BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-366-A - ORDER NO. 2009-371

JUNE 18, 2009

IN RE: Application of Chem-Nuclear Systems, LLC for Approval of Allowable Costs (1st Filing) Application for Adjustment in the Levels of Allowable Costs and for Identification of Allowable Costs (2nd Filing and After)	)))))	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 30, 2008 (the "Original Application"). By its Original Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs for Fiscal Year 2007-2008, which the Commission had previously identified, and for the identification of allowable costs for Fiscal Year 2008-2009 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 February 26, 2009, 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 Low-level Radioactive Waste Compact (the "Compact") and authorizes the manner in which this State participates in the Compact with Connecticut and New Jersey, the other member states. S.C. Code Ann. § 48-46-20 (Supp. 2008).

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

In addition, the Act empowered 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 a generator for disposal of the generator's 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. Chem-Nuclear operates 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. 2008). "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. 2008). 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. 2008). 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. 2008).

The Act entitles a disposal facility operator to recover an operating margin of 29%, which is applied to identified "allowable costs," excluding certain "allowable costs" for taxes and the licensing and permitting fees which the operator is required to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2008).

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 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 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, the Commission, the State Treasurer and the Atlantic Compact Commission (the "Compact Commission") have incurred for the conduct of those agencies' responsibilities in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2008).

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. 2008). 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. 2008-447 and the amount of such costs that the Company actually experienced in the Fiscal Year 2007-2008, as well as for identification of Chem-Nuclear's "allowable costs" for Fiscal Year 2008-2009. As in prior

proceedings, Chem-Nuclear applied to be compensated only for those "allowable costs" incurred in Fiscal Year 2007-2008 where the actual costs were more than those identified and approved in Order No. 2008-447. Amended Application at paragraphs 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. 2008). 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. 2008), the ORS represents "the public interest" in proceedings in this Docket.

On April 28, 2009, the Commission held an evidentiary hearing with respect to the issues in the Company's Amended Application. The Honorable Elizabeth "Lib" Fleming, Chairman, presided and Commissioners Clyburn, Hamilton, Mitchell, Whitfield and Wright were in attendance. Joseph Melchers, Esquire, served as Advisor to the

Commission. Appearances were as follows: Robert T. Bockman, Esquire, represented Chem-Nuclear; Jeffrey M. Nelson, Esquire, represented the 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 Catherine E. Heigel, Esquire, and by K. Chad Burgess, Esquire, respectively. Frank R. Ellerbe, III, Esquire, represented the Compact Commission. Progress Energy Carolinas, Inc. ("Progress Energy"), which intervened, did not appear at the hearing.

Chem-Nuclear and the ORS entered into a Settlement Agreement, dated March 24, 2009, by which they resolved various issues raised in the Amended Application and during the audit which ORS conducted. Counsel for SCE&G, Duke, Progress Energy and the Compact Commission signed the Settlement Agreement. The Settlement Agreement was filed with the Commission prior to the hearing and is a part of the administrative record of this proceeding, as Hearing Exhibit No. 1. Tr. P. 7. The Settlement Agreement included an attachment which consisted of the audit report prepared by ORS of its examination of Chem-Nuclear's books and records. Chem-Nuclear presented the testimony of one witness, James W. Latham. The record of this proceeding consists of the pleadings; the Commission's notices; the transcript of the oral testimony, consisting of sixty-eight (68) pages; and two (2) hearing exhibits.

II. DISCUSSION OF ISSUES

All of the issues relating to the identification of "allowable costs" for Fiscal Year 2007-2008 and for Fiscal Year 2008-2009 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 2007-2008

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 application and its evidence separated costs into three (3) categories: fixed costs, variable costs, and irregular costs. Tr. Pp. 27-28. 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 at 17.

1. Fixed Costs for Fiscal Year 2007-2008

Chem-Nuclear separated its fixed costs for Fiscal Year 2007-2008 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 operating expense for that period resulted in total fixed costs of $7,452,850, which were actually incurred. Hearing Ex. No. 2, Amended Exhibit A, p. 1. Since the total fixed costs which Chem-Nuclear actually incurred for 2007-2008 were

less than the level of fixed costs anticipated in Order No. 2008-447, the Company did not propose any adjustment in the previously identified allowable fixed costs for Fiscal Year 2007-2008. Tr. p. 14. The record supports the identification of $7,452,850 as fixed "allowable costs" for Fiscal Year 2007-2008.

2. Variable Material Costs for Vaults for Fiscal Year 2007-2008

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. 30-31. For Fiscal Year 2007-2008, Chem-Nuclear's actual costs for disposal vaults were $1,975,945. Hearing Ex. No. 2, Amended Exhibit A, p. 3.

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2007-2008

Order No. 2008-447 determined various categories of rates applicable to purchase, inspection, and placement of the following: 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. The Company incurred actual variable labor and non-labor costs of $1,195,903 in Fiscal Year 2007-2008, which the Company has requested to be included in this category of costs for Fiscal Year 2007-2008. Tr. Pp. 34-35.

4. Irregular Costs for Fiscal Year 2007-2008

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. Tr. p. 35. The record contains numerous descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2007-2008. Id., pp. 35-37. At the date of the issuance of Order No. 2008-447, not all of the irregular costs for Fiscal Year 2007-2008 were known and measurable. Id. p. 17. The evidence here establishes that Chem-Nuclear incurred actual irregular costs for Fiscal Year 2007-2008 of $644,843. Tr. p. 35. Amended Exhibit A, p. 4.

