

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA

DOCKET NO. 2015-13-A - ORDER NO. 2016-437

JUNE 17, 2016

|   |   |                 |
|---|---|-----------------|
| IN RE: Application of Chem-Nuclear Systems, LLC | ) | ORDER APPROVING |
| for Adjustment in the Levels of Allowable       | ) | AND IDENTIFYING |
| Costs and for Identification of Allowable       | ) | ALLOWABLE COSTS |
| Costs (Fiscal Year 2015-2016)                   | ) |                 |
|   | ) |                 |

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Chem-Nuclear Systems, LLC (“Chem-Nuclear” or the “Company”), dated September 25, 2015 (the “Original Application”). By its Original Application, Chem-Nuclear sought an adjustment in the levels of certain allowable costs for Fiscal Year 2014-2015, which the Commission had previously identified, and for the identification of allowable costs for Fiscal Year 2015-2016, 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.* (2008 & Supp. 2015). On March 3, 2016, the Company filed and served an Amended Application and Exhibits 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”). Also on March 3, 2016, the Company filed and served the Direct Testimony of Michael J. Benjamin, reflecting the position of the company as contained in the Amended Application and Exhibits.

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 Interstate Low-Level Radioactive Waste Management Compact Commission (the “Compact Commission”), and authorizes the manner in which South Carolina participates in the Compact Commission with the other two member states, Connecticut and New Jersey. S.C. Code Ann. § 48-46-20 (2008 & Supp. 2015).

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 Commission’s member states. S.C. Code Ann. § 48-46-40(A)(6)(a) (Supp. 2015). Starting on July 1, 2008, the Barnwell Facility was limited to accepting waste exclusively from generators in South Carolina, New Jersey and Connecticut, the three Compact Commission states.

In addition, the Act fixes responsibility for the approval of disposal rates for low-level radioactive waste and provides for the disposition of revenues produced by the operation of disposal 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. 2015). “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(1) (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. 2015). Section 48-46-40(3) also provides that “allowable costs” include “any other costs directly associated with disposal operations determined by the PSC to be allowable.” The Act excludes from identification as “allowable costs” the costs of certain expressly listed activities and “and other costs determined by the PSC to be unallowable.” S.C. Code Ann. § 48-46-40(B)(3) (Supp. 2015).

The Act entitles a disposal facility operator to recover an operating margin of twenty-nine percent (29%). This operating margin is authorized for the total amount of all identified “allowable costs,” excluding allowable costs for taxes, licensing, and permitting fees which the operator is required to remit to governmental entities. S.C. Code Ann. § 48-46-40(B)(5) (Supp. 2015).

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 percent (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 administrative costs incurred for the conduct of certain state agencies’ functions in administering the Act. S.C. Code Ann. § 48-46-60(B) and (C) (Supp. 2015).

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. 2015). 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 adjust the level of certain “allowable costs” which the Commission identified in Order No. 2015-423 and the amount of such costs that the Company actually experienced in the Fiscal Year 2014-2015. The Original and Amended Applications also sought identification of the Company’s “allowable costs” for Fiscal Year 2015-2016. Chem-Nuclear’s Amended Application sought an adjustment or additional compensation for the Company for “allowable costs” incurred in Fiscal Year 2014-2015 as the actual costs

specified in the Amended Application as allowable vault costs were more than those identified and approved in Order No. 2015-423. Amended Application for Fiscal Year 2015-2016, ¶¶ 13-14 and Amended Exhibit A to the Amended Application.

Upon receipt of the Company's Original Application, the Commission's Clerk's Office 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 an affidavit of publication which demonstrated its compliance with the instructions of the Clerk's Office.

The Act specifies certain agencies to be parties of record in proceedings for identification of "allowable costs" before the Commission. Those parties are 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. 2015). 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. § 48-46-40(B)(9), ORS participates as a party to these proceedings in order to represent "the interests of the State of South Carolina."

Chem-Nuclear and ORS entered into a Settlement Agreement, dated April 13, 2016, by which they resolved various issues raised in the Original Application and during the audit which ORS conducted. The Settlement Agreement was filed with the Commission on April 14, 2016, and was entered in the record of this proceeding as Hearing Exhibit No. 1. The Settlement Agreement includes an Attachment A which consists of the

“Examination Report for Docket No. 2015-13-A” (including Exhibits A and AA thereto) prepared by ORS and dated March 11, 2016.

