

Response by EDF

Consultation on Revised FDP Guidance
Office of Nuclear Development
Department of Energy and Climate Change
3 Whitehall Place
London SW1A 2AW
8 March 2011

Dear Sir or Madam

The Energy Act 2008: Consultation on revised Funded Decommissioning Programme Guidance for New Nuclear Power Stations

Please find below a response to the above consultation, which represents the views of NNB Generation Company Limited ("NNB GenCo") and the investors in NNB GenCo, being the EDF group ("EDF") and the Centrica group (excluding Centrica Storage Ltd) ("Centrica"). NNB GenCo is the joint venture company through which EDF and Centrica will undertake the pre-development activities for a planned nuclear new build programme. References to NNB or NNB GenCo are references to NNB GenCo and its investors.

NNB GenCo welcomes the publication of this further consultation paper. The development of robust arrangements for the future funding of waste management and decommissioning is an important issue for both public confidence and the commercial investment case for new nuclear. It is inevitably complex and NNB GenCo has been pleased that DECC has listened to stakeholders' comments on the practicality of implementing the previous guidance and have brought forward a revised set of proposals.

Our response to this consultation is set out in two sections: direct answers to the specific questions posed in the consultation and a full mark up of the consultation text identifying where those concerns arise. As always, we would be happy to discuss this response directly with DECC.

Section 1: Questions

Do you agree or disagree that the draft Guidance sets out what an approvable Funded Decommissioning Programme should contain to ensure that operators of new nuclear power stations (i) estimate the potential costs of decommissioning, waste management and waste disposal (i.e. the designated technical matters) and (ii) make prudent provision for meeting their liabilities? What are your reasons?

NNB GenCo considers that the heart of the guidance is about ensuring that the operator's Funded Decommissioning Programme provides the greatest practicable degree of certainty that the liabilities will be properly calculated and that the funding will be available to meet those liabilities. We support that aim and recognise it is an important factor for the acceptability of nuclear power in meeting the UK's need for low carbon electricity.

However, to make the commercial case for major investment in new nuclear, the operator also needs the greatest practicable degree of certainty around the arrangements it puts in place to manage and fund these liabilities. The sums involved are material and NNB GenCo will need to have confidence that the FDP arrangements it enters into are reasonable and not subject to unilateral or arbitrary change. A number of our detailed comments in the mark up therefore address this theme of ensuring reasonable certainty.

Alongside certainty, both versions of the guidance have highlighted the need for the Fund arrangements to be independent of both operator and Government. We understand the thinking behind this emphasis, although we would note that internationally there are examples of successful liabilities funding arrangements that are not independent from either Government or operator. Nevertheless we accept that it is important in the UK context for the arrangements to be demonstrably independent.

However, we think there is an important distinction to be drawn between ensuring that arrangements are functionally independent (i.e. independent for a purpose) rather than independent just to meet a principle. We recognise the functional value of ensuring that the Fund arrangements should be insolvency remote, that the Fund proceeds should only be used for the purposes of discharging the liabilities and that the liabilities costs and fund contributions should be subject to independent verification. But in our view some aspects of the guidance stray into seeking independence for its own sake. Again, we make a number of detailed comments in the mark up on independence issues.

A further theme running through the guidance is the interaction of the FDP with existing nuclear regulation. NNB GenCo welcomes the clarification of the interaction with the Nuclear Site Licence, namely that an FDP must be in place before the start of construction work on buildings with nuclear safety significance. However, there are a number of areas in the FDP where the role of the Secretary of State may duplicate or cut across the responsibilities of the nuclear and environmental regulators, leading to the risk of dual regulation. This is largely an issue for the Decommissioning and Waste Management Plan (DWMP) where there are parallel arrangements for decommissioning under the nuclear site licence, but it also has implications for record keeping and change control.

Finally, an approvable FDP will need to demonstrate that it is consistent with Energy Act legislation and the FDP regulations and, although less prescriptively, with guidance. Unfortunately, in part due to the way in which regulations and guidance have been produced separately, NNB GenCo considers that there are inconsistencies between the intent of the guidance and the detailed drafting of the current regulations. These inconsistencies are sufficiently important, we believe, to need some redrafting of the regulations; this is likely to require a further round of public consultation. We have identified in the mark up the particular areas where we believe there to be problems. edfenergy.com 3

Does the draft Guidance contain sufficient information to enable operators of new nuclear power stations to understand the matters that their Funded Decommissioning Programmes should contain?

With an issue of this complexity, and especially where arrangements are being developed essentially for the first time, there is a difficult balance to strike in producing guidance. On the one hand it is desirable that guidance should be non-prescriptive and outcome based, with the focus to be on what is delivered rather than how. This allows for creative and innovative solutions to come forward. On the other hand, requests from stakeholders for more clarification on what is expected by Government can lead to the guidance becoming more detailed and prescriptive. This can have unintended consequences for practical implementation, as we have seen and commented on in the previous consultation. These challenges apply equally to the regulations and this is another reason why we propose that there would be benefit in a further consultation on the regulations.

NNB GenCo is pleased that this version of the guidance is generally much less prescriptive. We would propose that the guidance should remain, where possible, non-prescriptive and outcome based, but suggest that DECC continue to engage positively with operators and other stakeholders on developing the detailed arrangements for the Funded Decommissioning Programme. Our comments below on seeking further clarity should be read in that context.