BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2000-366-A – ORDER NO. 2002-395

JUNE 3, 2002

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| 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. 2001). 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. 2001). 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. 2001). 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. 2001). 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. 2001).

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. 2001). 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. 2001).

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. 2001).

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. 2001). (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. 2001).

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. 2001).

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. 2001). 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). Extensive discovery was conducted by the parties in this matter.

A hearing was held on January 9, 2002 in the offices of the Commission. The Honorable William Saunders, Chairman, presided. Chem-Nuclear was represented by Robert T. Bockman, Esquire and Sara S. Rogers, Esquire. The Board was represented by Kevin A. Hall, Esquire and Jennifer M. Rawl, Esquire. The Consumer Advocate was represented by Nancy V. Coombs, Esquire, and Hana Pokorna-Williamson, Esquire. The Attorney General did not appear at the hearing. DHEC was represented by Samuel L. Finklea, Esquire. The Atlantic Compact Commission was represented by Frank R. Ellerbe, III, Esquire. SCE&G was represented by B. Craig Collins, Esquire and Randy

Lowell, Esquire. Duke Power did not appear at the hearing. The Commission Staff was represented by F. David Butler, General Counsel.

Chem-Nuclear presented the testimony of Regan E. Voit, Carol Ann Hurst, and Craig T. Bartlett. The Board presented the testimony of Thomas D. Pietras. DHEC presented the testimony of Henry J. Porter. Neither the Consumer Advocate nor SCE&G presented any witnesses. The Staff presented the testimony of William P. Blume.

## II. MOTIONS

There were several post-hearing motions presented that must be adjudicated, prior to reaching our final decision in this matter.

First, on May 9, 2002, Chem-Nuclear filed a Motion for Approval of Amendment to Application. This Motion requested that this Commission allow Chem-Nuclear to modify its September 4, 2001 Application to reflect Barnwell Operating Rights as an allowable cost of $5,000,000, rather than $7,340,000 as contained in the original Application. The Motion further proposes that this $5,000,000 be amortized over an eight year period beginning July 1, 2000 at $625,000 per year. Under Chem-Nuclear's Motion, the statutory 29% operating margin would not apply to the $5,000,000 operating rights amount. No party to this proceeding has filed any opposition to the Motion. Accordingly, the Motion for Approval of Amendment to Application is granted as filed.

Second, also on May 9, 2002, Chem-Nuclear filed a Motion for Declaratory Order, addressing the treatment of certain legal fees and expenses as allowable costs. If approved by us, a Declaratory Order would provide the following:

A. All legal fees and expenses associated with legal representation of Chem-Nuclear in proceedings before the Commission by which Chem-Nuclear seeks identification or adjustment of allowable costs should be considered as allowable costs. In addition, Chem-Nuclear would be allowed to recover the statutory 29% margin on those legal fees.

B. Chem-Nuclear's legal fees and expense would not be considered allowable costs in an instance where Chem-Nuclear appeals a final order of the Commission issued in a proceeding for identification or adjustment of allowable costs where the Court affirms the Commission and grants no increase in allowable costs.

C. Legal fees and expenses would be considered allowable costs should Chem-Nuclear appeal a final Order of the Commission issued in a proceeding for identification or adjustment of allowable costs where the Court rules in Chem-Nuclear's favor, which results in an increase in allowable costs. The 29% margin would not apply to these legal fees.

D. Legal fees and expenses would be considered allowable costs when incurred in any action initiated by any other party for judicial review of a final Order of the Commission where the Commission is affirmed. The 29% margin does not apply to these legal fees.

E. Legal fees and expenses would not be considered allowable costs in instances where Chem-Nuclear initiates an action, other than with regard to an allowable costs issue, in which the State of South Carolina or any agency of the State of South Carolina is a defendant and in which Chem-Nuclear is not the prevailing party.