On May 18, 2016, the Commission held an evidentiary hearing with respect to the issues in the Company’s Amended Application. The Honorable Nikiya “Nikki” Hall, Chairman, presided. Josh Minges, Esquire, served as advisor to the Commission. Appearances were as follows: J. David Black, Esquire, represented Chem-Nuclear; Jeffrey M. Nelson, Esquire, and Andrew M. Bateman, Esquire, represented ORS. There were no intervenors in this docket. The South Carolina Attorney General’s Office did not appear or participate in the hearing.

At the hearing, Chem-Nuclear presented the testimony of one witness, Michael J. Benjamin, Chem-Nuclear’s Director for Barnwell Operations, who presented his testimony and answered questions from the Commission regarding the operation of the Barnwell facility.

## **II. DISCUSSION OF ISSUES**

All of the issues relating to the identification of “allowable costs” for Fiscal Year 2014-2015 and for Fiscal Year 2015-2016 were resolved between 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 2014-2015**

In accordance with the provisions of the “Collaborative Review of Chem-Nuclear’s Operations and Efficiency Plan” (“OEP”), approved in Order No. 2004-349 for use in these

“allowable cost” proceedings, Chem-Nuclear’s Original and Amended Applications separated costs into three (3) categories: fixed, variable and irregular. See Amended Exhibit A to Chem-Nuclear’s Amended Application and Hearing Exhibit No. 1 (ORS Examination Report, Exhibit A). As recognized in Order No. 2004-349, 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 2014-2015

Chem-Nuclear separated its fixed costs for Fiscal Year 2014-2015 into several general categories: labor, fringe and 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, such as legal support. The Company’s operating expense for that period resulted in total fixed costs of \$3,582,910, which Chem-Nuclear actually incurred. Amended Application, ¶11 and Amended Exhibit A, p. 1. The total fixed costs incurred for 2014-2015 were (\$121,257) less than the level of fixed costs anticipated in Order No. 2015-423. ORS Examination Report, Exhibit A; Amended Application Exhibit A, p. 1. The record supports the identification of \$3,582,910 as fixed “allowable costs” for Fiscal Year 2014-2015.

2. Variable Material Costs for Vaults for Fiscal Year 2014-2015

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. For Fiscal Year 2014-2015, Chem-Nuclear’s actual cost for disposal vaults was \$448,056. Hearing Exhibit No. 1, Attachment A, Exhibit A. This amount is \$76,319 more than the

\$371,737 estimated vault cost calculated using the rates established in Order No. 2015-423. The Company therefore requests an adjustment of \$76,319 in this category of costs. The evidence supports treatment of the \$448,056 of actual vault costs as “allowable.”

3. Variable Labor Costs and Non-Labor Costs for Fiscal Year 2014-2015

Order No. 2015-423 determined various categories of rates applicable to the following: vault purchase and inspection (per vault), ABC waste disposal (per shipment), slit trench waste operations (per slit trench offload), customer assistance (per shipment), and maintenance of trench records (per container). Amended Application, Amended Exhibit A, p. 2. The Company incurred actual variable labor and non-labor costs of \$158,602 in Fiscal Year 2014-2015, which the Company has requested to be included in this category of costs for Fiscal Year 2014-2015. Id. This amount is (\$43,250) less than the amount that was anticipated based on rates provided in Commission Order 2015-423. The record supports treatment of actual variable labor and non-labor costs of \$158,602 as “allowable.”

4. Irregular Costs for Fiscal Year 2014-2015

Irregular costs include costs for projects that are nonrecurring annually or varying costs for projects which continue for more than a year. This category includes, but is not limited to, costs associated with trench design, site engineering, decontamination and corrective actions, and license renewal and appeal costs. See, Hearing Exhibit No. 1, Attachment A, Exhibit A, pg. 2 of 2. The record contains descriptions of each project and the actual costs that Chem-Nuclear incurred for them in Fiscal Year 2014-2015. Id., Amended Application, Amended Exhibit B. The evidence in the record establishes that



Chem-Nuclear incurred actual irregular costs for Fiscal Year 2014-2015 of \$400,993. Amended Application, Amended Exhibit A, p. 4, and Hearing Exhibit No. 1, Exhibit A to Attachment A. This amount is (\$119,376) less than the \$520,369 in estimated Irregular Costs provided in Commission Order No. 2015-423. The record supports treatment of actual irregular costs for fiscal year 2014-2015 of \$400,993 as “allowable.”

