

Response by Structured Product Solutions LLP

Dear Sirs,

We should explain that we are a micro-business specialising in the development of risk finance products and similarly blended financial products, chiefly for the energy sector both upstream and downstream.

At the outset, we should like to express our wholehearted endorsement of the underlying philosophy of the proposed Guidelines for "New Nuclear" that there should be sufficient funding in place for both decommissioning and waste management at the time when it is projected that those activities will take place. In so far as "Old Nuclear" is concerned, this was not factored in at the outset in the 1950's. The consequence of this is evidenced by the necessity to restructure the sector in 2002 at significant cost to Government (and the UK taxpayer) in underwriting BNFL's £5.3 billion decommissioning liability when BNFL were deemed to be insolvent if they continued to carry the financial burden of decommissioning the plant that they operated.

Against this underlying philosophy is the need for Government to attract investors into the sector in order that it can grow and flourish so as to meet the future needs of the nation. Fundamental to such balance is the need to ensure that the Guidelines are clear and concise (as is acknowledged in paragraph 7 of the introduction) and that the funding can be structured in a fiscally efficient manner on the one hand whilst the nation can be considered secure on the other.

Whilst we entirely accept that it is fundamental to the security of the nation for the funding to be insolvency remote from the operator, we do not accept that the only way of achieving that objective is for all forms of such funding to be held in an independent fund. Indeed, the "funding" structure that we have developed is centered round a Finite Risk Insurance Policy core with appropriate independent guarantees to Government and hence the nation. In our view, the Guidelines should be amended to expressly permit such structures provided that they maintain the insolvency remoteness of the funding from the operator. We would respectfully suggest that the term "Fund" should be defined so as to include the words "or alternative funding structure".

We have designed such an 'alternative funding structure' whereby the insurer both funds the maintenance/decommissioning expenditure up to a pre-agreed insured value and issues a guarantee to Government or such party as Government may nominate for the pre-agreed insured value in the event of a default by the insured operator. The structure also brings with it significant fiscal efficiency.

Where the Guidelines are somewhat silent and where further clarification would be helpful is the potential scenario should the Operator either default upon his obligation to Decommission or becomes insolvent. In such circumstances, to whom is the 'Fund' payable, upon what event and when? We consider this to be an important issue, not only from the point of view of giving the nation access to the 'Fund' in the event of default but also from the perspective of being insolvency remote. From the perspective of a structured risk finance product such as ours which provides a funding guarantee, it is also important to know to whom that guarantee should be issued.

The Guidelines very properly go into significant detail as to how the 'Fund' should be managed from the perspective of remoteness from insolvency, the management of the investments as a whole and consequent future contributions by the operator. Such management is, of course, critical to the maintenance of a 'Fund' that will fluctuate in value depending upon its investment performance and the general level of contributions. However, in a structure such as ours where the amount of claims are a pre-agreed insured sum and will not fluctuate, such a fund management structure and its supervision will not be required in the same way albeit that the credit rating of the Insurer may need to be kept under review. We feel, therefore, that the Guidelines should be drafted so as to reflect the potential for more innovative funding structures such as the one that we propose and thereby, ease or remove the regulatory burden applicable to such a structure