BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-366-A – ORDER NO. 2003-188

APRIL 14, 2003

IN RE: Application of Chem-Nuclear Systems, LLC for Approval of Allowable Costs.	))	ORDER IDENTIFYING ALLOWABLE COSTS

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of Chem-Nuclear Systems, LLC (Chem-Nuclear or the Company) on a proceeding for approval of allowable costs as required under the provisions of the Atlantic Interstate Low-Level Radioactive Waste Compact Implementation Act (the Act), codified as S.C. Code Ann. Section 48-46-10 et seq. (Supp. 2002). Pursuant to Section 48-46-40(B), this Commission is authorized and directed to identify allowable costs for operating a regional low-level radioactive waste disposal facility in South Carolina.

The provisions of the Act extensively govern the relationship between the State of South Carolina and operators of facilities for the disposal of low-level radioactive waste in a comprehensive economic regulatory program. Fundamentally, the Act implements the State's membership in the "Atlantic Low-Level Radioactive Waste Compact" (the Compact) and authorizes the manner in which the State will participate in the Compact, along with the States of Connecticut and New Jersey, which are the other members of the Compact. S.C. Code Ann. § 48-46-20 (Supp. 2002). The Atlantic Compact Act

establishes a schedule of declining annual, maximum volumes of low-level radioactive waste from generators in states within and without the Compact to be disposed at the facility within South Carolina. S.C. Code Ann. § 48-46-40(A)(6)(a) (Supp. 2002). The Act provides for the establishment of rates for the disposal of waste within South Carolina, establishes certain fees for various purposes, and makes disposition of revenues generated by the disposal operations of facilities subject to the provisions of the Act.

Among other things, the Act imposes a form of shared responsibility for economic regulation between the Budget and Control Board (the Board) and the Commission. The Board sets the rates for disposal of low-level radioactive waste at any facility located in South Carolina. S.C. Code Ann. § 48-46-40(A) (Supp. 2002). Upon the Board's implementation of initial disposal rates, the Commission is authorized and directed to identify "allowable costs" for operating a regional low-level radioactive waste disposal facility in the State. S.C. Code Ann. § 48-46-40(B)(1). In fulfilling that responsibility, the Commission must (a) prescribe a system of accounts, using generally accepted accounting principles ("GAAP"), using an operator's existing accounting system as the "starting point"; (b) audit site operators' books and records associated with disposal operations; (c) assess penalties for failures to comply with the Commission's applicable regulations; and (d) require periodic reports from site operators. S.C. Code Ann. § 48-46-40(B)(2) (Supp. 2002).

The Act defines "allowable costs" as those "costs to a disposal site operator of operating a regional disposal facility." S.C. Code Ann. § 48-46-30(1) (Supp. 2002). In

addition to that definition, the Act specifies that "[a]llowable costs include the costs of those activities necessary for:

(a) the receipt of waste;

(b) the construction of disposal trenches, vaults, and overpacks;

(c) construction and maintenance of necessary physical facilities;

(d) the purchase or amortization of necessary equipment;

(e) purchase of supplies that are consumed in support of waste disposal activities;

(f) accounting and billing for waste disposal;

(g) creating and maintaining records related to disposed waste;

(h) the administrative costs directly associated with disposal operations including, but not limited to, salaries, wages, and employee benefits;

(i) site surveillance and maintenance required by the State of South Carolina, other than site surveillance and maintenance costs covered by the balance of funds in the decommissioning trust fund or the extended care maintenance fund;

(j) compliance with the license, lease, and regulatory requirements of all jurisdictional agencies;

(k) administrative costs associated with collecting the surcharges provided for in subsections (B) and (C) of Section 48-46-60;

(l) taxes other than income taxes;

(m) licensing and permitting fees; and

(n) any other costs directly associated with disposal operations determined by the [Commission] to be allowable."

The Act also expressly excludes from "allowable costs" the costs of "activities associated with lobbying and public relations, clean-up and remediation activities caused by errors or accidents in violation of laws, regulations, or violations of the facility operating license or permits, activities of the site operator not directly in support of waste disposal, and

other costs determined by the [Commission] to be unallowable." S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2002).

The Commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of identifying allowable costs associated with waste disposal. S.C. Code Ann. § 48-46-40(B)(8) (Supp. 2002).

