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November 30, 2010

Ms. Sophia Angelini
Attorney-Advisor
Office of the General Counsel
for Civilian Nuclear Programs, GC–52,
U.S. Department of Energy, 1000
Independence Avenue, SW.,
Washington, DC 20585

Subject: Notice of inquiry and request for comment on Section 934 of the Energy Independence and Security Act of 2007 (''Act'')

Dear Ms. Angelini:

On behalf of USEC Inc. and its wholly-owned subsidiary United States Enrichment Corporation (collectively, USEC), I am submitting the following comment in response to the U.S. Department of Energy (DOE) Notice of Inquiry (NOI) on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation. 75 Fed. Reg. 43945 (July 27, 2010).

United States Enrichment Corporation produces enriched uranium hexafluoride ("enriched UF6") at a large gaseous diffusion uranium enrichment plant in Paducah, Kentucky, and USEC Inc. is deploying an advanced centrifuge enrichment plant in Piketon, Ohio. These two plants are the only commercial uranium enrichment plants employing U.S. technology.

USEC is also the executive agent of the U.S. government under a contract for the purchase of enriched UF6 produced in Russia from highly enriched uranium. We use this enriched UF6, plus the enriched UF6 we produce, as our supply sources to fulfill contracts for the sale of separative work units to nuclear power utilities in Asia, the United States and Western Europe. Our enriched UF6 is delivered to nuclear fuel fabricators, where it is converted into uranium dioxide and then fabricated into nuclear fuel assemblies designed by fabricators for utilities to use in their reactors.

Our interest in the CSC arises from our desire to clarify the legal rules applicable to nuclear liability risk at the nuclear facilities to which our products are supplied. We believe that our exposure would be more certain and manageable if the CSC came into

force and was ratified by many countries. Further, we believe that by encouraging countries to adopt laws that meet the minimum standards set forth in the CSC, the CSC will ensure victims are adequately compensated in the event of an incident without the need for recourse to unpredictable and burdensome litigation in multiple fora.

USEC is a member of the Contractors International Group for Nuclear Liability (CIGNL) and the Nuclear Energy Institute (NEI) and joins in their comments. Our purpose in submitting this response is not to repeat what either CIGNL or NEI set out in their responses, both rather to clarify our company position with respect to two key points:

First, it is essential that any rule promulgated by DOE to implement Section 934 of the Energy Independence and Security Act of 2007 (the "2007 Act") limit the maximum amount that any company could be assessed as its share of the contingent cost allocated to the United States. Such a maximum is a fair way of implementing the principle, reflected in the 2007 Act, that all nuclear suppliers to covered installations will be required to contribute financially to cover the U.S. government's liability under the CSC, even if they did not supply the facility at which a nuclear incident occurred, while at the same time ensuring that suppliers are not exposed to a financial burden that might discourage them from exporting.

Second, with respect to the ideas presented by CIGNL and NEI regarding a risk-based approach to allocating liability among U.S. nuclear suppliers for the contingent cost arising from a call for funds under Article VII of the CSC, it is USEC's position that the only acceptable approach to establishing a "risk-informed assessment formula" is to group CSC facilities into a few discrete categories, and then compare the risk that a nuclear incident resulting in a call for funds under the CSC will occur at a facility in each category, to the risk that such an incident will occur at a facility in the other categories. If each category were allocated a percentage of the total contingent cost based on this comparative risk analysis and the suppliers of goods and services to each category were required to share the portion of the contingent cost allocated to that category, the result would be a formula under which the suppliers of goods and services to all categories would contribute to covering the total U.S. contingent cost.

The attached chart illustrates how this concept might work in practice. The categories chosen are for illustration only, as we recognize that a consensus does not yet exist within industry regarding the specific categories to use. We also recognize that there is no consensus on how to allocate a category's share of the contingent cost among the suppliers of goods and services to that category, but we believe the fairest method would be to assess the risk of such goods and services to each other in terms of whether they are likely to cause a covered incident in their category, and to allocate the greatest portion of each category's share to the suppliers who supply the type of goods and services that represent the greatest risk.