It should be noted that there has been no opposition filed by any party to the Motion for Declaratory Order. The Atlantic Compact Commission did seek clarification of two items. Chem-Nuclear has agreed to the points of clarification requested by that Commission, and these are included above. The Motion, as amended, appears to comport with the law in this matter. Accordingly, the Motion for a Declaratory Order is also approved, as was finally agreed upon.

Third, on May 8, 2002, a settlement agreement was executed by Chem-Nuclear and the Board related to the Barnwell Operating Rights. This agreement establishes the value of the Barnwell Operating Rights at $5,000,000 which is to be amortized over an eight year period as indicated in the Company's amended Application. In addition, the Agreement reflects language which affirms that the 29% operating margin will not apply to the Barnwell Operating Rights. This agreement is consistent with the now amended Application in this matter. Again, we have received no opposition to the proposed agreement. Accordingly, it is approved. The Board's motion to strike portions of Company witness Bartlett's rebuttal testimony is moot, as are any other motions not previously ruled upon by us or otherwise ruled upon in this Order.

## III. DISCUSSION

The Commission Staff proposed a number of accounting and pro forma adjustments during this proceeding. We have previously addressed and/or Chem-Nuclear has agreed (with no other parties in opposition) to all Staff adjustments, except for one adjustment. The Staff proposed disallowance of $60,027 in legal fees paid to a law firm in Utah. The basis for Staff's proposed disallowance is that the expense appeared to be

related to lobbying, rather than costs associated with disposal cost. Bills rendered by the law firm included a notation that the services performed were for monitoring legislation in Utah. Looking at the evidence presented during the course of the case, the legislative monitoring appeared mainly to be associated with the licensing activities of a company named Envirocare, which requested that the Utah legislature allow it to handle Class B and Class C waste in the State of Utah.

Chem-Nuclear maintained that the Utah law firm was furnishing information related to pricing as well as information related to taxes on low level radioactive waste. Accordingly, Chem-Nuclear states that the Staff adjustment should be denied, and the Commission should allow the expense. We agree with Chem-Nuclear, and hold that the expense should be allowed. We think that the furnishing of pricing information by the Utah law firm takes expense related to the use of that firm out of the category of lobbying. Clearly, the expansion of Envirocare's authority in Utah to handle Class B and Class C waste could have resulted in a need for pricing changes if an additional site for Class B and Class C waste had been created in the State of Utah, even though such a site was not so created. Accordingly, we believe that the Utah law firm expense should be deemed an allowable cost.

## IV. 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. 2001) 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. The various Motions of Chem-Nuclear, as described above, are granted, and the settlement agreement is approved.

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. To enable the Commission to adequately track historical accounts, no changes in the current system, such as the proposed change to the Cost Point Accounting System should be made without prior approval by the Commission.

5. We have listed below the various accounts and the undisputed amounts that shall herein be approved by this Commission as allowable costs:

| **Account #** | **Description** | **As Adjusted-$** |
|---|---|---|
| | Direct Cost | |
| 5020 | Disposal Exp./ Vault Cost | 0 |
| 5030 | Inter-Co. Disp. WMI S.E. | 0 |
| 5111 | Exempt Labor | 571,644 |
| 5112 | Non-Exempt Labor | 846,672 |
| 5312 | Temporary Labor | 57,600 |
| 5119 | Overtime Labor | 57,752 |
| 5132,34,35 | Equipment | 269,280 |
| 5142,43,45 | Materials | 69,456 |

| | | |
|---|---|---|
| 5151 | Affiliated Cost | 72,360 |
| 5152 | Contract Cost | 120,204 |
| 5156 | Maintenance Cost | 28,656 |
| 5157 | Laundry Services | 6,720 |
| 5171,72,74 | Travel Expenses | 9,540 |
| 5175 | Other Direct Cost | 59,616 |
| 5191,92 | Fed. Ex. and Postage | 2,652 |
| 5249 | Calc. Fringe Benefits | 493,006 |
| 5303,04 | R&M Equip. Main. | 96,048 |
| 5310 | Capitalized Cost | -32,284 |
| 5317 | Project Cost | 72,648 |
| 5319 | Insurance Prem. | 452,540 |
| 5832 | Site Labor Allo. | -49,740 |
| Total Direct Cost | | 3,204,370 |

