

BY EMAIL ONLY

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19 October 2018

Dear Ms Libretto

The Hinkley Point C (Nuclear Generating Station) Order 2013 – S.I. 2013 No. 648 (as amended) – Proposed Material Change related to Acoustic Fish Deterrent system

Regulation 10(1)(f) (as amended) - Request for confirmation of any other body that should be consulted

Regulation 10(2) (as amended) - Written consent from Secretary of State for not consulting a person or authority

NNB Generation Company (HPC) Limited (“NNB GenCo”) is proposing to make an application for a material change under Schedule 6 of the Planning Act 2008 and The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (amended in 2015) (“the Regulations”). The proposed application will request the removal of the requirement to design and install an Acoustic Fish Deterrent (AFD) system from the Hinkley Point C (Nuclear Generating Station) Order 2013 (“DCO”). This relates to requirement CW1 of the DCO.

The proposed application will be accompanied by a revised Environmental Statement in relation to the change undertaken in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 and information to inform an updated Habitats Regulations Assessment under the Conservation of Habitats and Species Regulations 2017. The change relates to offshore elements only in relation to a specific part of the HPC proposal as explained below.

Under the Regulations, before making an application for a material change to the Secretary of State, an applicant must carry out a pre-application consultation with persons as identified in Regulation 10.

Regulation 10(2) (amended by Regulation 5(1)(b) of the 2015 Regulations) states that “*the applicant need not consult a person or authority listed above if they have obtained written consent of the Secretary of State*”. Regulation 10(f)

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Registered Number 06937084.
Visualisations of completed development are
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states that in addition to those persons listed in Regulation 10 the applicant must consult “*any other person the appropriate authority considers should be consulted*”.

This letter notifies the Secretary of State of those persons who NNB GenCo considers should be consulted as a result of the proposed material change and those it does not consider need to be consulted under the Regulations. The rationale for treatment within the Consultee Schedule (attached) is explained in more detail below. NNB GenCo requests the following of the Secretary of State:

- Written approval that NNB GenCo need not consult persons it has identified as not needing to be consulted; and
- Confirmation as to whether the Secretary of State considers any other person should be consulted.

NATURE OF THE PROPOSED CHANGE

The proposed consultation will provide details of the proposed change and likely environmental effects. A high-level summary is set out below to give context for the purposes of this letter.

A plan showing the location of Hinkley Point C (“HPC”) is **attached** for information. HPC will be “direct-cooled”. This means that water from the sea in Bridgwater Bay will be abstracted to cool the steam condensers (and other heat exchangers) before returning the water back into Bridgwater Bay. This will be done via a series of intake structures and tunnels extending out under the seabed into Bridgwater Bay, referred to as the cooling water system. Each UK European Pressurised Reactor (“EPR”) unit will have a single dedicated intake tunnel with two dedicated seabed intake heads (four in total). The intake heads will be situated approximately 3.3km offshore. A plan showing the offshore “red line boundary” and location of the cooling water system, with the four intake heads at the end, is **attached** for information.

The abstracted water would travel through tunnels and screens and into an onshore pumping station. Debris and organisms, mainly fish and invertebrates, have the potential to enter the cooling water stream and into the system. This could have an impact on fish populations. Fish protection measures to mitigate the risk to fish populations were proposed in the DCO application and committed to in requirement CW1. These were a Fish Recovery and Return (FRR) system, the provision of Low Velocity Side Intake (LVSE) heads and an AFD system as part of the cooling water system design.

An AFD system acts as a behavioural deterrent to provoke an avoidance reaction amongst certain groups of fish (ie “hearing sensitive”) from entering cooling water intakes and into the system. It works by projecting sound underwater through a pulsed, swept frequency sound field. An AFD generally comprises: (a) sound projectors which generate the sound waves that deter the fish; (b) a mounting structure from which the sound projectors are mounted in banks or arrays; and (c) a power and communications supply. The AFD system at HPC is proposed to be located on or near the four intake heads approximately 3.3km offshore as shown on the attached plan.

For information, the FRR system is designed to return fish and crustaceans drawn in with the cooling water and caught on the screens fitted at the entry to the onshore cooling water pump house. The LVSE intake heads are designed to limit the exposure of the intake surfaces to the tidal stream and in so doing reducing the risk of fish swimming with the tide being caught in the system.

