STATE OF SOUTH CAROLINA

(Caption of Case)
In re Application of ChemNuclear Systems, LLC

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2000 - 366 - A

(Please type or print)

Submitted by: Robert T. Bockman, Esquire
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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
☐ Electric	☐ Affidavit	☐ Letter	☐ Request
☐ Electric/Gas	☐ Agreement	☐ Memorandum	☐ Request for Certification
☐ Electric/Telecommunications	☐ Answer	☐ Motion	☐ Request for Investigation
☐ Electric/Water	☐ Appellate Review	☐ Objection	☐ Resale Agreement
☐ Electric/Water/Telecom.	☐ Application	☐ Petition	☐ Resale Amendment
☐ Electric/Water/Sewer	☐ Brief	☐ Petition for Reconsideration	☐ Reservation Letter
☐ Gas	☐ Certificate	☐ Petition for Rulemaking	☐ Response
☐ Railroad	☐ Comments	☐ Petition for Rule to Show Cause	☐ Response to Discovery
☐ Sewer	☐ Complaint	☐ Petition to Intervene	☐ Return to Petition
☐ Telecommunications	☐ Consent Order	☐ Petition to Intervene Out of Time	☐ Stipulation
☐ Transportation	☐ Discovery	☐ Prefiled Testimony	☐ Subpoena
☐ Water	☐ Exhibit	☐ Promotion	☐ Tariff
☐ Water/Sewer	☐ Expedited Consideration	☒ Proposed Order	☐ Other:
☒ Administrative Matter	☐ Interconnection Agreement	☐ Protest	
☐ Other:	☐ Interconnection Amendment	☐ Publisher's Affidavit	
	☐ Late-Filed Exhibit	☐ Report	

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May 24, 2010

Hand Delivered

Jocelyn Boyd, Esquire
Interim Chief Clerk and Administrator
South Carolina Public Service Commission
Post Office Box 11649
Columbia, South Carolina 29211

Re: *Application of Chem-Nuclear Systems, LLC*
(SCPSC Docket No. 2000-366-A) (2009-2010 Proceeding)

Dear Ms. Boyd:

Please find enclosed the proposed Order Identifying Allowable Costs. Please file the exhibit in accordance with the Commission's rules and regulations.

By copy of this letter, I am providing a copy of the proposed Order to each party of record. Should you have any questions with respect to this matter, please do not hesitate to contact me.

Very truly yours,

Robert T. Bockman

Enclosures

cc: The Honorable Henry Dargan McMaster (w/encl.)
The Honorable C. Earl Hunter (w/encl.)
Frank R. Ellerbe, III, Esquire (w/encl.)
Derrick K. McFarland (w/encl.)
Jeffrey M. Nelson, Esquire (w/encl.)
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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2000-366-A - Order No. 2010-_____

June _____, 2010

In re: Application of Chem-Nuclear Systems, LLC, a Subsidiary of Duratek, Inc., for Adjustment in the Levels of Allowable Costs and for Identification of Allowable Costs	)))))	**ORDER IDENTIFYING ALLOWABLE COSTS**

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Chem-Nuclear Systems, LLC, a subsidiary of Duratek, Inc. ("Chem-Nuclear" or the "Company"), dated September 24, 2009 (the "Original Application"). By its Original Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs for Fiscal Year 2008-2009, which the Commission had previously identified, and for the identification of allowable costs for Fiscal Year 2009-2010, all of which are associated with the operation of the Company's regional low-level radioactive waste disposal facility located in the vicinity of Barnwell, South Carolina (the "Barnwell Facility"). The Application was submitted pursuant to the pertinent provisions of the Atlantic Interstate Low-level Radioactive Waste Compact Implementation Act (the "Act"), which is codified as S.C. Code Ann. §§ 48-46-10, et. seq. (1976), as amended. On March 18, 2010, the Company filed and served an Amended Application which proposed certain revisions in the information contained in the Original Application to reflect the Company's reconciliation of certain issues with the Office of Regulatory Staff ("ORS").

The Act established a comprehensive economic regulatory program and governs the relationship between the State of South Carolina and operators of facilities for the disposal of low-level radioactive waste. Among other things, the Act provides for South Carolina's membership in the Atlantic Compact (the "Compact") and authorizes the manner in which this State participates in the Compact with Connecticut and New Jersey, which are the other member states. S.C. Code Ann. § 48-46-20 (Supp. 2009).