| **Account #** | **Description** | **As Adjusted-$** |
|---|---|---|
| | Indirect Cost | |
| 6111 | Exempt Labor | 632,976 |
| 6112 | Non-Exempt Labor | 209,952 |
| 6117 | Labor Allocation | -127,500 |
| 6149 | Calculated Fringe Benefits | -538,914 |
| 6119 | Overtime Labor | 1,030 |
| 6120 | Allowable Fringe | 939,522 |
| 7100 | Travel Expenses | 56,436 |
| 7200 | Employee Cost | 72,456 |
| 7300 | Office Supplies & Expenses | 122,088 |
| 7400 | Building & Util. | 134,244 |
| 7500 | Services | 253,131 |
| 7600 | Equipment | 85,524 |
| 7700 | Depreciation | 403,700 |
| 7904 | Management Fees/ General & Admin. | 662,402 |
| 9308 | Barnwell Rights | 625,000 |
| Total Indirect Cost | | 3,532,047 |
| Total Direct and Indirect Cost | | 6,736,417 |

Allowable Variable Cost:

| Waste Class | Total Allowed Vault and Trench Variable Cost ($/ft$^3$) |
|---|---|
| A | $18.66 |
| B | $22.61 |
| C | $20.28 |
| C (Slit Trench Burial) | $124.17 |

6. Accordingly, we approve the sum of $6,736,417 in fixed costs, and variable rates as listed above, based on class of waste. The actual expense will be dependent on the actual volume and class of waste received. We believe that these numbers are appropriately documented in the Staff testimony and exhibits, and through the unopposed agreements between Chem-Nuclear and the Budget and Control Board, and are hereby adopted as reflecting the true allowable cost for Chem-Nuclear to operate the Barnwell disposal facility.

7. Likewise, we have listed below the various accounts and the undisputed amounts that shall be herein approved by this Commission for payment of excess costs over and above those approved by us for the last fiscal year. We adopt the reasoning for said approval as appears in the testimony of Staff witness Blume and the numbers as appear in Blume's Exhibit AA. We have also adjusted for our now approved Barnwell Operating Rights and for the denial of Staff's proposed adjustment for the Company's Utah legal fees:

| Direct Cost | Excess Revenue Coverage Amount $ |
|---|---|
| Exempt Labor | 19,599 |
| Non-Exempt Labor | 58,356 |
| Temporary Labor | 0 |
| Overtime Labor | 5,105 |
| Equipment | 0 |
| Materials | 3,573 |

| | |
|---|---|
| Affiliated Cost | 0 |
| Contract Cost | 1,820 |
| Maintenance Cost | 0 |
| Laundry Services | 0 |
| Travel Expenses | 987 |
| Other Direct Costs | 0 |
| Federal Express & Postage | 927 |
| Calculated Fringe Benefits | 28,002 |
| R&M Equipment Maintenance | 13,650 |
| Capitalized Cost | (1,808) |
| Project Cost | 9,324 |
| Insurance Premiums | 7,728 |
| Site Labor Allocation | 0 |
| Total Direct Cost | 147,263 |
| | |
| Indirect Cost | |
| | |
| Exempt Labor | 0 |
| Non-Exempt Labor | 6,704 |
| Labor Allocation | 0 |
| Calculated Fringe Benefits | (62,912) |
| Overtime Labor | 121 |
| Allowable Fringe | 137,955 |
| Travel Expenses | 0 |
| Employee Cost | 7,223 |
| Office Supplies & Expenses | 40,295 |
| Building & Utilities | 16,631 |
| Services | 99,020 |
| Equipment | 1,143 |
| Depreciation | 0 |
| Management Fees/General & Administrative | 0 |
| Barnwell Rights | 625,000 |
| Total Indirect Cost | 871,180 |
| | |
| Total Direct & Indirect Cost | 1,018,443 |

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

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

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director
(SEAL)