April 21, 2015

Re: RIN 1990-AA39
Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation

Ms. Sophia Angelini
US Department of Energy
Office of General Counsel
1000 Independence Ave., SW
Washington, DC 20585

Attn: Section 934 Rulemaking

Dear Ms. Angelini:

CH2M is submitting these comments to the CSC rulemaking and also to provide additional comments relative to the recommendations of others commenting on this rulemaking. We ask that DOE consider these comments to the extent practicable consistent with the Administrative Procedures Act.

CH2M is an international supplier of nuclear program management, staff augmentation, and consulting services related to the development of civil nuclear programs throughout the world.

First, CH2M is highly supportive of the newly effective CSC and we appreciate and congratulate the Administration's efforts to bring it into effect. The Convention provides very important liability protections which are essential for company's like ours to do business overseas in countries not party to other conventions. We would have preferred that the international contribution from the United States be a sovereign obligation rather than an obligation falling on suppliers. However, we understand it is the law.

Furthermore, we appreciate DOE's efforts to publish these proposed regulations to provide a procedure and system to determine the contribution for individual suppliers.

There are three subjects on which we will comment:

1. The vagueness of the basis and purpose behind various approaches makes comment nearly impossible.

2. The effective date to begin reporting of overseas sales.

3. The inter-company impact of a cap on contributions

Impossible to Determine Required Contribution Under the Rules

The current proposed regulations lack the specificity and basis for those affected to adequately comment. Under the current proposal it is impossible to understand the exposure under the rules as presented. Without knowing the total overseas sales covered by this rule, an individual supplier cannot calculate what proportion of the US contribution the supplier is responsible for.

Thus, suppliers subject to the regulations cannot determine the exposure they are facing, as the proposals are currently set forth. DOE provides two competing approaches without the ability for suppliers to evaluate the pros and cons for each option providing a basis as to which approach is best for an individual supplier. There is no mechanism in these proposed rules for a company to determine exactly how much it will be assessed in a worse case scenario, especially vis-à-vis it competitors. A supplier cannot verify the reasonableness of a company's assessment and compare it to what other companies are paying. The allocation of the assessments on industry must be fair and reasonable with sufficient underlying justification. Under this rule, a company's contribution is largely dependent on the information provided to the government by a company's competitors without knowing the veracity and integrity of information provided by others.

The government suggests that this rule will only affect approximately 25 firms (79 FR 242, p. 75093), but they have not been able to justify that number. DOE needs to provide the basis for this estimate. CIGNL in its comments stated, "With regard to the size of the pool, we know of no basis for the 25-member pool-size contemplated in the NOPR." In order for the industry to adequately comment, it needs to learn and understand the basis for these comments.

Similarly, the suppliers need to understand the basis for the allocation of risk behind the various categories of services in version 2. How did DOE come up with the concept of 2 times the risk for certain types of activities in version 1? In order to adequately comment, the suppliers need to understand the underlying assumptions of DOE's risk calculations.

Following this comment period, DOE needs to decide on its favored approach, justify it and republish a precise rule, not leaving the regulated community with only vague ideas about how this would work. Most importantly, DOE must provide sufficient information for suppliers to know the specific impact of this rule on them financially. Without that they cannot adequately comment meaningfully.

The Effective Date for Data Collection

The date that is set to begin data collection has significant financial impact on a company's liability due to fluctuations and uneven yearly nuclear sales over time.

Clearly, the suggestion by DOE that data collection may begin as early as 1960 is clearly unworkable. Few companies retain records this long and the very old technology is not particularly relevant to today's market.

However, we strongly object to *industry* suggestions that the date set would be 2007/2008. The period of collection needs to be longer to smooth out the variations in annual sales data. Because many of these facilities are expensive, focusing on a short period for reporting, many companies could be disadvantaged including ours. We believe the start date should be sufficiently back in time to smooth out annual variations. We recommend a start date of 1990 or earlier.

Similarly, DOE needs to define how it will enforce administratively equivalent data collection so that honest and forthright companies are not taken advantage of by the information provided to the government in comparison to those less forthright.

Impact of a Cap on Liability

Although there is some logic behind the concept of a cap on liability—for instance, enhancing the potential for insuring the risk—there are significant equity questions in establishing an absolute cap.

If caps are utilized, they could create a situation where the smaller suppliers are forced to pay more in order to make up the entire US contribution once the larger companies reach the cap. Such an outcome is clearly unfair to the smaller suppliers.

If the larger suppliers have received substantial revenues for the installation of the essential nuclear components, they should be responsible for their entire share and not use a cap to effectively have the smaller suppliers make up the difference.

Unless a system can be derived to make the cap equitable to all, DOE should abandon the concept altogether.

Finally, all of this is made more difficult because the industry cannot determine each company's level of exposure under the regulations as proposed. Therefore, an individual company cannot determine where they might fall in reference to the cap.

Conclusion

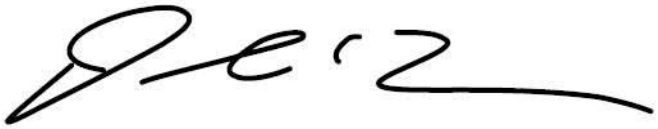
There are serious problems with the regulatory approach presented, since there is insufficient information for a company to determine its level of exposure and to know how to comment.

DOE needs to define a methodology and provide suppliers with more certainty. To pass muster under the APA, the rule at a minimum, has to be clear enough that reasonable individuals and companies can reliably comment. That is not the case now. DOE should make the necessary choices, provide sufficient background information regarding how it arrived at its approach then publish a precise rule and submit that for comment before finalizing.

Nevertheless, the CSC is an important tool to allow the US industry to participate in markets it otherwise might have avoided. We congratulate the Administration in making the CSC a reality. Now, DOE needs to complete the job and provide a workable set of regulations to implement it.

We appreciate the opportunity to comment.

Sincerely,



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