MARSH

STATEMENT OF MARSH USA, INC.

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

INTRODUCTION

Marsh sincerely appreciated the opportunity to participate in the U.S. Department of Energy's (DOE) February 20, 2015 Public Workshop and previous public meetings on the Convention on Supplementary Compensation (CSC) Contingent Cost Allocation. Our clients serving the Nuclear Energy Industry 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).

Given that the per-incident potential impact of this rulemaking on U.S. nuclear suppliers may approach $150 million, it is critically important that any final rule be based on sound and supportable principles of equity, but also not pose an undue logistic or administrative burden on affected suppliers.

Marsh affirmatively recognizes the difficulty of developing a proposed rule that is consistent with EISA's directives. Although DOE's 2014 Notice of Proposed Rulemaking (NOPR) defines some critical terms and concepts and addresses other points raised in comments previously submitted by the Nuclear Energy Institute (NEI) and the Contractors International Group on Nuclear Liability (CIGNL), Marsh is concerned that DOE's proposal must 1) allocate costs equitably among affected nuclear suppliers, 2) be straightforward and transparent, and 3) provide sufficient predictability to facilitate the employment of a commercial insurance program to support potential assessments. The U.S. program implementing EISA should also encourage emerging nuclear suppliers to pursue international business opportunities rather than dissuade them from entering or remaining in the growing international nuclear market.

Who is Marsh?

Marsh is a member of Marsh & McLennan Companies, a global professional services firm headquartered in the United States with more than 57,000 colleagues worldwide and annual revenues of approximately $13 billion.

Marsh is a world leader in delivering risk and insurance services and solutions to its clients. From its founding in 1871 to the present day, we have provided risk management thought leadership and innovation for clients and the insurance industry.

Marsh is privileged to serve as a risk management advisor and insurance broker to a wide array of participants in the U.S. Nuclear Energy Industry. With the only dedicated nuclear energy risk advisory and insurance brokerage practice globally, Marsh's U.S. Nuclear Energy Center of Excellence includes five full-time nuclear risk management professionals who place the majority of nuclear insurance premiums in the U.S.

SPECIFIC COMMENTS FOR DOE CONSIDERATION

Although there were many issues discussed during the February workshop, we believe the focus going forward should address three key concerns: I. The cost, burden, and potential impossibility of providing the information DOE has requested in the NOPR; II. Establishment of a comprehensible method of calculation that will be equitable in application; and III. Elimination of impediments to risk management through insurance by ensuring certainty as to the amount and timing of any amounts to be assessed under the program.

I. As respects the cost, burden, and potential impossibility of providing information

Marsh believes the level of detail proposed in the NOPR is not necessary to inform an equitable cost allocation regime. In addition, DOE has not provided assurance that it can protect such business critical information from public disclosure or cyber security breaches. We believe the determination of a risk-informed assessment formula for the allocation among nuclear suppliers need not require excessive amounts of data collection.

Furthermore, in consideration of both the remote probabilities and the finite severities associated with a CSC call for funds, a risk-informed assessment formula might reasonably be a formula which simply makes it clear to all which nuclear suppliers are affected.[1] In such an instance, the only data required for collection might reasonably be that which is sufficient for DOE to determine whether a supplier is or is not to be exposed to a call, and such data may already be publicly available.[2]

II. As respects establishing a comprehensible method of calculation

The complex formulae proposed in the NOPR for determining liability do not contain all of the information needed for companies to compare Alternative 1 and Alternative 2 or to calculate potential exposure. Other examples of material terms or matters for which there is insufficient information *(without which there cannot be meaningful public comment)* include the following:

1. The total number of affected nuclear suppliers and their potential aggregate risk exposure cannot be determined from the NOPR.
2. 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 and must assume risk of liability for the full amount. Once the class is defined, a cap might reasonably be proposed.
3. No technical basis is provided for key factors, such as risk weighting factors for different types of equipment and industry sectors. Further, Marsh is not aware of any known or reported correlation of such factors with respect to the risk of liability assumed. Here again, in consideration of the probability and severity of the U.S. CSC risk in the aggregate, a reasonable alternative might simply be to allocate liability "pro-rata and by equal parts" within the class.
4. The total value of reportable transactions is not defined under either of the two proposed options.

III. As respects impediments to risk management through insurance

Contrary to its stated intent,[3] the proposal in the NOPR does not allow for clear or efficient identification or analysis of potential loss exposures, therefore it does not now support examination of formal risk financing techniques including the employment of insurance.

Unless an affected supplier's CSC risk exposure can be clearly and objectively quantified in advance of a call for funds from the DOE, it cannot be efficiently disclosed to stakeholders or transferred via an insurance vehicle.

1 Who is "in" and how many suppliers are in the class, there being no need, in consideration of the probability and severity of the risk in the aggregate, to allocate other than "pro-rata and by equal parts" within the class

2 Suggestions from some have included export licenses granted, revenue, and N stamps

3 "...the Secretary shall make available information...to support the voluntary establishment and maintenance of private insurance..." Energy Independence and Security Act of 2007, Sec. 934 (e) Convention on Supplemental Compensation for Nuclear Damage Contingent Cost Allocation

RECOMMENDATIONS

In consideration of the above, Marsh offers the following perspectives and recommendations regarding the proposed DOE rule:

1. Defining the affected class is critical. Clear, objective and advance identification of all affected suppliers is needed before any potentially affected supplier can analyze its individual exposure or consider any number of proven risk financing techniques. U.S. suppliers must have certainty as respects the size and composition of the affected class in advance of a CSC call for funds if they are to have the option of efficiently addressing their exposures.