B. Proposed "Allowable Costs" for Fiscal Year 2008-2009

Chem-Nuclear's Amended Application and the evidence in the record presented "allowable costs" to be identified for Fiscal Year 2008-2009, separated into the three cost categories that were submitted in the Collaborative Review of the OEP and adopted in Order No. 2004-349.

1. Allowable Fixed Costs for Fiscal Year 2008-2009

Chem-Nuclear proposed total fixed costs of $2,561,000 to be identified as "allowable costs" for Fiscal Year 2008-2009. This amount was based on actual fixed costs incurred in Fiscal Year 2007-2008, with appropriate adjustments for inflation as the Commission has previously approved, and in anticipation of lower volumes for disposal. Tr. pp. 17-18 and 37-38. The total fixed costs for Fiscal Year 2008-2009 include $25,000 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 2008-2009

Chem-Nuclear described general categories of projects with estimated total costs of $389,000, which it categorized as irregular costs for Fiscal Year 2008-2009. Tr. pp. 18-19 and 38-39.

3. Variable Material Cost (Vaults) Rates for Fiscal Year 2008-2009

For Fiscal Year 2008-2009, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates which we had approved in Order No. 2008-447 for Fiscal Year 2007-2008, as adjusted for an increase in the costs of concrete disposal vaults from Chem-Nuclear's supplier. Tr. pp. 20 and 39-40.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2008-2009

For Fiscal Year 2008-2009, Chem-Nuclear proposed rates for variable labor and non-labor costs. Tr. pp. 19-20 and 39. 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 actual costs during the first seven (7) months of Fiscal Year 2008-2009. Tr. pp. 20 and 39.

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. 2008) 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 in question 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 2007-2008 are included in Appendix A, which is attached to this Order.

3. We approve and identify as "allowable costs" for Fiscal Year 2008-2009 the individual figures and the sum of $2,950,000 in fixed and irregular costs, as reflected in Appendix B, which is attached to this Order.

4. Further, we approve the variable cost rates for Fiscal Year 2008-2009, as those costs and rates that 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 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

Elizabeth B. Fleming, Chairman

ATTEST:

Charles L. A. Terreni, Chief Clerk/Administrator

(SEAL)

APPENDIX A – Order No. 2009-371

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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2008

Description	Allowable Cost
Fixed Costs	
Fixed Labor and Fringe	$2,452,543
Non-Labor Costs	$1,087,714
Depreciation	$188,000
Insurance	$632,003
Equipment and Leases and Support	$696,642
Corporate G&A	$1,246,765
Intangible Asset Amortization (Operating Rights)*	$624,917
Employee Retention Compensation*	$461,905
Legal Support*	$62,361
Total Fixed Costs	$7,452,850.00
Variable Costs**	
Vault Costs	$1,975,945
Variable Labor and Fringe	$1,195,903
Total Variable Costs	$3,171,848.00
Irregular Costs	
Total Irregular Costs (see page 2 of 2)	$644,843
Total Allowable Costs	$11,269,541

* 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.

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Chem-Nuclear Systems, LLC
Allowable Costs
Fiscal Year Ending June 30, 2008

Irregular Cost Item	**Labor & Fringe**	**Non Labor**	**Total Cost**
Irregular Components	($36)	$3,328	$3,292
Various Trenches	$53,662	$232,235	$285,897
Decontamination and Corrective Actions	$8,569	$62,112	$70,681
Deep Well and Monitoring Well Abandonment	$3,803	$490	$4,293
Site Engineering and Drawing Updates	$15,465	$9,051	$24,516
Site Assessments	$92,621	$63,819	$156,440
License Renewal and Appeal Costs	$3,802	$1,579	$5,381
Investigation of Mary's Branch	$24,383	0	$24,383
Increased Security Controls	($38)	$1,850	$1,812
Other Irregular Costs	$5,594	$62,554	$68,148
Total Irregular Costs	**$207,825**	**$437,018**	**$644,843**

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

Description	Allowable Cost
Fixed Costs	
Labor and Fringe and Non-Labor	$1,000,000
Depreciation	$188,000
Insurance	$448,000
Equipment Leases and Support	$400,000
Corporate Allocation (Management Fee/G&A)	$500,000
Legal Support*	$25,000
Total Fixed Costs	$2,561,000
Irregular Costs	
Trench Construction	$40,000
License Appeal	$5,000
Increased Security Controls	$10,000
Site Engineering Drawings	$3,000
Site Assessments	$30,000
Severance Pay	$300,000
Miscellaneous	$1,000
Total Irregular Costs	$389,000
Total Fixed and Irregular Costs	$2,950,000
Variable Costs	
Variable Labor and Non-Labor Rates	
Vault Purchase and Inspection (per vault)	$75.91
ABC Waste Disposal (per shipment)	$1,818.55
Slit Trench Shipment (Offload)	$6,565.38
Customer Assistance (per shipment)	$44.45
Trench Records (per container)	$124.06
Variable Material Costs (Vault Costs)	
Class A Waste (per cubic foot)	$38.26
Class B Waste (per cubic foot)	$39.65
Class C Waste (per cubic foot)	$40.49
Slit Trench Waste (per cubic foot)	$180.92

* Not subject to statutory operating margin