burden, and potential impossibility of providing the information DOE has requested in the NOPR; (2) establishing a comprehensible method of calculation that will be equitable in application; and (3) impediments to risk management through insurance.

Turning first to the need for additional data, the NOPR proposes a complex information collection and DOE reporting system that will be cumbersome and time-consuming to implement. Further, the technical basis and rationale for some requirements is not apparent. The NOPR seeks

¹ NEI is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

significant quantities of information (some of it more than 50 years old) from suppliers. Even if records from 1960 are found, it will be extremely time-consuming for companies to locate and analyze them. Moreover, DOE's Paperwork Reduction Act estimate of the time required to perform data collection (100 hours per company, plus an annual burden of 25 hours per company) appears unrealistically low. It also appears that affected companies could be compelled to provide proprietary data and/or competitively sensitive information. However, it is not evident that this level of detail is needed to inform any cost allocation regime, and DOE has not provided assurance that it can protect such information from public disclosure.

With respect to the formula for determining liability, the proposal in the NOPR is far too complex and does not contain all of the information needed for companies to compare the two alternative formulas proposed to calculate potential liability. The absence of such material information means that potentially affected companies will be forced to conduct multiple "sensitivity studies," although without essential facts, even those studies will be of limited, if any, use. More specifically, the total number of affected nuclear suppliers and their potential aggregate risk exposure is not provided. Other examples of material terms or matters for which there is insufficient information (without which there cannot be meaningful public comment) include the following:

- The NOPR seeks comment on how to define a "cap" on retrospective premium payments but does not propose a specific cap. Absent this important definition, individual suppliers cannot ascertain an upper limit on the amount they might owe under the risk pool.
- No technical basis is provided for key factors, such as risk weighting factors for different types of equipment and industry sectors.
- The total value of reportable transactions is not defined under either of the two proposed options.

It is of the utmost importance that the rule implementing EISA's directives be structured so as to allow the contingent liability to be managed via insurance. Therefore, among other requirements, the individual company's liability must be reasonably ascertainable.

While NEI and its nuclear supplier members have many concerns regarding the specifics of the proposed rule, we have not lost sight of the value of the CSC. We appreciate the efforts of the U.S. government to encourage other countries to ratify the Convention and, thereby, bring it into force. The Convention represents a significant opportunity for U.S. nuclear exporters to participate in the growing global nuclear market while not exposing their shareholders to unquantifiable liability. To gain the full value of the CSC, however, the rule implementing EISA must not create a competitive disadvantage for U.S. nuclear exporters who must compete with suppliers from other countries whose governments do not require industry reimbursement under the CSC, or who are owned or supported by their government.

Finally, we fully recognize that Congress' directives in EISA create many of the difficulties that will be the subject of discussion during the workshop. To address those difficulties we urge DOE to seek amendment of EISA to the extent necessary to ensure that the risk pooling program does

not drive nuclear suppliers out of business or encourage them to move their nuclear business overseas. As noted above, the participation of U.S. suppliers in nuclear power projects in emerging markets is critical to promoting international safety and security.