B. Proposed “Allowable Costs” for Fiscal Year 2015-2016

Chem-Nuclear’s Amended Application and the evidence in the record presented “allowable costs” to be identified for Fiscal Year 2015-2016, 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 2015-2016

Chem-Nuclear proposed fixed costs of \$3,512,970 to be identified as “allowable costs” for Fiscal Year 2015-2016. That amount was based on costs incurred in the first half of Fiscal Year 2015-2016 and activities anticipated for the second half of the Fiscal Year. Amended Application, Second Amended Exhibit C, p. 6, and Hearing Exhibit No. 1, Attachment A, Exhibit AA.

2. Allowable Irregular Costs for Fiscal Year 2015-2016

Chem-Nuclear’s Amended Application includes general categories of projects with estimated total costs of \$330,234, which it categorized as irregular costs for Fiscal Year 2015-2016. These irregular costs, identified in Second Amended Exhibit C to the Amended Application, are based on costs incurred in the first half of Fiscal Year 2015-2016 and activities anticipated for the second half of the Fiscal Year.

3. Variable Material Cost Rates (Vaults) for Fiscal Year 2015-2016

For Fiscal Year 2015-2016, Chem-Nuclear proposed variable material cost rates for each category of waste received based upon the rates which the Commission had approved in Order No. 2015-423 for Fiscal Year 2014-2015, as adjusted for changes in the cost of concrete disposal vaults from Chem-Nuclear's supplier. Amended Application, Second Amended Exhibit C.

4. Variable Labor and Non-Labor Rates for Fiscal Year 2015-2016

For Fiscal Year 2015-2016, Chem-Nuclear proposed rates for variable labor and non-labor costs. Amended Application, Second Amended Exhibit C. Those rates pertained to five (5) categories: vault purchase and inspection (per vault); ABC waste disposal (per shipment); Slit Trench Operations (per slit trench offload); customer assistance (per shipment); and trench records (per container). The rates for vault purchase and inspection, ABC waste disposal, slit trench operations, customer assistance, and trench records were based on the rates which were approved in Order No. 2015-423, adjusted to more accurately reflect actual costs.

**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. 2015) 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 2014-2015 are included in *Appendix A*, which is attached to this Order.

3. Further, we approve and identify as “allowable costs” for Fiscal Year 2015-2016 the individual figures and the sum of \$3,843,204 in fixed and irregular costs, as reflected in *Appendix B*, which is attached to this Order.

4. We further approve the variable cost rates for Fiscal Year 2015-2016, 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.

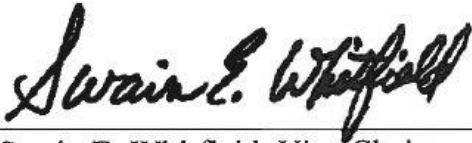
BY ORDER OF THE COMMISSION:



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Nikiya Hall, Chairman

ATTEST:



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Swain E. Whitfield, Vice Chairman

(SEAL)

APPENDIX A – Order No. 2016-437  
Docket No. 2015-13-A  
June 17, 2016  
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Chem-Nuclear Systems, LLC  
Allowable Costs  
Fiscal Year Ending June 30, 2015

| <u>Description</u>                      | <u>Allowable Cost</u> |
|---|-----------------------|
| <b>Fixed Costs</b>                      |                       |
| Fixed Labor, Fringe and Non-Labor Costs | \$2,107,487           |
| Depreciation                            | \$118,082             |
| Insurance                               | \$376,221             |
| Equipment, Leases, and Support          | \$280,321             |
| Corporate Allocations (G&A)             | \$629,913             |
| Legal Support (License Appeal)*         | \$70,886              |
| <b>Total Fixed Costs</b>                | <b>\$3,582,910</b>    |
| <b>Variable Costs</b>                   |                       |
| Vault Costs                             | \$448,056             |
| Variable Labor and Fringe**             | \$158,602             |
| <b>Total Variable Costs</b>             | <b>\$606,658</b>      |
| <b>Irregular Costs</b>                  |                       |
| <b>Total Irregular Costs</b>            | <b>\$400,993</b>      |
| <b>Total Allowable Costs</b>            | <b>\$4,590,561</b>    |

\* Not subject to statutory operating margin.

