U.S. DEPARTMENT OF ENERGY

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RIN 1990–AA39

Comments of

Aon Corporation

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General Statement of Aon Corporation

The Aon Corporation ("Aon") hereby submits its statement for the April 17, 2015 public comment period with respect to the U.S. Department of Energy (DOE) Notice of Proposed Rulemaking (NOPR) on the Convention on Supplementary Compensation for Nuclear Damage ("CSC") Contingent Cost Allocation. [Docket Number DOE–HQ–2014–0021]; RIN 1990–AA39]

Aon Corporation

Aon is the largest insurance broker in the world. Aon is amongst the leaders in the surety and nuclear insurance industries and provides nuclear insurance and risk management advice to a significant portion of the world's nuclear operators and suppliers inside and outside the United States. Additionally, Aon provides insurance and risk management advice to a majority of the top contractors as listed in the *Engineering News Record*.

Introduction

Aon's vision is to ensure that the final rule adopted by the DOE provides for a fair, risk-informed assessment of the exposure that will provide an adequate base of suppliers to efficiently and securely meet the U.S. contribution to the international supplementary fund under the CSC, without discouraging U.S. trade in nuclear goods and services. To this end, Aon recommends an objective definition of the group to be subject to the final rule, along with a reliable and equitable assessment cap, so that the contribution of any individual company in any sector of the U.S. nuclear industry is as predictable as possible and not disproportionate to the risk associated with the goods and services exported by that company.

Proposed Financial Security Program

Aon believes a surety and insurance program ("Program") may provide the U.S. government with financial assurance from each nuclear contractor as defined by the DOE ("Supplier") subject to the final rule. The U.S. government is specifically familiar with surety and insurance as it has accepted these as financial assurance for environmental reclamation and nuclear energy liability obligations. The Program may support each of the Suppliers that are required to participate in the final rule, which would provide financial security to the DOE. A portion of the Program could insure suppliers in their obligation to provide funds to the DOE. Another portion of the aforementioned financial security could be in the form of a surety bond that would cover any Supplier that defaults on their portion of the CSC payment despite being insured.

Aon believes that surety and insurance may be reasonable solutions for the DOE to consider in its implementation of the CSC Contingent Cost Allocation. The proposed Program is intended to give the DOE a defined amount of financial assurance in order to mitigate their total exposure in the event of a nuclear accident in one of the CSC-ratified countries.

In order to establish a surety and insurance Program the DOE should conclude the following:

1. **<u>Defined List of Suppliers</u>**: A defined list of Suppliers required to participate in the final rule will be needed to understand the ultimate parties to be insured and guaranteed by insurers.

2. **<u>Defined Allocation of Exposure for each Supplier</u>**: A defined allocation of exposure for each Supplier will be needed to proceed with a standard underwriting process. Each Supplier's allocation of exposure will be capped for the purposes of the proposed Program.

3. **<u>Approval of Surety Bond and Insurance Forms</u>**: Aon is working with specific insurers to create surety bond and insurance forms to be used by each of the Suppliers participating in the Program. These forms should be approved by the DOE prior to implementation.
    a. The bond form includes maximum exposure language which caps the amount of the bond to the amount listed on the face of the bond.
    b. The bond will be an annually renewable bond, with standard cancellation provisions for the Surety.
    c. DOE may request the bond amount to be amended upon standard written notice to the Surety.
    d. In addition to the above aspects, the insurance form will include terms, conditions, and exclusions typical to the industry.

4. **<u>Defined Events of Default and Cure Period</u>**:
    a. The surety bond may only be called on upon the following events occurring:
        i. A nuclear incident must occur in a CSC-ratified country;
        ii. Third party nuclear damages must exceed the first "tier" of compensation as defined by the CSC (e.g., 300 million Special Drawing Rights);
        iii. Principal (Supplier) must default on payment of its share of the retrospective premium; and
        iv. Principal (Supplier) must be solvent as of the date of the nuclear incident.[1]
    b. Suppliers should be given a standard period to cure their default by making the full payment.
    c. Aon is aware of the proposed idea of allowing the Suppliers to elect a 5 year payment plan. The surety bond amount would decrease each year by each payment made by the Supplier to the DOE.

