

**Department of Energy and
Climate Change**

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By Email
REDACTED

Our ref: 12/0559

23rd August 2012

Dear REDACTED,

Freedom of Information Request – Reference 12/0559

1. I am writing further to our letter of 31st July regarding your request for:

- all correspondence between DECC ministers and officials, including the Office of Nuclear Development, and EDF Energy (and any subsidiary companies, including NNB GenCo) in relation to Contracts for Difference and Letters of Comfort; and
- a list of any meetings on this subject between EDF Energy and DECC ministers and officials, the agendas, minutes, ministerial briefings and papers for those meetings, from 1 January 2011 onwards.

2. We have identified that we hold information within the scope of your request. Please find attached:

- a list of the meetings between DECC officials and EDF Energy including NNB GenCo (Annex A).

A list of ministerial meetings with external organisations is published on a quarterly basis and can be found on the Department's website at the following address:

<http://www.decc.gov.uk/en/content/cms/accesstoinform/registers/ministermtgs/ministermtgs.aspx>

- a letter from DECC to NNBG dated 18 November 2011 (Annex B)

- a letter from NNBG to DECC dated 22 March 2012 (Annex C). We have also attached the DECC response dated 22 May 2012 (Annex D) which is outside the scope of the request as it was sent after the date that you requested the information on 4 April 2012.
3. We also hold other information in relation to the meetings, and correspondence that fall within the scope of the request. Having carefully considered your request and the public interest arguments both in favour and against disclosure, we have come to the view that all of this documentation is exempt from disclosure under the Freedom of Information Act. Further detail on the arguments for and against disclosure is set out below.

Section 36

4. Section 36(2) provides that Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act — would, or would be likely to, inhibit —
- (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation
5. Releasing this documentation would have a detrimental impact on policy development. Candid input from the energy industry, in confidence, is an essential element of our policy making process, and the loss of that input would have an adverse impact on our ability to make sound and robust policy, or negotiate contracts. Release of the information would be likely to inhibit third parties from fully engaging in such discussions with Government officials. The process of dialogue would be weakened if third parties did not feel able to be as open and frank with us, for fear of their views and assessments offered in the context of dialogue and analysis being made public.
6. Releasing information of this nature could also inhibit the future provision of important information by stakeholders. This could have a detrimental effect on policy development and the design and implementation of the EMR Programme which would not be in the public interest as it could impact on our objective to ensure secure supply of low carbon energy.

7. This exemption is subject to the public interest test. Having considered the public interest and presumption in favour of disclosure stated in Section 2 of the FOI Act, we are satisfied that the balance of public interest favours withholding the information.

Section 41

8. Section 41(1) provides that information is exempt if disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person. Some of the information requested is detailed information provided to the Department in confidence. This information is subject to a duty of confidence and disclosure of the information would constitute an actionable breach of confidence. We have therefore reached the view that the information is exempt from disclosure by virtue of section 41.

Section 43

9. Section 43 (2) provides that information may be exempt information, subject to the public interest test, if the release of the information would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding. Section 43(2) is a qualified exemption.
10. We are satisfied that the release of some of the information could damage and adversely affect the commercial position of EDF in the discussions on FID enabling for Hinkley Point C. We have also considered the impact that releasing the information would have on maintaining the trust and confidence between the Department and companies who engage with us. If the Department does not respect such confidences its ability to engage meaningfully with companies and other stakeholders would be likely to be prejudiced. Therefore the Department's own commercial interests could also be damaged.
11. While there is general public interest in the disclosure of the information as greater transparency makes Government more accountable, account has to be taken of the need to ensure the commercial interests of third parties are not prejudiced or undermined by disclosure of information that is not common knowledge, and which could adversely impact on future business. Having considered the public interest, we are satisfied that the balance favours withholding the information.

Appeals procedure

12. If you are unhappy with the result of your request for information, you may request an internal review within two calendar months of the date of this letter. If you wish to request an internal review, please contact the Information Rights Unit (foi@decc.gsi.gov.uk).

13. If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely
REDACTED

ANNEX A

Meetings specific to NNB GenCo's Hinkley Point C project

Ref	Date of meeting(s)
1	3 April 2012
2	30 March 2012
3	26 March 2012
4	5 March 2012
5	27 February 2012
6	23 February 2012
7	27 January 2012
8	23 January 2012
9	18 November 2011
10	7 November 2011
11	31 October 2011
12	30 August 2011
13	27 July 2011

Meetings in the context of DECC's overall work on EMR

Ref	Date of meeting(s)
1	29 March 2012
2	28 March 2012
3	26 March 2012
4	23 March 2012
5	16 March 2012
6	13 March 2012
7	1 March 2012
8	23 February 2012

