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Submitted electronically

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Ms. Sophia Angelini
U.S. Department of Energy
Office of the General Counsel
Section 934 Rulemaking
1000 Independence Avenue SW.
Washington, DC 20585

Subject: **Comments of Transco Products Inc. on Section 934 Notice of Proposed Rulemaking (RIN 1990-AA39)**

Reference: (1) Convention on Supplementary Compensation for Nuclear Damage: Contingent Cost Allocation; Notice of Proposed Rulemaking (RIN 1990-AA39; Docket No. DOE-HQ-2014-0021), 79 Fed. Reg. 75076, dated December 17, 2014

In Reference (1), the Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) in the *Federal Register*, which proposes regulations under Section 934 of the Energy Independence and Security Act of 2007. The proposed regulations would establish a retrospective risk pooling program whereby nuclear suppliers would pay for any contribution made by the United States government to an international supplementary fund created under the Convention on Supplementary Compensation for Nuclear Damage (CSC) in the event of certain nuclear incidents not covered by the Price-Anderson Act. The NOPR provided a deadline of March 17, 2015 for comments. That date was later extended to April 17, 2015.

Transco Products Inc. (TPI) appreciates the opportunity to provide comments on this important rulemaking. TPI, a privately held company headquartered in Illinois, manufactures insulation systems for use by the nuclear power industry. The company's products fall into five primary categories: thermal insulation, passive fire protection, radiation shielding, emergency core cooling system strainers, and control room habitability. The products and services of TPI have been used at over 200 nuclear power plants in 16 countries, including every operating nuclear station in the United States.

TPI's metal reflective insulation (MRI) products are designed for thermal insulation in nuclear power applications, and may be used in steam generator replacements, reactor vessel upgrades, new plant construction, ongoing maintenance and outage support. The insulation is fabricated of 100% stainless steel and utilizes unique foil liners spatially configured within a stainless steel shell. The product is individually designed for the geometry of the plant in which it will be installed. For example, MRI may

be cut to fit on the outside of the reactor vessel head for a specific reactor. MRI is used in applications inside and outside the nuclear island portion of the plant, as well as non-nuclear applications where conventional insulation cannot be used.

MRI has become popular for use in nuclear power plants primarily for nuclear safety reasons. Because the product is made entirely of stainless steel, it presents a lower risk of emergency core cooling system (ECCS) strainer blockage in case of a loss of coolant accident than conventional fibrous insulation. In addition, the stainless steel construction limits the absorption of radioactive contaminants and is not readily activated. As a result, many nuclear power plant projects are choosing to replace conventional thermal insulation with MRI. However, the thermal insulation function is no different than conventional insulation, and in fact many plants around the world continue to use conventional insulation materials in their nuclear reactors and connecting piping systems. TPI's MRI is designed and manufactured in the United States. MRI not generally procured subject to the U.S. Nuclear Regulatory Commission's 10 CFR Part 21 requirements, although there are individual exceptions to that based on client preference.

TPI also manufactures ECCS suction strainers, which serve as a filter in a nuclear power plant ECCS to protect ECCS pumps and reactor fuel from debris in the event of a loss of coolant accident. The strainers therefore help to ensure the long-term cooling capability of the ECCS and maintain safe shutdown capability for the plant in case of a loss of coolant accident. The ECCS strainers generally are used inside the containment of nuclear power plants, but are completely separate from the reactor vessel or any connecting part of the primary coolant system. The base element of the ECCS strainers is a perforated plate to filter debris, which is a standard product used for a wide variety of strainers throughout a nuclear plant and in non-nuclear applications. The overall configuration of the ECCS strainers is designed and manufactured according to specifications provided by each nuclear power plant customer, with variations due to the unique physical structure of each plant's ECCS, the variable water flow rates that might be used, and the different materials that must be filtered by the strainer in case of ECCS activation. ECCS strainers are attached to ECCS sumps, and are entirely separate from the reactor vessel and the reactor's primary coolant loop. The ECCS suction strainers are designed and manufactured in the United States. The strainers are often procured as safety-related components subject to Part 21 (or the foreign equivalent of part 21), but exports are not subject to the NRC's 10 CFR Part 110 requirements.

COMMENT 1. Definition of "covered nuclear supplier" and reportable transactions should be clarified.

DOE has requested comment on whether 10 CFR Part 21 (or another criterion, such as Appendix B to 10 CFR Part 50) would be an appropriate criterion for determining whether a nuclear supplier is a "covered nuclear supplier" under the rule and which of its transactions must be reported to DOE. The NOPR would

define a covered nuclear supplier as one "whose goods or services, if supplied in the United States, would be subject to the requirements of 10 CFR Part 21."