The Act fixed a schedule of annually declining maximum volumes of low-level radioactive waste that a disposal facility in South Carolina may accept from generators within and without the Compact's member states. S.C. Code Ann. § 48-46-40(A)(6)(a) (Supp. 2009). Starting on July 1, 2008, the Barnwell Facility was limited to accepting waste exclusively from generators in the three Compact states.

In addition, the Act empowers the South Carolina Budget and Control Board (the "Budget and Control Board") to fix the rates that an operator of a disposal facility in South Carolina could charge generators for disposal of low-level radioactive waste. The Act fixed fees for various purposes and provided for the disposition of revenues produced by the disposal operations of facilities subject to the Act. The Barnwell Facility is the only disposal facility for low-level radioactive waste in South Carolina.

Under the Act, the Commission has the responsibility to identify the "allowable costs" of a disposal facility operator. S.C. Code Ann. § 48-46-40(B)(1) (Supp. 2009). "Allowable costs" are "costs to a disposal site operator of operating a regional disposal facility," and they "are limited to costs determined by standard accounting practices and regulatory findings to be associated with facility operations." S.C. Code Ann. § 48-46-30(I) (Supp. 2009). The Act provides that "allowable costs" expressly include the costs of certain specifically identified

activities necessary in the operation of a low-level radioactive waste facility. S.C. Code Ann. § 48-46-40(B)(3)(a) through (n) (Supp. 2009). Section 48-46-40(3) also provides that "allowable costs" include "any other costs directly associated with disposal operations determined by [the Commission] to be allowable." The Act excludes from identification as "allowable costs" the costs of certain expressly listed activities and "any other costs determined by [the Commission] to be unallowable." S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2009).

The Act entitles a disposal facility operator to recover an operating margin of twenty-nine (29%), which is applied to identified "allowable costs," excluding certain "allowable costs" for taxes and any licensing and permitting fees which the operator is required to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2009).

The level of "allowable costs" and the statutory operating margin affect the amount of annual revenue that a disposal facility operator remits to the State of South Carolina. At the end of the fiscal year, the operator pays the South Carolina Department of Revenue an amount equal to the total revenue that the operator had received for waste disposal services during the fiscal year, reduced by the operator's identified "allowable costs," and reduced further by the twenty-nine (29%) statutory operating margin on the "allowable costs" under the Act, and reduced further by payments that the operator made during the fiscal year for reimbursement of certain administrative costs which the Budget and Control Board, this Commission, the State Treasurer and the Atlantic Compact Commission (the "Compact Commission") have incurred for the conduct of those agencies' functions in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2009).

The Act provides that the operator of a low-level radioactive waste disposal site may apply to the Commission for adjustments in the levels of "allowable costs" which the Commission had identified for the previous fiscal year and for identification of costs which the

Commission had not previously identified as "allowable costs." S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2009). Upon disposition of the issues in an application, the Act requires the Commission to authorize the site operator to adjust its "allowable costs" for the current fiscal year to compensate the site operator for revenues "lost" during the previous fiscal year (that is, the difference between the level of "allowable costs" previously identified and the level of "allowable costs" identified upon approval of the application). Id.

Chem-Nuclear filed its Original and Amended Applications in this proceeding seeking to be compensated for the difference between the level of "allowable costs" which we identified in Order No. 2009-371 and the amount of such costs that the Company actually experienced in the Fiscal Year 2008-2009. The Original and Amended Applications also sought identification of Chem-Nuclear's "allowable costs" for Fiscal Year 2009-2010. As in prior proceedings, Chem-Nuclear applied to be compensated only for those "allowable costs" incurred in Fiscal Year 2008-2009 where the actual costs were more than those identified and approved in Order No. 2009-371. Amended Application, ¶¶ 11-14 and Exhibit A to the Amended Application.

Upon receipt of the Company's Original Application, the Commission's Docketing Department directed Chem-Nuclear to publish a Notice of Filing, advising the public of the submission of the Original Application and of the manner in which interested persons might intervene or otherwise participate in this proceeding. Chem-Nuclear filed affidavits of publication which demonstrated its compliance with the instructions of the Docketing Department.