9	16 February 2012
10	9 February 2012
11	6 February 2012
12	30 January 2012
13	19 January 2011
14	16 December 2011
15	27 October 2011
16	26 October 2011
17	25 October 2011
18	21 September 2011
19	15 September 2011
20	28 April 2011
21	5 April 2011

ANNEX B

Humphrey Cadoux-Hudson
EDF Energy NNB
The Qube
90 Whitfield Street
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Hugo Robson
Commercial Director
Department of Energy & Climate Change
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18 November 2011

Dear Humphrey,

RE: Roadmap to Investment Decision

At the Joint Steering Committee meeting on Monday 7th November, I said that I would write to you ahead of the EDF Board meeting on 22nd November to set out the process that we intend to follow to work towards providing an appropriate level of comfort against which a final investment decision at Hinkley Point in November 2012 can be made despite the fact that EMR will not have been implemented by that date.

At the time of the publication of the EMR Technical Update planned for the turn of the year, we intend to include the eligibility criteria that developers will need to satisfy in order to enter into discussions with Commercial team at DECC. We can confirm that although these criteria are still in development and subject to Ministerial approval, at this stage we see no reason why NNBG's Hinkley Point plans should not meet the eligibility criteria.

We would then expect to be in a position in the first quarter of next year, to discuss with you the form of assurance (the "product") that we would, subject to detailed due diligence and Ministerial clearance be able to provide.

Following this, we would anticipate discussing with you the product form so that it is available ahead of the final investment decision in November 2012. We would use the structure that we have established with working groups covering legal issues and risk issues, together with a cost discovery group.

As agreed, we will set up monthly Joint Steering Committee meetings throughout 2012 to monitor progress.

When developing our thoughts on the product, we will take note of the fundamental principles that you set out at the meeting, in particular the need for "a fair risk/return profile which ensures that the project is financeable".

However, as previously mentioned, it is not possible to be firm at this stage with regard to the precise legal form or content of any product.

Please feel free to contact me to discuss further.

Your sincerely

REDACTED

Hugo Robson
Commercial Director

ANNEX C

Hugo Robson
Commercial Director, Energy Markets & Infrastructure Group
Department of Energy and Climate Change
55 Whitehall
London
SW1A 2EY

22 March 2012

Dear Hugo

Expression of interest - enabling investment decisions for early projects

By this letter we formally express our interest in being part of DECC's work on enabling investment decisions for early projects (the "**Transitional Arrangements**" or "**TAs**") for Hinkley Point C as provided for in the Technical Update published by DECC on 15 December 2011.

EDF Energy and Centrica have established a joint venture company, NNB Generation Company Limited ("**NNB**"), with a view to developing four new EPR reactor units on two sites in the UK. If approved, our lead project, Hinkley Point C in Somerset, will be the first in a new generation of nuclear power stations in the UK making a major contribution towards meeting the country's future requirements for low carbon affordable electricity. Once operational, Hinkley Point C is expected to provide approximately 6% of the UK's electricity, sufficient for five million homes. Our new nuclear build plans would deliver thousands of jobs and business opportunities worth billions and contribute to an electricity market which delivers the low carbon energy Britain needs.

Chapter Four and Annex B of the Technical Update require that expressions of interest from developers seeking TAs:

- set out briefly why the developer believes its project exhibits each of the characteristics set out in Chapter Four of the Technical Update;
- provide supporting evidence for each characteristic; and
- explain what the developer is seeking from DECC to enable their investment to progress.

The remainder of this expression of interest addresses these points. We are, of course, willing to provide further information, subject to agreeing appropriate arrangements to protect any commercially confidential information.

The characteristics

Eligibility for FIT CfD support

The Overarching National Policy Statement for Energy (EN-1) clearly articulates the Government's belief that there is an "urgent need" for new electricity generation plant, including new nuclear power, and that it is Government policy that new nuclear power should form part of the generation mix.

The Electricity Market Reform White Paper published in July 2011 envisages low carbon generation, including new nuclear power, as being eligible for support through feed-in tariffs based on contracts for differences ("**FiT CfDs**"). We consider that our Hinkley Point C new nuclear power generation project to develop two UK EPRs capable of providing up to 3.2 GW of low carbon baseload generation capacity, is eligible for support through a FiT CfD.

We note that paragraph 186 of Annex B to the Technical Update suggests that DECC has yet to publish the FiT CfD eligibility criteria (and that the criteria may be updated after they have been published). We are willing to provide DECC, subject to agreeing appropriate arrangements to protect any confidential information, with any further information that it may require to determine that the criteria are, and will continue to be, satisfied.

Project delivery depends on the availability of Transitional Arrangements

If approved, Hinkley Point C will be the first in a new generation of nuclear power stations in the UK making a major contribution towards meeting the UK's future requirements for low carbon electricity. It will require significant investment and is currently the largest and most complex project for which an application for a Development Consent Order has been accepted for examination by the Infrastructure Planning Commission ("**IPC**").

