



**U.S. Department of Commerce  
Civil Nuclear Trade Advisory Committee (CINTAC) Meeting**

Sixth Charter, 2018-2020

Thursday, May 21, 2020, 11:00am - 4:00pm EDT

(11:00am – 1:00pm closed to the public. 1:00pm – 4:00pm open to the public)

Location: virtual meeting (MS Teams and call-in)

**MEETING MINUTES**

**11:00 – 1:00                      Closed Portion of Meeting**

**1:00 – 1:30                      Break**

**1:30 – 2:45                      Discussion & Finalization of Full Committee Recommendations**

- Full committee discusses and approves final recommendations
- **Proposed Letter on NFWG Report**
  - The working groups reports highlights the importance of domestic and international nuclear energy.
  - The report has a large number of recommendations that would increase U.S. industry competitiveness while addressing various difficulties faced by domestic industries. For instance, recommendations can potentially address the at-risk nature of many U.S. nuclear power plants experiencing premature retirements due to the economics of the electricity-generating sector.
  - Language in the letter that explicitly states U.S. intention to offset Russian and Chinese SOEs will remain.
  - The motion to approve the letter passed unanimously.
- **Proposed Letter on Civil Nuclear Industry Toolkit**
  - This letter aims to finalize the Toolkit by July 2020. DOC hopes that the Toolkit will be widely propagated to all CINTAC members and relevant companies, as well as demonstrated at the September IAEA conference. Details for how to apply to be a listed company are available on the [ITA website](#).
  - The motion to approve the letter passed unanimously.
- **Updates by subcommittee chairs and sub-chairs**
  - CINTAC aims to improve the IAEA conference experience and its valuation of trade missions. This will be exhibited in future CINTAC White Papers.
  - CINTAC will create uniform criteria for what constitutes the “success” of trade missions and other industry activity in order to better understand industry goals.



Standard and integrated measures of success will also allow the U.S. government to optimize their trade missions.

- The document regarding effective nuclear energy messaging will be converted into a letter to be sent to all relevant government personal.
- Discussions regarding a risk-based framework will resume.
- The letter regarding the regulatory toolkit will be revisited.

**2:45 – 3:00                      Preparation and Planning for July 23 CINTAC Meeting**

- Subcommittees will have interim meetings prior to the partially-closed July 23<sup>rd</sup> meeting. Additionally, a fully open CINTAC meeting is being scheduled for August 6<sup>th</sup> between 10:00am and 12:00pm.
- Secretary Ross has been invited to participate in the July 23<sup>rd</sup> meeting. To prepare for the Secretary's potential participation, subcommittees will prepare a list of questions for him as well as prepare for potential questions that he may ask them.
- The aforementioned list of industry successes will be determined and compiled by subcommittees during their interim meetings and will be presented at the July 23<sup>rd</sup> meeting.

**3:00 – 3:10                      Conclusions and Next Steps**

- CINTAC voted to send two letters – the first on the prioritization of the NFWG recommendations and the second on ITA's Civil Nuclear Toolkit – to Secretary Ross.

**3:10 – 4:00                      Public Comment & Adjourn**

- There was a suggestion for the advisory committee to use the services of the DOJ (or another entity) to intervene on the side of PJM states petitioning the D.C. circuit court in regards to FERC's recent PJM MOPR order in December.
- CINTAC's regulatory committee was encouraged to consult experts (e.g. individuals from NEI, Exelon, and a public utility in New Jersey) to follow up with FERC. These experts can form a basis for how CINTAC can play a constructive role.
- Another member of the public reiterated how crucial CINTAC is for private U.S. industry, especially when competing for funding against Chinese and Russian (and other) SOEs. The importance of DFC was also expressed.

Written comments from Jay Kraemer, Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP for open portion of May 21 CINTAC Meeting

On April 23, 2020, the Department of Energy released the report of the United States Nuclear Fuel Working Group (NFWG), entitled "Restoring America's Competitive Nuclear Energy Advantage." The NFWG Report contains a large number of recommendations, both for the front end of the nuclear fuel cycle and for nuclear energy matters more broadly, and constitutes a comprehensive strategy to restore the leadership of the U.S. in nuclear energy. Among these



numerous recommendations are two that I hope will engage the attention of the CINTAC and will lead to CINTAC action in specific support of the goals of the NFWG report.