If DOE were to pursue a category-based approach, then the next step in the rule-making process should be to identify the categories to use. This should be done in consultation with industry, and should be based on which facilities are most similar and therefore most susceptible to a comparative risk analysis.

Given the long history of performing risk assessments within the nuclear industry, it should be possible for experts to assess the risk that an incident resulting in a call for funds (defined as a "covered incident" in the 2007 Act) could occur within a broad category of facilities, and then allocate shares of the contingent cost to each category based on the risk that a call for funds would occur in one category as compared to the other three. For example, if in light of past history and the greater number of facilities involved, the risk of a covered incident occurring at facilities in one category is greater than the risk of a covered incident occurring at the facilities in another category, the share of the contingent fund allocated to the suppliers to the first category of facilities would be greater.

There are several advantages to this approach. First, all suppliers would pay something, although the suppliers to facilities in the category with greatest risk would pay comparatively more than suppliers to other categories. Second, by grouping facilities or activities into broad categories, it is more feasible that a usable assessment of relative risk can be conducted. Finally, by focusing upon the risk that the facilities or transportation covered by a category could experience a <u>covered incident</u> (i.e., a nuclear incident of sufficient magnitude to result in a call for funds) rather than looking at the risk of the category experiencing <u>any</u> nuclear incident (including incidents that are unlikely to result in a call for funds), the analysis would not require the experts engaged to perform the risk assessment to look at all possible types of incidents, but rather just the most significant ones that raises the allocation issue that the 2007 Act seeks to address.

USEC would like to stress three key points with respect to its position on this approach:

First, it is USEC's position that consistent with the language used in the definition of "nuclear supplier" in the 2007 Act, only goods or services supplied to a CSC country would be counted in determining whether a company is a "nuclear supplier" and hence subject to share in paying for the portion of the contingent cost allocated to a category. Thus, if Mexico did not join the CSC, then companies that supply only to facilities in Mexico but not to countries which belong to the CSC, would not be included as "nuclear suppliers" because those companies do not supply CSC countries. Further, if a company supplied only 20% of its goods or services to covered installations in CSC countries, it would only be those goods or services that would be included in determining whether the company qualifies as a "nuclear supplier" for purposes of the 2007 Act.

Second, it is USEC's view that foreign companies that supply nuclear-related goods or services from the United States to CSC-covered facilities should be included as

nuclear suppliers for purposes of apportioning a share of the contingent cost allocated to a particular category of facilities.

Finally, to highlight a point made in the comments filed by CIGNL and NEI, further data needs to be collected before the DOE can determine a "risk-informed assessment formula". While we recognize that the 2007 Act envisions that the DOE would determine a formula by the end of this year, given that the CSC is not yet in force and there is no pressing need for such a formula, we urge the DOE to instead consider addressing the 2007 Act's requirement with a plan for the development of a formula based on the approaches discussed in the NEI and CIGNL comments. Under this plan, DOE would preliminarily identify categories and the facilities and activities that would fall into each, and then seek industry comment. Once those categories were finalized, DOE would engage experts to conduct an assessment of comparative risk between the categories and then vet the results of this analysis with industry. Additionally, information would be gathered regarding the companies that supply each category of facilities and further comments sought from industry about how the suppliers to each category would be determined, and how best to allocate the portion of the contingent cost allocated to each category to these suppliers. The allocation of contingent cost to an individual company could be based on the relative risk that goods or services of the type supplied by the company would cause a covered incident in its category as compared to the type of goods and services of other companies that supply that category.

At each step of the process, consideration should be given to the impact of the rule on the competitiveness of U.S. companies that might have to contribute to the contingent cost and if necessary, industry could propose that Congress adopt changes in the 2007 Act. However, if at the outset, the DOE adopted a reasonable cap on the maximum amount that a company would pay under any circumstances in the event of a call for funds, we believe this cap, plus the very low risk that a covered incident would ever occur, should allay fears that implementation of the 2007 Act's requirement that nuclear suppliers pay the U.S. contingent cost will undermine U.S. exports or impose an unpredictable and burdensome cost on U.S. companies.