The Act entitles a private operator of a regional disposal facility in South Carolina to charge an operating margin of 29%. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2002). (The present regional disposal facility in South Carolina is located in Barnwell County, South Carolina. The facility shall hereinafter be known as the facility at Barnwell.) The operating margin is applied to the total amount of the operator's "allowable costs" which the Commission has identified, excluding the "allowable costs" for taxes and the licensing and permitting fees paid to governmental entities (*i.e.*, those "allowable costs" described in Section 48-46-40(B)(3)(l) and (m)). S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2002).

Under the Act, the "allowable costs" and operating margin affect the amount of revenue which a site operator annually pays to the State of South Carolina. Under Section 48-46-40(D)(1), at the conclusion of the fiscal year, a site operator pays to the South Carolina Department of Revenue an amount equal to the total revenues received for waste disposal in that fiscal year (with interest accrued on cash flows in accordance with instructions from the State Treasurer) less its allowable costs, less the statutory 29% operating margin, and less any payments the site operator had previously made during the fiscal year for reimbursement of certain administrative costs which the Board, the

Commission, the State Treasurer and the Atlantic Compact Commission had incurred in satisfaction of those agencies' responsibilities under the Act. *See* S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2002).

The Act also allows a site operator to file an application for adjustment in the levels of previously identified "allowable costs" or for the identification of "allowable costs" which the Commission had not previously identified. S.C. Code Ann. § 48-46-40(B)(4) (Supp. 2002). The site operator must file such application within 90 days of the conclusion of a fiscal year. If the Commission grants the requested relief in the application, the Act requires the Commission to authorize the site operator "to adjust 'allowable costs' for the current fiscal year so as to compensate the site operator for revenues lost during the previous fiscal year." *Id.*

S.C. Code Ann. Section 48-46-40 (B)(9) identifies certain specific parties to the proceeding. This section of the Act states that the Budget and Control Board shall participate as a party representing the interests of the State of South Carolina, and the Atlantic Compact Commission (the Compact Commission) may participate as a party representing the interest of the compact states. In addition, the section directs that the Consumer Advocate and the Attorney General of the State of South Carolina (the Attorney General) shall be parties. Further, representatives from the Department of Health and Environmental Control (DHEC) shall participate in proceedings where necessary to determine or define the activities that a site operator must conduct in order to comply with the regulations and license conditions imposed by the department. The

Act also states that other parties may participate in the proceeding upon satisfaction of standing requirements and compliance with the Commission's procedures.

In the present proceeding, the Commission's Executive Director directed the Applicant to publish a Notice of Filing in newspapers of general circulation one time, advising the members of the public of how to participate in the proceedings. The Company furnished affidavits to show that it had complied with the instructions of the Executive Director. Parties of record in this case are as follows: Chem-Nuclear Systems, LLC, the South Carolina Budget and Control Board, the Consumer Advocate for the State of South Carolina (the Consumer Advocate), the Attorney General of the State of South Carolina, the South Carolina Department of Health and Environmental Control, the Atlantic Compact Commission, South Carolina Electric & Gas Company (SCE&G), Duke Power, and the Commission Staff (the Staff).

A hearing was held on February 12, 2003 in the offices of the Commission. The Honorable Mignon Clyburn, Chairman, presided. Chem-Nuclear was represented by Robert T. Bockman, Esquire. The Board was represented by Robert E. Merritt, Esquire. The Consumer Advocate was represented by Hana Pokorna-Williamson, Esquire. The Atlantic Compact Commission was represented by Frank R. Ellerbe, III, Esquire. The Commission Staff was represented by F. David Butler, General Counsel. The Attorney General, DHEC, SCE&G, and Duke Power did not appear at the hearing.

Chem-Nuclear presented the testimony of Regan E. Voit and Carol Ann Hurst. The Board presented the testimony of William F. Newberry. The Staff presented the testimony of William P. Blume.

At the hearing, a Stipulation and Agreement (the Stipulation) between the Staff and Chem-Nuclear was presented to the Commission, along with revised exhibits from the Commission Staff. Because of the reasoning stated below, we adopt the Stipulation in part, and we reject it in part.