Following grant of the DCO, the planned LVSE intakes and FRR system associated with the cooling water system have been successfully incorporated into the detailed cooling water design all of which has been approved under

requirement CW1. Further environmental work and assessment has been undertaken to assess the effects on fish populations without an AFD system in place. This work has been able to incorporate updated information not available at the time of the Environmental Statement (ES) and DCO Examination (2011 and 2013 respectively) and has used the latest assessment techniques. This environmental work will be shared as part of the consultation. It is NNB GenCo's view that this work shows that with the other fish protection measures in place, the operation of the cooling water system without an AFD system has no significant impact on fish populations. As a consequence, NNB GenCo do not consider the installation of an AFD system is necessary.

RELATED APPLICATIONS

NNB GenCo are preparing related applications to the Environment Agency (EA) and Marine Management Organisation (MMO) to remove requirements related to the AFD System in the relevant Water Discharge Permit and Marine Licence. The application to vary the Environmental Permit is proposed to be submitted ahead of the DCO change application, later this year. The pre-application consultation for the DCO is currently being planned to start at the same time as the Environment Agency's consultation on the permit variation application. An application to vary the Marine Licence (which is not deemed within the DCO) is anticipated to be made at the same time as the DCO change application. NNB GenCo has been engaging with both the EA and MMO in relation to this proposal.

APPROACH TO MATERIALITY

Schedule 6 of the Planning Act 2008 makes provision for the Secretary of State to grant both material and non-material changes to a development consent order.

There is no statutory definition of "materiality" for the purposes of either the Planning Act or the Regulations. The Government's December 2015 "Guidance on Changes to Development Consent Orders" ("DCLG Guidance") makes it clear that such decisions will inevitably depend on the circumstances of a specific case. However, the DCLG Guidance sets out four examples of characteristics which are likely to indicate that a change is material. Two of the examples which were relevant to EDF Energy's consideration of materiality are:

(1) Environmental Statement

The DCLG Guidance states that a proposed change might be considered material where it would result in the need for an updated Environmental Statement (ES) because there is:

- A new significant effect that was not identified in the ES for the consented project; or
- A materially different effect (positive or negative) when compared to the ES for the consented project.

Whilst in NNB GenCo's view no significant effects have been shown NNB GenCo is proposing to submit an updated Environmental Statement with the application. This will be focussed only on the potential direct effects on fish populations and any indirect receptors identified as a result of not installing the AFD system.

(2) Habitats and Protected Species

The DCLG Guidance states that a proposed change to a project might be considered material if it would invoke a need for a Habitat Regulations Assessment (HRA).

An HRA was carried out in relation to the DCO. NNB GenCo is preparing updated information focussed on not installing the AFD system to inform an HRA which will be submitted with the application.

Given the above, and having regard to the guidance, NNB GenCo are treating the change as material.

CONSULTATION

Duty to consult

Regulation 10(1) in Part 2 of The Regulations (as amended in 2015) states that the applicant must consult the following about a proposed application for a material change:

- (a) *Each person who may be directly affected by the change proposed in the application;*
- (b) *Each person who has the benefit of the development consent order to which the application relates, unless that person is also the applicant;*
- (c) *Any other person or authority who does not fall within paragraph (a) and is –*
 - (i) *Listed in column 1 of the table in Schedule 1 to these Regulations, who must be consulted in the circumstances specified in relation to each such person in column 2 of that table;*
 - (ii) *An authority which, in relation to the proposed application, is a relevant local authority;*
 - (iii) *A person who is within one or more of the categories set out in section 44;*
- (d) *The Greater London Authority if the land to which the proposed application relates, or any part of it, is in Greater London.*
- (e) *The Marine Management Organisation if the land is in one or more of the areas specified in subsection (1A) of section 102; and*
- (f) *Any other person the appropriate authority considers should be consulted.*

Regulation 10(2) (as amended in 2015) states that: *“the applicant need not consult a person or authority listed above if they have obtained written consent of Secretary of State”.*

Regulation 10(3) states that: *“if the appropriate authority exercises its discretion under paragraph (2) it must publish its reasons for doing so on its website”.*

For the purposes of Regulation 10(1)(iii), Section 42(1)(d) of the Planning Act 2008 requires that an applicant must also consult *“each person who is within one or more of the categories set out in section 44”.*

Section 44(1) of the Planning Act 2008 states that *“A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.”*

Section 44(2) of the Planning Act 2008 states *“A person is within Category 2 if the applicant, after making diligent inquiry, knows that the person—*

- (a) is interested in the land, or*
- (b) has power—*
 - (i) to sell and convey the land, or*

(ii) to release the land."

Section 44(4) of the Planning Act 2008 states that "A person is within Category 3 if the applicant thinks that, if the order sought by the proposed application were to be made and fully implemented, the person would or might be entitled—
 (a) as a result of the implementing of the order,
 (b) as a result of the order having been implemented, or
 (c) as a result of use of the land once the order has been implemented, to make a relevant claim."