To date, our costs on the Hinkley Point C project relate primarily to pre-development activities such as planning and engineering design. Without a clear and binding assurance from the Government that our revenue assumptions for the Hinkley Point C project will receive the necessary certainty through the Electricity Market Reform and the Transitional Arrangements (as currently envisaged), the joint venture partners will not be in a position to make a positive decision to support the significant further investment required for the next stage. In order to deliver new nuclear in the UK on a timetable which is in line with the Nuclear National Policy Statement we intend, subject to the right framework being in place and receiving all necessary consents, to make a Final Investment Decision at the end of 2012.

With acceptable Transitional Arrangements the project can credibly be delivered

The progress made to date, and the considerable sum already invested in the project, indicates our commitment to delivering the project, and evidences that

reaching “go-live” after 2016 (the date referred to in Annex B to the Technical Update) is realistically achievable.

Our project has already achieved significant milestones. Local authorities in Somerset have granted planning permission for site preparation / excavation and July 2011, NNB submitted its Nuclear Site Licence application for Hinkley Point C to the Office for Nuclear Regulation.

Following a three year consultation with the local community, EDF Energy submitted its Development Consent Order application to the IPC, which it accepted on 24 November 2011.

In December 2011 the joint regulators (Office for Nuclear Regulation and Environment Agency) issued interim design acceptance confirmations for the UK EPR, describing this themselves as a major milestone in the process. This is significant progress following four years of assessment by one of the most rigorous independent nuclear safety regulators in the world.

We have continued our engagement with the supply chain and have now signed a £100 million-plus contract with Kier BAM for site preparation works at Hinkley Point C, a Memorandum of Understanding with AREVA relating to the delivery of the nuclear steam supply system and instrumentation and control systems for the Hinkley Point C project, and EDF Energy has confirmed a £15 million investment to establish a world class national training centre in partnership with Bridgwater College in Somerset. These and other agreements show that we continue to maintain momentum in 2012 as we take the steps which will lead to a Final Investment Decision.

Support is not available under the Renewables Obligation

Unlike projects using renewable technologies within the definitions currently applicable under the Renewables Obligation Order 2009, support for nuclear projects like Hinkley Point C cannot be provided under the Renewables Obligation. The enabling power for the Renewables Obligation is section 32 of the Electricity Act 1989 which, in its amended form, expressly excludes nuclear energy.

What we need from the TAs to enable the investment to progress

To take an investment decision we need a legally binding agreement which gives us confidence that there will be sufficient revenue to support the investment case, including in the scenarios where Electricity Market Reform is not delivered or is delivered but in a way which is incompatible with NNB investment assumptions.

Specifically, we need arrangements that, at the Final Investment Decision date, enable NNB to enter into a legally binding CfD with a counterparty which if required has power to raise revenue. We also need long-term change of law

risk protection to provide a continued grandfathering commitment and to protect the project against retrospective changes to law, regulations and low-carbon policy, including Electricity Market Reform and TAs (as currently envisaged).

To the extent these arrangements require State Aid clearance, we will need to be confident that this will be obtained in order to receive the legal certainty we need for our investment decision.

We believe that key issues for the FiT CfD at this stage include the term, the risk allocation, the strike price and finance ability

To avoid the need for upfront contingency in relation to risks which are difficult to quantify and may not crystallise, we propose that the strike price should be adjustable to respond to material risks not under our control; the FiT CfD should help the investment be financeable if low carbon baseload generation is to make a substantial contribution to the UK's de-carbonisation targets.

We expect to discuss these and other issues with you during the course of constructive dialogue we will engage in.

We would be grateful if you would acknowledge receipt of this expression of interest, confirm that it is acceptable and that we can start dialogue. We look forward to taking part in further discussions with you to help enable the investment decision for the Hinkley Point C project.

Yours sincerely

REDACTED

Humphrey Cadoux-Hudson
Managing Director
NNB Generation Company Limited

ANNEX D

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Mr Humphrey Cadoux-Hudson
Managing Director
NNB Generation Company Limited
The Qube
90 Whitfield Street
London W1T 4EZ

22 May 2012

Dear Humphrey,

RE: Expression of interest – enabling investment decisions for early projects

Thank you for your letter of 22 March 2012 expressing NNB's interest in DECC's work to enable investment decisions for early projects ahead of EMR, and setting out why you believe NNB's Hinkley Point C project meets the required characteristics.

We have considered the information and evidence you have provided and agree that your Hinkley Point C project fulfils the characteristics listed in Chapter 4 of the document "Planning our Electricity Future: Technical Update" published by DECC in December 2011.

I can confirm that DECC is willing to enter into a dialogue regarding potential Transitional Arrangements on the basis set out in the Technical Update. We look forward to these discussions with you.

Yours sincerely,

REDACTED

Hugo Robson
Commercial Director