II. DISCUSSION

The Stipulation contained a proposal that this Commission adopt revised Commission Staff's Exhibit AA-2 (without information from the Operations and Efficiency Plan (OEP)) for identification of allowable costs for Fiscal Year 2002-2003, with one exception discussed later in the Stipulation. Second, the document proposed that this Commission adopt costs from revised Staff's Exhibit AA-1 which were derived from the information in OEP as a guide only to validate the actual costs for Fiscal Year 2002-2003, but not for the purposes of adjustments to such actual costs. Third, the Stipulation proposed that one-half of the costs which Chem-Nuclear incurred and paid in Fiscal Year 2001-2002 for the preparation of the OEP should be treated as an allowable cost for Fiscal Year 2001-2002 in this proceeding. This amount was $123,699. Further, the two parties agreed that Chem-Nuclear may request that the Commission identify as an allowable cost the remaining balance of the costs (that is, $123,698) for the preparation of the OEP in any future proceeding in which the OEP is used to make recommendations to the Commission for identification of allowable costs. The two parties acknowledge the authority of the Commission to make adjustments to the identification of the costs for preparation of the OEP in future proceedings consistent with applicable law. Next, both the Commission Staff and Chem-Nuclear agree and propose that the statutory operating

margin of 29% should be applied to $42,339 of those expenses for Fiscal Year 2001-2002 in Account No. 7500, "Service," and described in Adjustment No. 8 of the Commission Staff's Report. Finally, both parties agree that revised exhibits attached to the Stipulation reflected the matters to which the parties agreed to in the Stipulation.

First, we approve all accounting and proforma adjustments contained in Staff witness Blume's direct testimony which were not objected to by Chem-Nuclear. Staff's analysis was very thorough in this matter and its adjustments are well-founded in fact and law, therefore allowing appropriate reimbursable costs for the fiscal year ending June 30, 2002. Except as may be objected to by Chem-Nuclear, we adopt Staff's proposed allowed reimbursable costs. These reimbursable costs are shown in Exhibit A-1 of the Stipulation and Agreement of February 12, 2003 (the Stipulation). Said adopted amounts are contained in the Appendix attached hereto.

Second, we believe that Staff's allowable and direct and indirect costs for the fiscal year ending June 30, 2003, utilizing the Operations and Efficiency Plan (OEP Plan) contained in Exhibit AA of the Stipulation and Agreement between the Commission Staff and Chem-Nuclear dated February 12, 2003 should be approved. This approval would include the inclusion of the remaining balance $123,698 of cost recovery for the OEP Plan, which represents one-half of the consulting fee, and, as Blume stated in his testimony, that would include the ability to place a 29% operating margin on that since it is part of a disposal cost. (See Appendix attached to this Order for a specific listing of approved allowable direct and indirect costs for fiscal year ending June 30, 2003.)

Some history of the OEP Plan is in order. In Order No. 2001-499, this Commission found that reductions in fixed and variable costs should result from reductions in the waste stream to the Chem-Nuclear facility. To quantify these future cost reductions, Chem-Nuclear was directed to provide to this Commission an "operations and efficiency plan" or OEP Plan for the Barnwell facility prepared by an independent, qualified party. The plan was to identify least-cost operating strategies for future years including, but not limited to, personnel requirements for disposal services, and optimal vault and trench configurations for determination of allowable variable costs. Any request for proposal was to be submitted to the Commission for approval prior to initiation of any proposed work. Under Order No. 2001-499, the plan was to be completed prior to June 30, 2002, and the findings and recommendations of the plan were to be reviewed and considered by the Commission in subsequent hearings regarding allowable and fixed costs. See Order No. 2001-499 at 29-30.

This Commission approved a Request for Proposal (RFP) in Order No. 2002-1. The Commission found that the RFP criteria were appropriate in allowing a contractor to develop the proper plan outline to assist the Company in the development of the required least-cost operating strategies for the future. On June 26, 2002, Chem-Nuclear filed the OEP with this Commission. However, Chem-Nuclear and the Board filed a letter and Joint Statement on December 2, 2002, in which they requested that the Commission defer consideration of the Plan past the proceeding presently before the Commission. The Compact Commission ultimately filed a letter in support of the Joint Statement. The Commission Staff stated in its letter of December 17, 2002, that it had no objection to the

Commission's approval of the Joint Statement, but that Staff wanted to employ certain financial tools as described in the OEP for purposes of forecasting allowable costs as of the end of fiscal year 2002-2003. Staff further opined that if the OEP was tabled for the present proceeding, the cost of the OEP should be deferred or only a partial reimbursement should be allowed for recovery during the next fiscal year. (See Hearing Exhibit 1.)

We agree with Staff that, even at this point, the financial tools contained in the OEP should be useful for purposes of forecasting allowable costs as of the end of fiscal year 2002-2003. Therefore we have concluded that Staff's numbers in revised Exhibit AA incorporating the economic tools from the OEP Plan are reasonable at this time, except where noted. However, we reserve the right to more fully evaluate the OEP in the next and future proceedings.