First, the NFWG report recommends “Creat[ing] a level playing field for all energy sources in power markets and encourage[ing] FERC action to improve competition in the wholesale energy markets” (NFWG Report, at 17). More specifically, the NFWG Report goes on to state:

For several years the U.S. nuclear fleet and competitive energy markets have faced fundamental challenges brought on by a combination of state subsidies to select generators, the Shale Gas Revolution, increased renewables penetration, and stagnant load growth. Since 2013, eight nuclear power plants (nine units) have prematurely retired and seven more (10 units) have announced intention to close by 2025. This trend was most recently highlighted by the permanent closure of Three Mile Island on September 20, 2019. Moreover a large body of analyses suggests that at a minimum, an additional 25 units are at risk of premature retirement.

The majority of nuclear power plants under economic stress are in the deregulated electricity markets whose rules are overseen by the Federal Energy Regulatory Commission (FERC)...The Working Group also recognizes FERC’s efforts to accurately price state-publicized capacity resources in its recently announced Minimum Offer Price Rule...(NFWG Report, at 17-18)

There can be no doubt that, just as a healthy front end of the U.S. nuclear fuel cycle requires a vibrant fleet of domestic nuclear power plants, the health of the operating fleet of U.S. nuclear power reactors is a significant factor in the success of U.S. vendors globally throughout the fuel cycle. If the U.S. fleet of power reactors is allowed to wither away, as the current trend noted by the NFWG suggests is occurring, the future success of U.S. nuclear vendors on the world market will be correspondingly threatened. Accordingly, it should be of great importance to the CINTAC’s mission that, as the NFWG Report recommends, there be a level playing field for nuclear power plants in domestic power markets.

Unfortunately, recent action by FERC in its Minimum Offer Price Rule (“MOPR”) with respect to the PJM Interconnection (which covers the wholesale market in 13 Midwest and Mid-Atlantic States and D.C.) works in precisely the opposite direction. Over the past few years, several states (e.g., New York, Illinois, New Jersey) have taken action to level the playing field in electricity markets by recognizing in monetary terms the contribution that nuclear power plants make to reducing greenhouse gas emissions relative to power plants utilizing fossil fuels. These state programs, meant to offset the externalities enjoyed by fossil fuel-fired power plants when they emit massive amounts of CO<sub>2</sub> and other greenhouse gases, have been uniformly upheld by the courts as both consistent with the Federal Power Act’s allocation of authority between FERC and the States and otherwise in accord with the Commerce Clause of the U.S. Constitution. However, the response of FERC to these State actions and the courts’ decisions upholding them has been to attempt to counteract the State programs in the PJM wholesale



electricity pricing market. As a result, the MOPR operates to undermine the States' efforts to promote a level playing field for nuclear power. Last month, several States within the PJM's jurisdiction, including Illinois and New Jersey, petitioned the U.S. Court of Appeals for the D.C. Circuit to overturn the MOPR's devastating effects on State programs to foster clean energy. The CINTAC very clearly has "a dog in this fight," because the MOPR, if it is not overturned by the courts, will do great damage to the economic viability of dozens of nuclear power reactors in the PJM, now providing electricity to tens of millions of Americans. Accordingly, I suggest that the CINTAC send a letter to Secretary Ross requesting that he call upon the U.S. Department of Justice to intervene in the pending MOPR litigation in the D.C. Circuit on the side of the petitioning States, both to support a truly level playing field for nuclear power plants and to vindicate the right of States to protect their citizens' health and well-being by creating economic incentives for clean power. I believe that such an intervention by the Justice Department is the most effective step that the U.S. Government can take in the near term to protect the economic viability of more than one quarter of the remaining U.S. nuclear power reactor fleet.

Second, in another recommendation intended to level the playing field for nuclear power, the NFWG called upon the new U.S. International Development Finance Corporation (DFC), the successor to the Overseas Private Investment Corporation (OPIC), to "fix legacy policies that disallow support for nuclear projects." (NFWG Report, at 27) The NFWG Report goes on to say that, "[s]trengthening the internal capacity of Ex-IM and DFC, and utilizing expertise within other Federal Agencies, will be critical to enable competitive financing models for nations seeking U.S. industry as the responsible nuclear partner of choice." Reportedly, the DFC is not prevented by statute from providing financing for U.S. participation in nuclear power projects abroad, but has retained "legacy" internal procedures adopted by OPIC that have that effect. If those procedures ever had a viable rationale, in the face of the massive Russian, Chinese, and other countries' support currently provided for the benefit of their state-owned nuclear enterprises, that rationale has long-since disappeared. Accordingly, I suggest that the CINTAC send a letter to Secretary Ross asking that he work with the DFC to amend its procedures so as to enable it to support U.S. vendors in their efforts to make sales to nuclear power projects in developing countries.

