



April 16, 2015

Ms. Sophia Angelini
Attorney-Advisor
Office of the General Counsel for Civilian Nuclear Programs, GC-72
U.S. Department of Energy
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Room 6A-167
Washington, DC 20585
Section934Rulemaking@Hq.Doe.gov

VIA ELECTRONIC MAIL

Subject: ConverDyn Comments on “Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation; Notice of Proposed Rulemaking.” – 79 Fed. Reg. 75076 (Dec. 17, 2014)

Dear Ms. Angelini:

ConverDyn appreciates the opportunity to provide our views in the attached comments on the U.S. Department of Energy (“DOE”) Notice of Proposed Rulemaking, dated December 17, 2014, related to the United States’ obligations under Convention on Supplementary Compensation for Nuclear Damage (“CSC”). ConverDyn welcomes any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Critchley", with a stylized flourish at the end.

Malcolm Critchley

ConverDyn
President & CEO

Enclosure:

ConverDyn Comments

“Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation; Notice of Proposed Rulemaking.”

79 Fed. Reg. 75076 (Dec. 17, 2014)

Introduction

ConverDyn is the exclusive marketer of uranium hexafluoride (“UF₆”) conversion services produced by the Metropolis Works (“MTW”) facility, which is operated by Honeywell International. MTW is the only domestic provider of UF₆ conversion services. Those conversion services are marketed exclusively through ConverDyn.

ConverDyn appreciates the opportunity to provide comments on the issues raised by DOE in the Notice of Proposed Rulemaking (“NOPR”), dated December 17, 2014. In the notice, DOE proposes regulations under Section 934 of the Energy Independence and Security Act of 2007 (“EISA”) to address how the United States will meet its obligations under the Convention on Supplementary Compensation for Nuclear Damage (“CSC”). The proposed rule, in particular, describes the manner in which the United States will contribute to an international supplementary fund in the event of certain nuclear incidents outside the United States.

As the only domestic uranium converter of natural uranium ore concentrates to UF₆, ConverDyn supports the DOE’s efforts to implement the retrospective risk pooling program. ConverDyn agrees with DOE that providers of UF₆ conversion services, whether directly or as an intermediary, should be excluded from the definition of “nuclear supplier” under the statute and DOE’s regulations.

Discussion

Section 934(b)(7) defines “nuclear supplier” as a covered person (or a successor in interest of a covered person) that (A) supplies facilities, equipment, fuel, services, or technology pertaining to the design, construction, operation, or decommissioning of a covered installation; or (B) transports nuclear materials that could result in a covered incident. Neither ConverDyn nor MTW would fall within the meaning of this definition. ConverDyn does not supply services directly to a covered installation. Moreover, the UF₆ produced at MTW and marketed by ConverDyn is a chemical product containing only natural uranium. The natural UF₆ must still be enriched in order to concentrate the fissile material to be useful for fuel, and then must be fabricated into fuel suitable for use in a specific reactor. UF₆ therefore is not “fuel.”

The proposed rule also incorporates into the definition of a “covered nuclear supplier” facilities that are subject to 10 C.F.R. Part 21. Part 21, however, is limited to a suppliers of basic components.¹ UF₆ is a raw material in the fabrication of fuel and would not be a “basic component” subject to Part 21.

¹ A “basic component” is a structure, system, or component that affects specific safety functions, and that is designed and manufactured under a 10 C.F.R. Part 50, Appendix B quality assurance program. 10 C.F.R. § 21.3.

Furthermore, under EISA Section 934(b)(7), producers of UF₆ do not supply services that pertain to the “operation” of a covered installation. Consistent with the proposed alternatives for risk allocation in the NOPR, equipment and services pertaining to “operation” of a covered installation is equipment and services specifically intended for use in structures, systems, or components that are important to safety at a nuclear installation. Neither natural uranium nor UF₆ are equipment or services that control the nuclear safety risk at a covered facility. These commodities (and services related to producing the commodities) should not be considered to be goods or services related to operation of a nuclear facility and therefore should not be included in the risk pooling program.

In the current NOPR, DOE explains that, in its view, the statutory definition of nuclear supplier does not include providers or marketers of UF₆ conversion, whether directly or as an intermediary. DOE explicitly addresses application of Section 934 to the uranium conversion industry:

. . . the Department concludes that the definition of “nuclear installation” does not include radioactive waste disposal facilities or uranium mining, milling, and conversion facilities. Uranium mining, milling and conversion facilities do not fall within the definition of “nuclear installation” as they do not involve the use of nuclear fuel or nuclear material as defined in the [CSC]. In addition, DOE agrees that suppliers of natural or depleted uranium or uranium conversion services are not suppliers of fuel and thus not nuclear suppliers that would be subject to the requirements of this proposed rule.

79 Fed. Reg. at 75082. ConverDyn therefore agrees with DOE that uranium conversion should be excluded from the definition of “nuclear supplier” in EISA Section 934(b)(7) and not included in the “Risk Informed Assessment Formula” in Section 934(e)(2)(C)(i).

While the proposed regulation would simply adopt the definition of “nuclear supplier” from Section 934(b)(7), the definition of nuclear supplier could be improved by clarifying — within the regulation itself — its applicability to suppliers of uranium conversion services. ConverDyn therefore recommends revising the definition of nuclear supplier in 10 C.F.R. § 951.3 as follows:

Nuclear supplier means a covered person (or a successor in interest of a covered person) that—

- (1) Supplies facilities, equipment, fuel, services, or technology pertaining to the design, construction, operation, or decommissioning of a covered installation, or
- (2) Transports nuclear materials that could result in a covered incident.

The definition of nuclear supplier does not include suppliers of natural or depleted uranium or uranium conversion services.

At a minimum, DOE should affirmatively reiterate in the *Federal Register* notice for the final rule that suppliers of natural or depleted uranium or uranium conversion services are not suppliers of fuel and thus not nuclear suppliers that would be subject to the requirements of this proposed rule.

Conclusion

ConverDyn fully supports DOE's conclusions regarding the scope and applicability of the proposed rule to the domestic uranium conversion industry. ConverDyn agrees with DOE that uranium conversion should be excluded from the definition of "nuclear supplier" in EISA Section 934(b)(7) and not included in the "Risk Informed Assessment Formula" in Section 934(e)(2)(C)(i).