TPI appreciates that DOE is proposing to use the NRC's Part 21 requirements in order to provide an objective benchmark for determining which suppliers and which goods or services would be covered for purposes of the risk pooling program. TPI agrees that for many suppliers it is usually clear when a particular transaction is subject to Part 21 requirements. However, for other suppliers, such as TPI as described above, this is not always the case. As noted above, products manufactured by TPI may or may not be subject to the requirements of Part 21, depending on the specific project. Moreover, contracts are not always definitive as to whether the procured product is subject to Part 21. As mentioned, TPI's MRI is used both inside and outside the nuclear island. A contract may specify that the MRI is being procured subject to Part 21, even though the MRI is not intended to be safety-related. In these types of cases, it is up to the supplier to determine whether its product fits the definition of a basic component covered under Part 21.

Moreover, whether an NRC export license is required is not determinative either. In some cases, TPI may be required to obtain an NRC export license even though the product is not safety-related and is not otherwise subject to DOE's Part 810 regulations—such as when the MRI must be designed to attach directly to the reactor vessel head.

Therefore, the bright lines that DOE is proposing to adopt are not as clear as DOE may believe. TPI requests DOE clarify how its proposed definition of a "covered nuclear supplier" and reportable transactions would work when Part 21's applicability is not clear. If DOE's rule were adopted as proposed, TPI would report those transactions that are in fact determined to be subject to Part 21 requirements in accordance with the applicable NRC regulations and guidance.

We would also suggest that the final rule take into consideration the premise that a "covered nuclear supplier" must by definition be the company in a specified transaction that "enjoys the benefit of the CSC". This premise is at the core of the liability channeling principle. For example, if a supplier's product is nuclear-safety related, and the supplier is required to secure an export license, but the ultimate transaction is performed as a subcontract to a U.S. prime contractor or original equipment manufacturer (OEM), then the prime contractor or OEM is the party that "enjoys the benefit of the CSS", and the transaction in this case should be accounted to the prime contractor or OEM, not to the supplier.

COMMENT 2. Exclusion of small nuclear suppliers should be broadened.

TPI believes that a meaningful exclusion for small nuclear suppliers is an important part of the rule because it helps ensure that small nuclear suppliers would not face disproportionate financial liability in the event of a nuclear incident that results in a retrospective premium payment. TPI believes that the proposed exclusion

of small suppliers should be broadened to include a dollar threshold for covered transactions. The Small Business Administration (SBA) size standards, which DOE proposes to use, for determining whether a supplier qualifies as a small business are generally based on the company's overall number of employees. The SBA small business standards may not exclude many nuclear suppliers from the CSC retrospective premium system. TPI recommends that DOE broaden the exclusion for small suppliers to include a revenue-based exclusion. Under this type of exclusion, a covered person could be excluded from the rule if the company has total sales to all covered installations after the CSC has entered into force of less than a certain amount, such as $5 million annually. This type of revenue-based threshold would be consistent with the fact that the risk premium payment would be a financial (dollar) amount.

COMMENT 3. The proposed reporting requirements are unduly burdensome and unworkable.

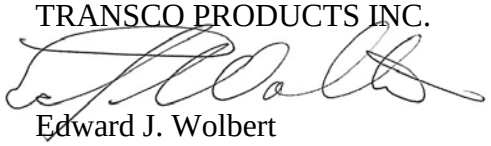
In the NOPR, DOE requests comments on a number of the proposed reporting requirements, including whether the 6-month period for reporting on prior transactions is adequate and the likelihood of a nuclear supplier having records of transactions dating back to 1960. As an initial matter, TPI does not believe that reporting of transactions back to 1960 is workable and such a requirement would be unduly burdensome. Even if records from 1960 could be found for these transactions, it will be extremely time-consuming for companies to analyze them, never mind certifying the accuracy and completeness of the information as proposed in the NOPR. Moreover, this type of information is not required to be maintained for such a length of time, further putting into question the state of older records. The NRC Part 110 regulations, for example, require nuclear export licensees to maintain records of covered exports for only three to five years after the date of export, depending on the type of export. *See* 10 C.F.R. § 110.53(b)(1). TPI suggests that reporting prior transactions back to 2007, the date of the Energy Independence and Security Act, should be acceptable to accomplish the purpose of the rule.

COMMENT 4. DOE should gather additional data for the risk informed assessment formula.

TPI supports the Nuclear Energy Institute's position that DOE should gather additional data to inform the proposed alternatives for the risk informed assessment formula. The existing NOPR provides little substantive information on how DOE plans to carry out the retrospective risk pooling program. As a result, a supplier cannot estimate its potential exposure due to the absence of any estimate of total aggregate exposure of all suppliers, and so cannot meaningfully evaluate which alternative is preferable. This uncertainty about a potentially significant financial liability will have an adverse impact on domestic U.S. suppliers and will discourage U.S. nuclear exports. TPI recommends that before going further with the rulemaking, DOE should collect sufficient data to estimate the critical values and risk weighting factors to be used in the proposed assessment formulas so that suppliers are able to meaningfully comment on whether the contingent cost allocation is equitable.

TPI appreciates the opportunity to comment on the NOPR. Please contact me at 312-896-8501 if there are any questions regarding these comments.

Very truly yours,
TRANSCO PRODUCTS INC.



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