Defining the group

Defining the group to be subject to the final rule is a vital step to establishing a surety and insurance program that will provide the U.S. government with financial assurance of its CSC obligation. Two major tenets of risk allocation are: 1) that the entity that can best control or manage the risk is allocated the risk, and 2) that the entity that can best bear the risk is allocated the risk. In considering these tenets of

[1] This precedent has been set by the current contingent liability which is secured by U.S. power reactor licensees through the Secondary Financial Protection (SFP) plan administered by American Nuclear Insurers (ANI) for the NRC. Condition 4. of the SFP Master Policy issued by ANI states its obligation, "… shall not apply to the failure of any named insured…because of bodily injury or property damage caused after the date of such insolvency…"

risk allocation, one of the criteria is the financial wherewithal or security of each proposed Supplier to pay their portion of the U.S. contribution to the international supplementary fund under the CSC.

Allocation and capping the group's liability

The DOE expressed that it would be open to considering additional alternatives in allocating the U.S. liability under the CSC to the group of Suppliers to be subject to the final rule. Aon recommends allocating this liability on an objective and transparent means that can be verified independently and publicly.

This type of allocation method is currently in use in the U.S. to distribute retrospective premium assessments for nuclear liability under the Price Anderson Act. The rulemaking in that case allocates to the defined group (i.e., certain NRC licensees) equally and caps each participant's liability identically. The rulemaking does not further discriminate among the group on any other basis even though there are different risk characteristics (e.g., age of the facility, Megawatt capacity, to vicinity to populations, types of technology). The rationale is that the probability of an assessment under the Price Anderson Act is so remote that further analysis to allocate among the group is insignificant on an actuarial basis. A similar rationale exists for not discriminating further among Suppliers of nuclear facilities, equipment, or nuclear material under NRC export licensing authority. The probability of an assessment under the CSC is so remote that further analysis to allocate among the group is insignificant on an actuarial basis.

The group to be subject to the DOE final rule regarding CSC Contingent Cost Allocation could be subject to an allocation similar to the method used for NRC licensees under Price Anderson (i.e., on an equal percentage basis). The allocation to each Supplier subject to the final rule would simply be the U.S. government obligation to the international fund under the CSC times the ratio of “1” to the aggregate number of Suppliers in the group. The rationale for this exists in the following:

1. Simplification - avoids complex math and data collection that is currently required under NOPR;
2. Efficiency - avoids burden of prospective recordkeeping and researching retrospectively exports to CSC Member States dating back as far as 1960 under NOPR;
3. Transparency – mitigates potential for litigation and need for dispute resolution procedures. The current NOPR allocation alternatives yield unreliable risk shares for the U.S. nuclear industry, aggregated or by sector;
4. Fair – allocation by equal percentage basis is an objective process;
5. Risk-informed – acknowledges the high remoteness of the ultimate risk while providing equitable allocation in its unlikely realization;
6. Greater Certainty - provides an equal cap on a percentage basis for the entire group;
7. Ease of Reporting - expedites the calculation and knowledge of ultimate obligation for each supplier ensuring prompt and equitable compensation in the event of a nuclear incident; and
8. Insurability – the above characteristics promote the ability for Suppliers to transfer the risk of CSC contingent cost allocations.

Though we understand the ultimate obligation of the U.S. government is not fixed the surety and insurance industry as a whole will require that the policies and bonds issued be capped in order to underwrite their probable maximum losses. Therefore, the DOE should establish a cap in order to procure the amount of surety and insurance capacity needed to secure the DOE in the event of a nuclear incident abroad.

Conclusion and Request for Ex Parte Communication

Aon has insurance and surety market support to create a backstop for Suppliers to efficiently and securely meet the U.S. government's obligation to contribute to the international supplementary fund under the CSC. The proposed Program may assist the DOE in implementing a final rule that mitigates any discouragement of U.S. trade in nuclear goods and services that could be present without such security. DOE has indicated that parties may include in their comments to DOE a request to meet with DOE to discuss the proposed rulemaking.

To ensure fairness to all stakeholders and integrity of the rulemaking process, Aon respectfully requests to meet with DOE to answer any questions it may have regarding these comments and our proposed Program. Aon would provide further ideas and solutions with the understanding that the primary goal of DOE employees in ex parte communications is to listen and ask clarifying questions and that the DOE will not engage in negotiation or reveal substantive aspects of the forthcoming.