The Act specifies certain agencies to be parties of record in proceedings for identification of "allowable costs" before the Commission. Those parties are: the Budget and Control Board, the Executive Director of the ORS and the Attorney General for the State of South Carolina. S.C. Code Ann. § 48-46-40(B)(9) (Supp. 2009). In addition, the Compact Commission and the

South Carolina Department of Health and Environmental Control ("DHEC") have the discretion under the Act to participate as parties. Id. Pursuant to the provisions of S.C. Code Ann. § 58-4-10(B) (Supp. 2009), ORS represents "the public interest" in proceedings in this Docket.

On April 29, 2010, the Commission held an evidentiary hearing with respect to the issues in the Company's Amended Application. The Honorable Elizabeth B. "Lib" Fleming, Chairman, presided, and Commissioners Hamilton, Mitchell, Whitfield and Wright were in attendance. F. David Butler, Esquire, served as Advisor to the Commission. Appearances were as follows: Robert T. Bockman, Esquire, represented Chem-Nuclear; Jeffrey M. Nelson, Esquire, represented ORS; neither the Budget and Control Board nor DHEC appeared at the hearing. The Attorney General did not appear or participate in the hearing. Duke Energy Carolinas, LLC ("Duke") and South Carolina Electric & Gas Company (SCE&G"), which had intervened in this Docket, were represented by Bonnie D. Shealy, Esquire, and by K. Chad Burgess, Esquire, respectively. Ms. Shealy also represented the Compact Commission. Progress Energy Carolinas, Inc. ("Progress Energy"), which had intervened, did not appear at the hearing.

Chem-Nuclear and ORS entered into a Settlement Agreement, dated March 22, 2010, by which they resolved various issues raised in the Original Application and during the audit which ORS conducted. Counsel for SCE&G, Duke, and Progress Energy signed the Settlement Agreement. The Settlement Agreement was filed with the Commission on April 15, 2010. Thereafter, the Settlement Agreement was amended by the inclusion of its referenced Attachment A ("Amended Settlement Agreement") and filed with the Commission on April 21, 2010. The Amended Settlement Agreement is a part of the administrative record of this proceeding, as Hearing Exhibit No. 1. The Settlement Agreement included an Attachment A which consisted of the audit report prepared by ORS of its examination of Chem-Nuclear's

books and records.

At the hearing, Chem-Nuclear presented the testimony of one witness, James W. Latham. At the conclusion of the hearing, the record remained open for Chem-Nuclear's submission of "late-filed" Hearing Exhibit No. 3. The record of this proceeding consists of the pleadings; the Commission's notices; the transcript of the oral testimony, consisting of fifty-two (52) pages; and three (3) hearing exhibits.

II. DISCUSSION OF ISSUES

All of the issues relating to the identification of "allowable costs" for Fiscal Year 2008-2009 and for Fiscal Year 2009-2010 were resolved among the parties or were not contested in the evidence or positions of the parties. Consequently, the Commission will discuss the issues in general to reflect our reliance upon the evidentiary record for the findings and conclusions in this order.

A. "Allowable Costs" for Fiscal Year 2008-2009

In accordance with the provisions of the Collaborative Review of Chem-Nuclear's Operations and Efficiency Plan ("OEP"), which Order No. 2004-349 approved for use in these "allowable cost" proceedings, Chem-Nuclear's Applications and its evidence separated costs into three (3) categories: fixed costs, variable costs and irregular costs. Tr., p. 15. As Order No. 2004-349 had recognized, the OEP was valid for use as a "baseline for establishing a method for identifying 'allowable costs.'" Order No. 2004-349, p. 17.

1. Fixed Costs for Fiscal Year 2008-2009

Chem-Nuclear separated its fixed costs for Fiscal Year 2008-2009 into several general categories: labor and fringe costs, non-labor costs, corporate allocation of general and administrative expense, equipment leases and support, depreciation, and insurance, as well as those fixed costs for which the statutory operating margin was not applicable. The Company's

operating expense for that period resulted in total fixed costs of $2,838,898, which Chem-Nuclear actually incurred. Hearing Ex. No. 2, Amended Exhibit A, p. 1. Since the total fixed costs incurred for 2008-2009 were greater than the level of fixed costs anticipated in Order No. 2009-371, the Company proposed an adjustment of $277,898 above the previously identified allowable fixed costs for Fiscal Year 2008-2009. Tr., pp. 19, 30. The record supports the identification of $2,838,898 as fixed "allowable costs" for Fiscal Year 2008-2009.