2. The recurring submission of commercially sensitive information required in the NOPR is unnecessary and unlikely to have any meaningful or equitable risk-informed allocation benefit. In our experience, the breadth of information proposed for collection under the NOPR proposal is neither readily available from all U.S. suppliers, nor consistently available from any one U.S. supplier in a format likely to prove useful to DOE. Even if commercially sensitive information of the type proposed by DOE could be provided efficiently and securely to DOE by all U.S. nuclear suppliers, there is no known or creditable correlation between the variables in the proposed rule and nuclear liability losses experienced globally to date. Global nuclear liability incident risk as characterized by the CSC is very low probability and historically infrequent, suggesting identification of risk by virtue of association, not correlation.

3. The need for DOE to develop a complex rating formula in order to differentiate amongst the defined class may be overstated. While the nuclear liability incident risk characterized by the CSC is considered to be very low probability and very high severity *(i.e. classically catastrophic)* the exposure to such nuclear liability risk for U.S. suppliers in the aggregate is very low probability but not very high severity *(i.e. capped and therefore not catastrophic)*. Marsh suggests that one option for a qualified risk-informed assessment formula would be for DOE to not attempt to differentiate amongst suppliers at all, rather, a risk-informed alternative might simply be to allocate "pro-rata and by equal parts" within a single tier *(or a small number of tiered exposure classes)*, subject to a per-supplier cap on liability.

For the purposes of illustration, Marsh offers hypothetical examples in Figure I of two (2) separate allocation methods and their resultant relative annual risk exposures on a per-supplier basis assuming a maximum aggregate exposure of $150 million and an annual, arbitrary but conservative, remote single event probability of 1 in 10,000.

Figure 1.

Allocation Method 1

Pro-Rata by Equal Share Allocation of Exposure

Maximum Aggregate Exposure	Aggregate Class	Maximum Supplier Exposure	Minimum Supplier Exposure	Event Probability	Maximum Annual Risk	Minimum Annual Risk
[1]	[2]	[3] = [1] / [2]	[4] = [1] / [2]	[5]	[6] = [3] x [5]	[7] = [4] x [5]
$150,000,000	10	$15,000,000	$15,000,000	1.00E-04	$1,500.0	$1,500.0
$150,000,000	20	$7,500,000	$7,500,000	1.00E-04	$750.0	$750.0
$150,000,000	200	$750,000	$750,000	1.00E-04	$75.0	$75.0
$150,000,000	2000	$75,000	$75,000	1.00E-04	$7.5	$7.5

Allocation Method 2
20% of the Class Carries 80% of the Risk (and 80% carries 20%) Allocation of Exposure

Maximum Aggregate Exposure	Aggregate Class	Maximum Supplier Exposure	Minimum Supplier Exposure	Event Probability	Maximum Annual Risk	Minimum Annual Risk
[1]	[2]	[3] = [[1] x 80%] / [[2] x 20%]	[4] = [[1] x 20%] / [[2] x 80%]	[5]	[6] = [3] x [5]	[7] = [4] x [5]
$150,000,000	10	$60,000,000	$3,750,000	1.00E-04	$6,000.0	$375.0
$150,000,000	20	$30,000,000	$1,875,000	1.00E-04	$3,000.0	$187.5
$150,000,000	200	$3,000,000	$187,500	1.00E-04	$300.0	$18.8
$150,000,000	2000	$300,000	$18,750	1.00E-04	$30.0	$1.9

4. Marsh has been quantifying and financing nuclear liability risk for the U.S. nuclear industry since 1958. Insuring such risks is neither a new nor novel concept; as respects any public or private comments received to the contrary, please note that it is important to consider that there are very few risk management professionals specializing in nuclear risk financing, so such comments may reasonably represent a very limited commercial perspective.

5. With clearly defined classes and precisely defined potential obligations, numerous proven and reliable techniques can be considered to allow flexible and efficient financing of the risk while assuring, in the unlikely event of a nuclear incident, the prompt availability of meaningful compensation with a minimum of litigation and other burdens. Among the risk management techniques that affected suppliers might reasonably consider employing under a sufficiently revised rule to relieve them of the financial burdens newly imposed, Marsh might suggest the following for further examination, all of which are deemed feasible:
    1. Self Insurance
    2. Commercial Insurance
    3. Mutual Insurance
    4. Single Parent and/or Group Captive Insurance
    5. Private Contractual Indemnities
    6. Retrospective Risk Funding

CLOSING COMMENTS

Marsh offers these comments on the NOPR to help strengthen and preserve the value of the CSC. We believe 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 compete with suppliers from other countries whose governments do not require industry reimbursement under the CSC, or who are owned or supported by their governments.

We therefore urge DOE to consider these comments and modify the NOPR to the extent necessary to ensure that the risk pooling program is straightforward to administer, viewed generally as equitable, not unduly burdensome to small or emerging suppliers, and certain as to potential financial obligation in any given fiscal year.