It is USEC's view that only this type of careful step-wise approach to the development of the rule will provide the risk-informed basis required to meet the requirements of the 2007 Act and to demonstrate a rational basis for the rule. Nothing in the CSC requires the United States to shift the financial burden of the contingent cost to nuclear suppliers, but given that Congress chose to go down this path, it is important that the rule allocates the industry's liability for the contingent cost in a reasonable manner so as not to interfere with trade or suggest to other potential parties to the CSC that ratification of the treaty could be financially burdensome for their industries.

USEC recognizes the significant challenge faced by the DOE in promulgating a rule to implement the 2007 Act. However, the stakes are quite high: Increased exports of U.S. products and services to existing and emerging markets can improve the reliability of foreign facilities, and tangibly reduce the risk of nuclear incidents. A rule that does

not limit a company's potential liability to a predictable and manageable level could prove to be a disincentive to such exports and thereby undermine one of the key objectives of the CSC for the United States.

The comments offered here should not be construed as a criticism of the CSC, which USEC fully supports. Our comments instead only relate to the implementation of the 2007 Act and our desire to ensure that the rule developed by the DOE fulfills the promise of the CSC to strengthen the U.S. economy while meeting the needs of our foreign partners for U.S. products and services that can enhance safety and expand the generation of carbon-free electricity.

If you have any questions or need further information about USEC's comment, please contact James A. Schoettler, Jr., Assistant General Counsel, USEC Inc. at (301)564-3325 or schoettlerj@usec.com.

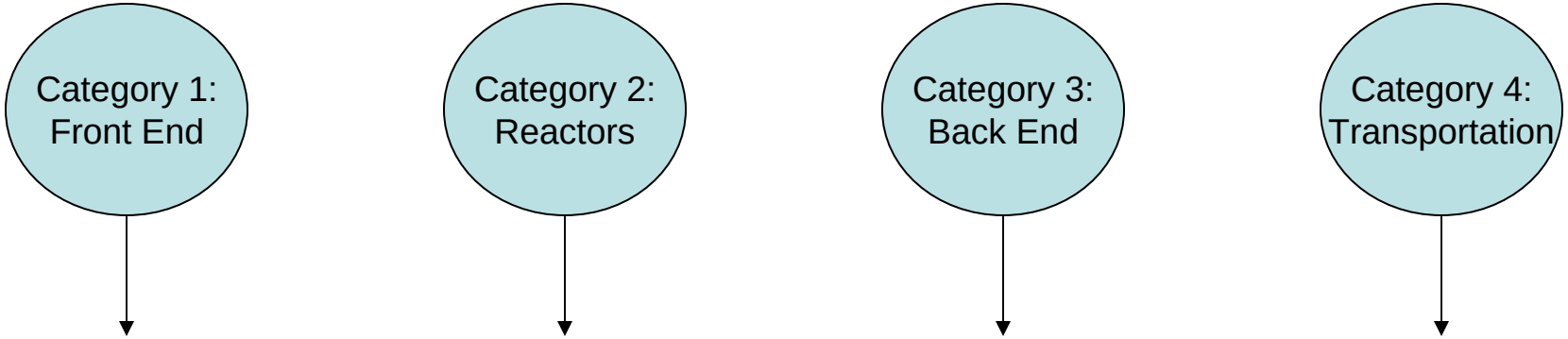
Sincerely,

John C. Barpoulis

John C. Barpoulis

ALLOCATION OF CONTINGENT COST

NOTE: Categories are for illustration only. Size of circles not proportional to relative risk.



A% + B% + C% + D% = 100% of contingent cost

Key Principles:

1) A, B, C and D percentages would be established by experts in collaboration with industry and would be based on the risk of a covered incident occurring within each category as compared to other categories, as determined in light of, e.g., history of incidents among CSC facilities of the type covered by the category, number of facilities in category, nature of hazards etc.

2) No supplier pays more than a maximum dollar amount (e.g., $ 5 MM) , even if the supplier falls under more than one category.

3) A portion of a category's share of the contingent cost would be allocated to an individual company supplying that category based on the risk that the type of goods and services supplied by that company will result in a covered incident as compared to the risk associated with the type of goods and services supplied to that category by other companies.