

**U.S. Department of Energy  
Notice of Proposed Rulemaking on  
Convention on Supplementary Compensation for Nuclear Damage  
Contingent Cost Allocation,  
79 Fed.Reg. 75076 (December 17, 2014)  
and  
80 Fed.Reg. 4227 (January 27, 2015)**

**Docket Number DOE-HQ-2014-0021  
and  
Regulatory Information Number (RIN) 1990-AA39**

**General Statement  
of  
Contractors International Group on Nuclear Liability  
for  
February 20, 2015 Public Workshop**

The Contractors International Group on Nuclear Liability (CIGNL) hereby submits its general statement for the February 20, 2015 public workshop on the U.S. Department of Energy (DOE) Notice of Notice of Proposed Rulemaking (NOPR) on the Convention on Supplementary Compensation for Nuclear Damage (CSC) Contingent Cost Allocation. 79 Fed.Reg. 75076 (Dec. 17, 2014) and 80 Fed.Reg. 4227 (Jan. 27, 2015).

### **CIGNL's Interest**

CIGNL is an *ad hoc* nongovernmental group of major U.S. nuclear suppliers formed in 1993 to promote more widespread adherence to the international nuclear liability conventions and adoption of domestic nuclear liability laws. In particular, CIGNL actively promoted ratification of the CSC by the United States after it was signed in 1997, because CIGNL believed the CSC would help open international nuclear export markets to the United States. CIGNL worked closely with the Administration and Congress in securing the ratification of the CSC in 2006 and enactment of implementing legislation in 2007. CIGNL also has been working closely with the U.S. Government, the International Atomic Energy Agency (IAEA) and others to encourage more States to join this important Convention, noting it will enter into force on April 15, 2015 following Japan's recent acceptance.

CIGNL's current members are as follows: The Babcock & Wilcox Company; Bechtel Power Corporation; CB&I; Centrus Energy Corp.; GE Hitachi Nuclear Energy LLC; and, Westinghouse Electric Company LLC.

Recognizing the difficult task that DOE faces and the considerable uncertainty about how to implement the 2007 legislation, CIGNL and each of its members respectfully reserve our rights to provide additional comments, collectively or individually, as this rulemaking proceeds.

In November 2010, CIGNL submitted comments intended to provide preliminary observations on the Department's earlier Notice of Inquiry (NOI) in this rulemaking. 75 Fed. Reg. 43945 (Jul. 27, 2010); 75 Fed. Reg. 51986 (Aug. 24, 2010); and, 75 Fed. Reg. 64717 (Oct. 20, 2010). On March 2, 2011, representatives of CIGNL met at the Forrestal Building with DOE officials at their invitation to discuss CIGNL's November 2010 written comments. On February 10, 2015, CIGNL submitted questions and topic suggestions for the Department's February 20, 2015 public workshop.

### **Workshop Agenda**

Given the complexity of the issues presented by the NOPR and the fact that the DOE workshop is scheduled for only a single day, CIGNL reiterates it would be advisable for the workshop to concentrate, as set out in CIGNL's February 10, 2015 submission, first on the significant threshold issues and to move on to secondary matters, as time permits. The most significant issues presented by the NOPR are in the areas of covered nuclear suppliers, covered transactions, a retrospective premium payment cap, information collection, access to information, dispute resolution, and risk allocation. While still critical, secondary issues include payments to the United States, other CSC Member States, any "small" nuclear supplier exclusion, and treatment of natural uranium.

## **General**

CIGNL's core objective in this proceeding is to ensure that the final rule adopted by the Department provides for a fair, risk-informed assessment of the exposure that will provide an adequate base of suppliers to meet the U.S. contribution to the international supplementary fund under the CSC, without discouraging U.S. trade in nuclear goods and services. This includes fashioning a definition of "nuclear supplier" that includes as wide a range of companies as possible (*i.e.*, more than the 25 projected in the NOPR), along with a reliable assessment cap, so that the contribution of any individual company in any sector of the U.S. nuclear industry is predictable and not disproportionate to the risk associated with the goods and services provided by that company.

CIGNL's interest in submitting questions and topic suggestions for the February 20, 2015 public workshop is to ensure that the DOE rulemaking facilitates the fulfillment of the CSC's promised opening up of trade for the United States in foreign markets. DOE's proposal (including, but not limited to, the notion of assessing additional premium payments beyond the U.S. suppliers' pro rata shares) cuts against the U.S. Government's interest in or responsibility for promoting or preserving the viability of the U.S. nuclear industry. To the extent the rulemaking burdens the U.S. industry with the specter of uncertain and uninsurable costs or provides incentives not to export, it will defeat the purpose behind the CSC.

As evident on the face of the NOPR, suppliers would be challenged to calculate the in-scope total(s) of their exports to CSC Member States (dating back as far as 1960), which would result in unreliable total(s) for the U.S. nuclear industry, aggregated or by sector (for the same period). As proposed, the DOE rule would not enable U.S. suppliers to calculate, plan for or insure against their risk exposure under the rule, considering that suppliers cannot currently evaluate their potential liability under either Alternative 1 or 2 of the NOPR. In light of Congress's expectation that the CSC would establish a predictable legal framework that will ensure prompt and equitable compensation in the event of a nuclear incident, 42 U.S.C. §17373(a)(1)(C), DOE should consider revising the rule to be simpler, more transparent, equitable and to provide greater certainty to those who will be asked to pay the U.S. share of foreign incident costs. If such rulemaking cannot be completed under the current provisions of the 2007 CSC Contingent Cost Allocation Act, DOE should seek statutory amendments.

## **Conclusions**

CIGNL appreciates the opportunity to participate in the Department's public workshop on the CSC Contingent Cost Allocation, and urges DOE to fully consider CIGNL's questions and suggested topics and to publish further information in the Federal Register addressing each of them well before March 17, 2015 when written comments from the public currently are due on the NOPR. Additionally, if, on the basis of the discussion in this workshop, it appears that there are a number of points of information that the industry needs to provide useful comments on to DOE, the Department should consider extending the deadline for comments until after such information has been provided.