With regard to the OEP Plan, we believe that Chem-Nuclear should be ordered to file a statement for approval by this Commission regarding a collaborative review of that Plan. All parties in this Docket should be provided an opportunity to participate in the collaborative review, which shall be chaired by the Commission. Further, the Executive Director should appoint appropriate Staff members to be on that review team. The purpose of the review would be to determine if consensus can be met regarding the validation of the OEP Plan. The statement should clearly identify areas of agreement and/or disagreement regarding the OEP. All parties participating should be provided an opportunity to submit comments to the Commission in this matter. However, such comments would need to be submitted prior to June 30, 2003.

Lastly, we believe that Chem-Nuclear must include the use of the OEP Plan in its next application to be filed with the Commission this year. Nothing in this Order prohibits any party in the next hearing from providing testimony regarding the validity of the OEP Plan.

We also believe that the variable costs utilizing the OEP Plan contained in Exhibit AA of the Stipulation and Agreement between the Commission Staff and Chem-Nuclear dated February 12, 2003 should be adopted. These approved variable costs appear in the attached Appendix.

Staff witness Blume testified that this Commission should hold in abeyance the final implementation of the Cost Point Accounting System software until such time that Staff can adequately track and substantiate that the system has been validated. Tr., Blume at 135. According to Blume, this can be done in the next Chem-Nuclear hearing, or it could be done prior to June 30, 2003, pursuant to motion by one of the parties such as Chem-Nuclear, so that the particular software can be utilized for the Company's next filing. We agree with the Staff on this matter.

Chem-Nuclear proposed that we approve the Key Manager and Employee Compensation Plan. Tr., Voit at 55. We agree it is very difficult to find highly technical, qualified people in this field. The Company clearly needs a good retention policy and compensation plan for Barnwell. The Board agrees with adoption of the Key Manager and Employee Compensation Plan. See Tr., Newberry, at 96. We believe that this Plan should be approved.

III. FINDINGS AND CONCLUSIONS

1. The Public Service Commission of South Carolina is authorized and directed by S.C. Code Ann. Section 48-46-40(B) et seq. (Supp. 2002) to identify allowable costs for operating a regional low-level radioactive waste disposal facility in South Carolina. The described facility is located in Barnwell, South Carolina.

2. Chem-Nuclear has operated the disposal site in question continuously since 1971 without interruptions. The site is comprised of approximately 235 acres of property owned by the State of South Carolina and leased by Chem-Nuclear from the Budget and Control Board. Approximately 102 acres of the 235 acres have been used for disposal. Approximately 13 acres remain available for disposal.

3. The Commission Staff's adjustments are adopted, except as noted above and except any adjustments objected to by Chem-Nuclear.

4. We hold that Chem-Nuclear's current accounting system accurately reports financial transactions, and that the present chart of accounts should continue to be used by Chem-Nuclear at this time. We hereby hold in abeyance the final implementation of the Cost Point Accounting System software until such time as the Commission Staff can adequately track and substantiate that the system has been validated. This can be done in the next hearing, or it could be done at some prior time to June 30, 2003. Any of the parties may make a motion for a finding that the system has been validated, so that, if granted, Chem-Nuclear could use the system for its next filing.

5. The various accounts and the undisputed amounts that shall herein be approved by this Commission as allowable costs for fiscal year 2002-2003, the allowable

variable costs for said year, and the various accounts and undisputed amount for payment of excess costs over and above those approved by us for the last fiscal year are included in the Appendix attached to this Order. The numbers appeared in Exhibit A-1 and Exhibit AA to the Stipulation and Agreement.

6. Further, we approve the sum of $4,976,551 in fixed costs, and variable vault costs rates for classes of waste as described in witness Blume's direct testimony. The actual expense will be dependent on the actual volume and class of waste received. The Commission also approves waste dependent and semi-variable labor and fringe rates on a cubic foot basis. We believe that these numbers and rates are appropriately documented in the Staff testimony and exhibits, and these numbers and rates are hereby adopted as reflecting the true allowable cost for Chem-Nuclear to operate the Barnwell disposal facility.

7. The Key Manager and Employee Compensation Plan proposed by Chem-Nuclear is approved.

8. After due consideration of this matter, Chem-Nuclear is ordered, prior to June 30, 2003, to file a statement for approval by this Commission regarding a collaborative review of the OEP Plan. All parties in this Docket shall be provided an opportunity to participate in the collaborative review, which shall be chaired by the Commission. Further, the Executive Director shall appoint the appropriate Staff members to be on that review team. The purpose of the review shall be to determine if consensus can be met regarding the validation of the OEP Plan. All parties participating shall be

provided with an opportunity to submit comments to the Commission in this matter. However, these comments must be submitted prior to June 30, 2003.