Section 44(5) of the Planning Act 2008 specifies that "A person is within Category 3 only if the person is known to the applicant after making diligent inquiry."

It is acknowledged (and set out here for completeness) that, so far as the consultation is concerned, the applicant also needs to comply with the following:

Regulation 11	Timetable for consultation under regulation 10 When consulting a person under regulation 10 the applicant must notify the person of the deadline for receipt of the person's response to the consultation which must not be earlier than the end of the period of 28 days beginning with the day after the day on which the person receives the consultation documents.
Regulation 12	Duty to notify appropriate authority of proposed application The applicant must supply the appropriate authority with a copy of the consultation documents as if the appropriate authority were to be consulted under regulation 10 "on or before commencing consultation under regulation 10". EDF Energy understands the appropriate authority to be the Secretary of State.
Regulation 13	This regulation required the applicant to consult the local community but was deleted by the 2015 amendment to the Regulations.
Regulation 14	Publicising a proposed application The applicant must publish a notice of the proposed application in one or more local newspaper circulating in the vicinity in which the land is situated for at least two successive weeks; once in the London Gazette and where the application relates to offshore development, once in Lloyd's List and once in an appropriate fishing trade journal. The notice must contain all of the information in Regulation 14(2) which include: details of making documents available for inspection; details on how to respond to the publicity and a deadline for receipt of responses being not less than 28 days following the date when the notice is last published. The notice must also be displayed at, or as close as reasonably practicable to, the land at a place accessible to the public. Regulation 14(5) provides that the applicant need not publish, or arrange for, a notice of a proposed application in the manner specified if they have obtained written consent of the Secretary of State.
Regulation 15	Duty to take account of responses to consultation and publicity The applicant must, when deciding whether the application the applicant is actually to make should be in the same terms as the proposed application, having regard to any relevant responses.
Regulation 16(2)(l)	Consultation Report

	When making the application the applicant must submit a consultation report giving details of what has been done in compliance with regulations 10 to 14, any relevant responses and the account taken of any relevant responses.
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Consultee Schedule

NNB GenCo have prepared a schedule of persons to consult in accordance with Regulation 10 set out above. The consultee schedule is **attached** to this letter.

In compiling this schedule, NNB GenCo has had regard to the following:

- Those who were consulted for the DCO,
- Those who were consulted for each of the subsequent non-material amendments;
- Other persons who NNB GenCo consider would be appropriate to notify of the consultation.

The attached schedule, in Excel, is split into two workbooks. One lists Statutory Consultees NNB GenCo consider are relevant to be consulted to comply with Regulation 10 and to which this request relates. The other lists non-statutory consultees whom NNB GenCo consider it appropriate to notify of the proposed change and consultation and who might want to make representations.

The list of Statutory Consultees includes all the consultees listed in column 1 of the table in Schedule 1 of the Regulations, who must be consulted in the circumstances specified in relation to each such person in column 2 of that table. Not all the circumstances apply, eg the proposed change does not affect land in Scotland, nor will the proposed change have an impact on the road network. Those Statutory Consultees NNB GenCo considers it should consult are shaded in green, those consultees not thought appropriate or relevant to consult are shaded in pale red. NNB GenCo requests written consent from the Secretary of State under Regulation 10(2) that it does not need to consult those bodies shaded in pale red within the Statutory Consultee workbook.

It is not considered that any persons would be “directly affected” by the proposed change per Regulation 10(1)(a). The landowner, Crown Estate, is included in the consultation as a Statutory Consultee. Nor is it considered that there are any persons who is within section 44 of the Planning Act 2008. As mentioned above persons or groups who might be interested in the proposal have been identified in the list of non-statutory consultees.

In addition, NNB GenCo requests that SoS confirms if there are any other persons it considers should be consulted, having regard to Regulation 10(1)(f).

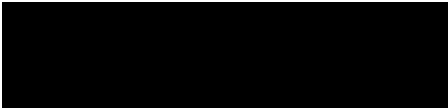
Timing of Consultation

As mentioned above under the heading “Related Applications”, NNB GenCo intend to align the start of the pre-application consultation for the DCO change application with the start of the related application to the Environment Agency to vary the Water Discharge Permit. It is anticipated that this consultation could start in early January 2018. I would therefore be grateful for a response to this request by early December if possible.



Should you require further explanation of any items raised in this letter please do not hesitate to contact me, clare.hennessey@wsp.com.

Yours sincerely



Clare Hennessey
on behalf of Carly Vince Chief Planning Officer, EDF Energy

cc Naomi Williams, BEIS