TO: File
FROM: Thomas E. Magette
SUBJECT: Meeting Notes re NOI for Convention on Supplementary Compensation
ATTENDEES: Ben McRae, Anita Capoferri, and Sophia Angelini, DOE-GC; Sean Tyson, DOE-NE; Thomas E. Magette, Energy*Solutions*; and James Lieberman, Talisman International
DATE: February 16, 2011

Mr. Magette summarized the Energy*Solutions* positions based on his letter of November 24, 2010. He emphasized the challenge DOE has to develop a rule to implement the statute and the Convention. DOE did not express any views on the issues and emphasized the need for commenters to provide specific information, such as on risk, to provide a basis for DOE action.

The following issues were raised during the discussion:

Need for further study and seeking an amendment of section 934 to delay rulemaking. DOE noted that it would need to continue its efforts until the legislation was amended.

Should the legislation be changed to make this a governmental burden rather than a burden on suppliers?

Need to issue an ANPR to focus comments before a proposed rule is issued.

Need to determine risks of different items that nuclear suppliers may supply and the basis for that information, e.g., why is waste disposal less hazardous than operating a reactor. DOE needs more than anecdotal statements. It is looking for public documents comparing risks. Suggested that NEPA documents might provide a source of information

Need for a cap known to each supplier so that the potential cost can be priced into contract.

How can a cap be determined if the number of suppliers are not known, what they will supply is not known, when they will supply is not known, and don't know how long they will be supplying?

Potential need to have a rule requiring notice to DOE of exports so that DOE can gather data to identify suppliers and what is being supplied before a retrospective fee rule can be developed.

Potential for retrospective fees could discourage suppliers who have little or no risk of nuclear damage from their activities from exporting.

Need to have a mechanism to identify suppliers and installations so that there is notice to permit suppliers to make informed decisions on whether they should be involved in exports.

DOE should consider the contribution to risks from suppliers on non-safety related components as that term is used by Part 50.

How to evaluate risks when supplying supplies to country with a minimum regulatory program, with a non-western judicial system vs. a robust regulatory program with a western judicial system? Does it matter which countries a supplier supplies?

Is it fair to require a retrospective fee to a supplier for an incident that was caused in a country the supplier did not supply for an incident that has no relation to the activity that the supplier supplied?

Several undefined liabilities were identified that Energy*Solutions* believes should be considered and defined. These include liabilities to:

- Supplier for payments for events that occurred before the supplier became a supplier, for events that were caused before the country where the installation was signed the Convention or the Convention went into effect.
- US company for actions of its foreign subsidiary
- US company for supplies made in a foreign country at the direction of the US company that never came to the US before going to an installation
- Company providing supplies to a US nuclear supplier where the company did not know the supplies were going to a foreign nuclear installation

Participation in CSC is strongly favored by protect suppliers who have the potential for a sizeable risk. It may be that smaller suppliers incur increased risk as a result of the US participation in this treaty. DOE representatives expressed the view that no party's risk should *increase* as a result of this rule.

There may be a need to take some of these concerns back to Congress.