

Via Electronic Submission

Non-confidential

November 7, 2016

Ms. Sophia Angelini  
U.S. Department of Energy  
Office of General Counsel  
Mailstop GC-72  
Section 934 Rulemaking  
1000 Independence Avenue SW  
Washington, DC 20585

Ref: (1) Convention on Supplementary Compensation for Nuclear Damage Contingent Cost, Federal Register, Vol. 81, August 3, 2016;  
(2) Convention on Supplementary Compensation for Nuclear Damage Contingent Cost, Federal Register, Vol. 81, September 27, 2016.

Dear Ms. Angelini:

URENCO USA, Inc. ("UUSA") appreciates the Department of Energy's ("DOE" or "the Department") outreach to the domestic nuclear power industry in preparing for a potential collection of information to support further development of a Contingent Cost Allocation methodology related to Section 934 of the Energy Independence and Security Act of 2007 as outlined in the Federal Register of August 3, 2016 and during the September 16, 2016 public workshop (Docket Number DOE-HQ-2014-0021). These comments are timely filed pursuant to the extension of the comment period noticed in the September 27, 2016 Federal Register.

UUSA, Inc. is the corporate parent of Louisiana Energy Services, LLC, the licensee and operator of the nation's only producer of low enriched uranium. The UUSA enrichment facility in southeast New Mexico, which began operating in 2010, reflects an investment of more than \$4.5 billion in U.S. manufacturing. The UUSA enrichment facility is currently capable of meeting roughly one-third of annual demand for uranium enrichment services from U.S. utilities based on present capacity of 4.8 million SWU/year.<sup>1</sup>

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<sup>1</sup> Capacity in enrichment services is typically measured in terms of separative work units, or SWU, which is a standard measure of the effort required to increase the concentration of the fissionable <sup>235</sup>U isotope.

Uranium enrichment is a key intermediate step in the nuclear fuel cycle in which natural uranium is first mined then converted to uranium hexafluoride, then enriched to increase the concentration of the fissionable <sup>235</sup>U isotope, and finally converted into uranium dioxide and fabricated into fuel assemblies.

UUSA has reviewed the draft CSC Data and Information Collection Form DOE-XX-XXXX and offers comments on three underlying concerns: (1) by its very construct, use of the form will yield incomplete results, (2) clarifications in the text regarding who and who is not required to file are necessary, and (3) DOE continues to mistakenly conflate the value of nuclear goods and services with risk.

#### **As designed, the proposed collection form will yield incomplete data**

UUSA understands that the proposed information collection is intended as a one-time undertaking intended to further inform the Department's on-going development of a Contingent Cost Allocation methodology. DOE's genuine efforts to better understand the types of nuclear suppliers that would appropriately comprise a retrospective risk pooling system are appreciated; however it is unclear whether the information collection in its current form will yield a significant improvement in this understanding.

At its September 16 workshop, DOE explained that the information to be collected, once aggregated, "would provide the total number of Nuclear Suppliers exporting nuclear goods or services and the value of those nuclear goods or services, by nuclear sector." Yet, by intentionally limiting the scope of reporting to only those applicable activities occurring between January 1, 2008 and December 31, 2015, DOE will necessarily miss a considerable number of transactions and entities that should appropriately be counted as part of a robust evaluation exercise. UUSA fully appreciates the challenges for both the Department and the industry in reaching back to historical transactions for companies and records that may no longer exist but DOE should articulate an approach to – at a minimum – approximate the missing data.

Without a remedy to account for gaps in the reporting results, the outcome, and any risk pooling methodology based on its use, will be skewed. The results of the information collection exercise should therefore be subject to public review and comment before being employed in the onward development of a final rulemaking.

#### **Clarifications are required regarding who and who is not required to file**

Should DOE elect to proceed with the information collection exercise, UUSA urges the Department to further refine the text regarding "Who is Required to File" and "Who is Not Required to File":

- The term "supplied" is imprecise; a more useful alternative would be "exported." Using this approach, the first sentence of "Who is Required to File" would read, "You are a Nuclear Supplier required to file Form DOE XX-XXXX if you have directly *exported* nuclear goods or services..."

- The concept of directly exporting nuclear goods or services to a foreign nuclear installation should be mirrored in both the “Who is Required to File” and “Who is Not Required to File” sections. As such, the opening sentence of “Who is Not Required to File” would read “Nuclear Suppliers that did not *directly* supply nuclear goods or services...”
- The concept of substantial transformation prior to export, as contained in the section “Who is Required to File,” is an important clarification and should be retained. For clarity and consistency, this language also should be replicated in the text regarding “Who is Not Required to File” by utilizing the same language to replace the conflicting phrase “in any form.”

**The value of nuclear goods and services does not automatically correlate with risk**

Section 934 of the Energy Independence and Security Act of 2007 (“EISA”) mandates that the retrospective risk pooling program developed by DOE be risk-informed. Consideration and evaluation of risk was not discussed by DOE at the September 16 public workshop as being among the goals of the data collection effort.

As outlined in previous interactions with the Department, UUSA remains concerned that the methodologies under consideration by the Department for inclusion and weighting in a risk pooling system continue to mistakenly rely on the value of nuclear goods, services and transportation as a proxy for risk. If, in fact, DOE does intend to base risk evaluations on such valuations, it must necessarily clearly articulate and justify the basis for such a decision or risk failure to comply with one of the EISA’s most fundamental components.

If, instead, DOE intends to use information submitted in response to Question 4 of the draft collection form (seeking a “brief description” of the nuclear goods or services and their purpose/function in nuclear commerce) to measure risk, the Department should clarify how such responses will be analyzed.

UUSA appreciates the opportunity to raise these issues with DOE. While we have on-going concerns about the rulemaking, we recognize the considerable complexity of the task at hand and the sincere commitment of DOE’s Office of General Counsel to thoughtfully evaluate public comments. Please do not hesitate to contact me at by email at [Melissa.mann@urencocom](mailto:Melissa.mann@urencocom) or by phone at 703-682-5208 with any questions.

Best regards,



Melissa Mann  
President