2. Variable Material Costs for Vaults for Fiscal Year 2008-2009

The actual costs for vaults are predicated on a number of factors, including the size and shape of waste packages and the number and size of vaults required for disposal. Tr., pp. 20, 30. For Fiscal Year 2008-2009, Chem-Nuclear's actual costs for disposal vaults were $500,401. Hearing Ex. No. 2, Amended Exhibit A, p. 3. The evidence supports treatment of that amount of those actual costs as "allowable."

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2008-2009

Order No. 2009-371 determined various categories of rates applicable to the following: purchase, inspection and placement of disposal vaults, handling of the various classes of waste shipments, slit trench offload operations, customer assistance, and scheduling of waste shipments and maintenance of disposal records. Hearing Ex. No. 2, Amended Exhibit A, p. 2. According to the record, the variable Labor and Non-Labor rates are associated with several independent variables. Tr., pp. 19-20, 28. The Company incurred actual variable labor and non-labor costs of $153,521 in Fiscal Year 2008-2009, which the Company has requested to be included in this category of costs for Fiscal Year 2008-2009. Id. The record supports treatment of that amount of those actual costs as "allowable."

4. Irregular Costs for Fiscal Year 2008-2009

Irregular costs include costs for projects that are nonrecurring annually or varying costs

for projects which continue for more than a year. Tr., pp. 21-22, 28. The record contains numerous descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2008-2009. Id.; Hearing Ex. No. 2, Amended Exhibit B. At the date of the issuance of Order No. 2009-371, not all of the irregular costs for Fiscal Year 2008-2009 were known and measurable. Id., p. 21. The evidence here establishes that Chem-Nuclear incurred actual irregular costs for Fiscal Year 2008-2009 of $360,593. Tr. pp. 21-22; Hearing Ex. No. 2, Amended Exhibit A, p. 4. The record supports treatment of that amount of those actual costs as "allowable."

B. Proposed "Allowable Costs" for Fiscal Year 2009-2010

Chem-Nuclear's Amended Application and the evidence in the record presented "allowable costs" to be identified for Fiscal Year 2009-2010, separated into the three (3) cost categories that were described in the Collaborative Review of the OEP and adopted in Order No. 2004-349.

1. Allowable Fixed Costs for Fiscal Year 2009-2010

Chem-Nuclear proposed total fixed costs of $2,632,663 to be identified as "allowable costs" for Fiscal Year 2009-2010. That amount was based on actual fixed costs incurred in Fiscal Year 2008-2009, with appropriate adjustments for inflation as the Commission has previously approved, and in anticipation of lower volumes for disposal. Tr., pp. 22, 32-33. The total fixed costs for Fiscal Year 2009-2010 include $167,000 to which the statutory operating margin is not applicable. Hearing Ex. No. 2, Amended Exhibit C, p. 1.

2. Allowable Irregular Costs for Fiscal Year 2009-2010

Chem-Nuclear described general categories of projects with estimated total costs of $153,000, which it categorized as irregular costs for Fiscal Year 2009-2010. Tr., pp. 22-23, 33.

3. Variable Material Cost (Vaults) Rates for Fiscal Year 2009-2010

For Fiscal Year 2009-2010, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates which we had approved in Order No. 2009-371 for Fiscal Year 2008-2009, as adjusted for a nominal inflation rate of two percent (2%). Tr., pp. 23-24, 34-35.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2009-2010

For Fiscal Year 2009-2010, Chem-Nuclear proposed rates for variable labor and non-labor costs. Tr., pp. 23, 34. Hearing Ex. No. 2, Amended Exhibit C. Those rates pertained to five (5) categories: vault purchase and inspection (per vault); ABC waste disposal (per shipment); Slit Trench Waste Operations (per offload); customer assistance (per shipment); and maintenance of trench records (per container). The rates were based on the rates which we approved in Order No. 2009-371, adjusted for a nominal inflation rate of two percent (2%). Id.