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

APPENDIX A – Order No. 2016-437  
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 Chem-Nuclear Systems, LLC  
 Allowable Costs  
 Fiscal Year Ending June 30, 2015

| <u>Irregular Cost Item</u>           | <u>Labor &amp; Fringe</u> | <u>Non-Labor</u>        | <u>Total Cost</u>       |
|--------------------------------------|---------------------------|-------------------------|-------------------------|
| Various Trenches                     | \$11,579                  | \$138,576               | \$150,155               |
| License Renewal and Appeal           | \$68,583                  | \$124,129               | \$192,712               |
| Decontamination & Corrective Actions | \$352                     | \$0                     | \$352                   |
| Trench Records Software              | \$2,666                   | \$979                   | \$3,645                 |
| Site Maintenance                     | \$3,017                   | \$16,223                | \$19,240                |
| Site Engineering and Drawing Update  | \$11                      | \$0                     | \$11                    |
| Severance/Incentive                  | \$34,878                  | \$0                     | \$34,878                |
| <br>                                 |                           |                         |                         |
| <b><u>Total Irregular Costs</u></b>  | <b><u>\$121,086</u></b>   | <b><u>\$279,907</u></b> | <b><u>\$400,993</u></b> |

APPENDIX B – Order No. 2016-437  
Docket No. 2015-13-A  
June 17, 2016  
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Chem-Nuclear Systems, LLC  
Allowable Costs  
Fiscal Year 2015-2016 (Ending June 30, 2016)

| <u>Description</u>                                  | <u>Allowable Cost</u> |
|---|-----------------------|
| <b>Fixed Costs</b>                                  |                       |
| Labor, Fringe and Non-Labor                         | \$2,100,000           |
| Depreciation  | \$124,277             |
| Insurance   | \$377,240             |
| Equipment Leases and Support                        | \$178,701             |
| Corporate Allocation (Management Fee/G&A)           | \$625,000             |
| Legal Support*                                      | \$107,752             |
|   | <hr/>                 |
| Total Fixed Costs                                   | \$3,512,970           |
| <b>Irregular Costs</b>                              |                       |
| Trench Construction                                 | \$150,000             |
| License Appeal                                      | \$150,000             |
| Corrective Action                                   | \$2,000               |
| Trench Software                                     | \$3,754               |
| Site Engineering Drawings                           | \$1,000               |
| Site Maintenance                                    | \$20,000              |
| Site Assessment                                     | \$2,000               |
| Severance/Incentive                                 | \$1,480               |
|   | <hr/>                 |
| Total Irregular Costs                               | \$330,234             |
|   | <hr/>                 |
| <b>Total Fixed and Irregular Costs</b>              | <b>\$3,843,204</b>    |
|   | <hr/> <hr/>           |
| <b>Variable Costs</b>                               |                       |
| <b><u>Variable Labor and Non-Labor Rates</u></b>    |                       |
| Vault Purchase and Inspection (per vault)           | \$226.17              |
| ABC Waste Disposal (per shipment)                   | \$1,854.47            |
| Slit Trench Shipment (per offload)                  | \$38,464.87           |
| Customer Assistance (per shipment)                  | \$80.71               |
| Trench Records (per container)                      | \$300.79              |
| <b><u>Variable Material Costs (Vault Costs)</u></b> |                       |
| Class A Waste (per cubic foot)                      | \$36.26               |
| Class B Waste (per cubic foot)                      | \$49.60               |
| Class C Waste (per cubic foot)                      | \$59.29               |
| Slit Trench Waste (per cubic foot)                  | \$153.18              |

\* Not subject to statutory operating margin