9. Consistent with our prior Order in this matter, Chem-Nuclear must include the use of the OEP Plan in its next Application to be filed with the Commission this year. Nothing shall prohibit any party in the next hearing from providing testimony regarding the validity of the OEP Plan.

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

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

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director

(SEAL)

Chem Nuclear Systems LLC
Commission Reimbursable Costs
Fiscal Year Ending June 30, 2002

Description	Commission's Allowed Reimbursable Costs
Variable Cost	
Vault and Trench Amortization Costs	1,451,924
Direct Cost	
Exempt Labor	660,136
Non-Exempt Labor	835,552
Temporary Labor	9,152
Overtime Labor	41,398
Equipment	231,030
Materials	38,006
Affiliated Cost	82,828
Contract Cost	163,317
Maintenance Cost	19,329
Laundry Services	3,138
Travel Expenses	4,550
Other Direct Costs	50,773
Federal Express & Postage	5,140
Calculated Fringe Benefits	513,387
R&M Equipment Maintenance	77,610
Capitalized Cost	(29,538)
Project Cost	46,214
Insurance Premiums	462,193
Site Labor Allocation	(11,448)
Total Direct Cost	3,202,767
Indirect Cost	
Exempt Labor	632,624
Non-Exempt Labor	225,963
Labor Allocation	(130,647)
Calculated Fringe Benefits	(588,363)
Overtime Labor	1,630
Allowable Fringe	1,004,579
Travel Expenses	59,132
Employee Cost	94,284
Office Supplies & Expenses	93,101
Building & Utilities	139,193
Services	361,663
Equipment	85,324
Depreciation	362,977
Management Fees/General & Administrative	651,235
Total Indirect Cost	2,992,695
Total Direct, Indirect Cost & Waste Dependent Costs	7,647,385
Reimburseable Costs-No Operating Margin of 29%	
Costs Associated with Consultants on Operating Rights Issue in 6/30/2001	42,339
Operating Rights	625,000
Total	667,339
Total Costs Approved	8,314,724

Chem Nuclear Systems LLC
Commisssion Approved Costs
Fiscal Year Ending June 30, 2003

Description	Amount
Direct Cost	
Direct Labor	
Direct Labor-Staff Regular	416,242
Direct Labor-Staff Regular	480,337
Direct Labor-Overtime	37,680
Total Direct Labor	934,258
Fringe Benefits	
Fringe Pool 11130-Direct Labor	312,042
Subcontractors	
Direct Maintenance	19,331
Direct Laundry	4,955
Temporary Labor	3,650
Total Subcontractors	27,936
Direct Material	
Direct Equipment	231,030
Direct Material	38,006
R&M Equipment	62,460
Project Cost	48,816
Other Direct Cost	49,156
Direct Affiliated	82,828
Direct Contract	142,000
Direct Postage and Mailing	4,212
Total Direct Material	658,508
Other Direct Costs	
Travel	4,610
Capitalized Costs	(18,760)
Insurance	563,586
Site Labor Allocation	(24,870)
Total Other Direct Costs	524,566
Total Direct Costs	2,457,310

Indirect Cost	
Fringe Benefits	
Allowed Fringe	714,401
Indirect Labor	
Indirect Labor-Exempt	433,598
Indirect Labor-Non Exempt	159,621
Indirect Overtime Labor	1,030
Total Indirect Labor	594,248
Overhead Expenses	
Labor Allocation	(130,407)
Calculated Fringe	(405,959)
Travel	54,000
Employee Cost	72,456
Office Supplies & Expenses	93,101
Building & Utilities	139,193
Services	348,374
Equipment	85,324
Depreciation	303,274
Management Fees/G & A Allocations	651,235
Total Overhead Expenses	1,210,591
Total Indirect Cost	2,519,241
Total Direct and Indirect Cost	4,976,551

Cost Per Cubic Foot of Waste	Costs
Class A Waste	23.90
Class B Waste	24.76
Class C Waste	24.13
Class C Slit Trench Waste	137.65
Waste Dependent Labor Cost per OEP Plan	6.08
Waste Dependent Fringe Cost per OEP Plan	2.03
Semi-Variable Labor Cost Per OEP Plan	4.50
Semi-Variable Fringe Cost Per OEP Plan	1.50