III. FINDINGS AND CONCLUSIONS

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. §§ 48-46-40(B), et seq. (Supp. 2009) to identify allowable costs for Chem-Nuclear's operation of a regional low-level radioactive waste disposal facility in South Carolina. The facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site continuously since 1971 without interruptions. Undisputed amounts in Chem-Nuclear's accounts that will herein be identified and approved by this Commission as "allowable costs" for Fiscal Year 2008-2009 are included in Appendix A, which is attached to this Order.

3. Further, we approve and identify as "allowable costs" for Fiscal Year 2009-2010 the individual figures and the sum of $2,785,663 in fixed and irregular costs, as reflected in

Appendix B, which is attached to this Order.

4. Finally, we approve the variable cost rates for Fiscal Year 2009-2010, as those costs and rates are depicted in Appendix B, which is attached to this Order. The actual expense in the variable cost category will be dependent on the actual volumes and classes of waste received. The rates in Appendix B are appropriately documented and supported by evidence in the record of this proceeding.

5. Chem-Nuclear shall continue to submit monthly reports of variable cost data to the Commission as required by Commission Order No. 2001-499.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

_____
Elizabeth B. Fleming, Chairman

ATTEST:

_____
Chief Clerk and Administrator

(SEAL)

APPENDIX A – Order No. 2010-_____
Docket No. 2000-366-A
June _____, 2010

Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2009

Description	Allowable Cost
Fixed Costs	
Fixed Labor, Fringe and Non-Labor Costs	$1,292,726
Depreciation	$154,407
Insurance	$458,425
Equipment and Leases and Support	$313,713
Corporate G&A	$563,563
Legal Support*	$56,064
Total Fixed Costs	$2,838,898
Variable Costs	
Vault Costs	$500,401
Variable Labor and Fringe**	$153,521
Total Variable Costs	$653,922
Irregular Costs	
Total Irregular Costs	360,593
Total Allowable Costs	$3,853,413

* Not subject to statutory operating margin.

** Categories of costs include: Vault Purchase and Inspection, ABC Waste Disposal, Slit Trench Operations, Waste Acceptance and Trench Records.

APPENDIX A – Order No. 2010-_____
Docket No. 2000-366-A
June _____, 2010
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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2009

Irregular Cost Item	**Labor & Fringe**	**Non Labor**	**Total Cost**
Various Trenches	$2,551	$68,709	$71,260
Decontamination and Corrective Actions	$1533	$6,474	$8,007
Site Engineering and Drawing Updates	$334	$2,643	$2,977
Site Assessments	$1,509	$2,842	$4,351
License Renewal and Appeal Costs	$9,189	$382	$9,571
Puncture Stand Relocation	$18,536	$2,437	$20,973
Increased Security Controls	$0	$17,350	$17,350
Severance Pay	$8,589	$178,750	$187,339
Other Irregular Costs	$28,791	$9,974	$38,765
Total Irregular Costs	**$71,032**	**$289,561**	**$360,593**

APPENDIX B – Order No. 2010-_____
Docket No. 2000-366-A
June _____, 2010
Page 1 of 1
Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year 2009-2010 (Ending June 30, 2009)

Description	Allowable Cost
Fixed Costs	
Labor and Fringe and Non-Labor	$1,318,581
Depreciation	$71,475
Insurance	$384,518
Equipment Leases and Support	$116,255
Corporate Allocation (Management Fee/G&A)	$574,834
Legal Support*	$167,000
Total Fixed Costs	$2,632,663
Irregular Costs	
Trench Construction	$30,000
License Appeal	$10,000
Corrective Action	$5,000
Increased Security Controls	$20,000
Site Engineering Drawings	$3,000
Site Assessments	$5,000
Severance Pay	$75,000
Miscellaneous	$5,000
Total Irregular Costs	$153,000
Total Fixed and Irregular Costs	$2,785,663
Variable Costs	
Variable Labor and Non-Labor Rates	
Vault Purchase and Inspection (per vault)	$77.43
ABC Waste Disposal (per shipment)	$1,854.92
Slit Trench Shipment (Offload)	$6,696.69
Customer Assistance (per shipment)	$45.34
Trench Records (per container)	$124.06
Variable Material Costs (Vault Costs)	
Class A Waste (per cubic foot)	$39.03
Class B Waste (per cubic foot)	$40.44
Class C Waste (per cubic foot)	$41.30
Slit Trench Waste (per cubic foot)	$184.54

* Not subject to statutory operating margin