Thank you very much for this opportunity to make suggestions with respect to the activities of the CINTAC. Please note that these comments, and the views expressed herein, are strictly my own and do not necessarily reflect or represent the views of my law firm, its attorneys, or any of its clients.





## **ATTENDEES**

### CINTAC Members

- Art Wharton, Vice President, Market Development, Studsvik Scandpower Inc.
- Beverly Marshall, Vice President, Governmental Affairs, Nuclear Energy Institute
- Brandon Brooks, Strategic Development Manager, General Atomics
- Charles Goodnight, President, Goodnight Consulting
- Christopher Colbert, Chief Strategy Officer, NuScale Power
- Colin Austin, Senior Vice President of International Business, EnergySolutions
- Colleen Deegan, Vice President, Bechtel Corporation
- David Sledzik, Senior Vice President, Sales and Commercial Operations, Nuclear Plant Projects, GE Hitachi Nuclear Energy
- Donald Hoffman, President and CEO, EXCEL Services Corporation
- Edward Kee, CEO, Nuclear Economics Consulting Group
- Gary Wolski, Vice President, Nuclear Division, Curtiss-Wright
- Glenn Neises, Nuclear Director, Burns & McDonnell
- Graham Cable, Vice President, Global Growth & Strategy, Westinghouse Electric Company
- H.M Hashemian, President, Analysis and Measurement Services Corporation
- Jarret Adams, CEO, Full On Communications
- Jeffrey Harper, Vice President, Strategy and Business Development, X Energy, LLC
- John Bendo, Business Development Manager, Power & Energy, ASME
- Joseph Miller, Director, Advanced Technology Programs, BWX Technologies, Inc.
- Juan Subiry, Vice President, Market and Product Strategy, NAC International
- Kenneth L. Peddicord, Professor, Nuclear Engineering, Texas A&M University
- Margaret Harding, Principal, 4 Factor Consulting
- Michael Whitehurst, Director, Business Development, Centrus Energy Corp.
- Mimi Limbach, Managing Partner and President, Potomac Communications Group
- Myron Kaczmarzsky, Senior Director, Holtec International
- Neil Numark, President, NUMARK Associates
- Paul Amico, Director, International Operations, Power Services Group, Jensen Hughes
- Pete Gaillard, Licensing Manager, TerraPower, LLC
- Ralph Hunter, Vice President, Exelon Corporation
- Robert Coward, Immediate Past President, American Nuclear Society
- Robert Kalantari, President and CEO, Engineering, Planning and Management
- Robert Sweeney, President and CEO, IBEX Engineering Services, Inc.
- Russell Neely, Chief Operating Officer, Edlow International Company
- Scott Singer, Vice President, Chief Security and Information Officer, PAR Systems
- Seth Grae, President and CEO, Lightbridge Corporation



- Woody Lawman, Director of Sales, Navy and Nuclear Products, Flowserve Limatorque

#### U.S. Government

- Jonathan Chesebro, Designated Federal Officer of the CINTAC, U.S. Department of Commerce
- Simone Stoyen, Civil Nuclear Intern, U.S. Department of Commerce, International Trade Administration
- Kirsten Cutler, Senior Science Advisor, Office of Nuclear Energy, Safety and Security, Bureau of International Security and Nonproliferation, U.S. Department of State
- Carl Kress, Regional Director for East Asia / Middle East, North Africa, Europe and Eurasia, U.S. Trade and Development Agency (USTDA)
- Michelle Scott, Senior Advisor for Commercial Activities, U.S. Department of Energy, Office of Nuclear Energy
- Lauren Mayros, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission
- Dr. K. Michael Goff, Assistant Director for Nuclear Energy, Office of Science and Technology Policy

#### Members of the Public

- Jay Kraemer, Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP
- Wendy Simon-Pearson, General Counsel, Ultra Safe Nuclear Corporation