

Richard Marriott  
Office for Nuclear Development  
Department for Energy and Climate Change  
3 Whitehall Place  
London  
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3 November 2010

Dear Richard,

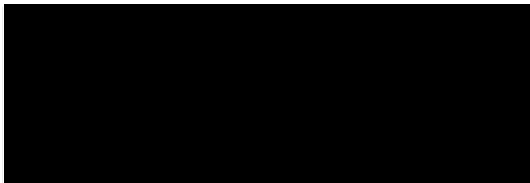
**MEETING ON 8 SEPTEMBER 2010**

Thank you for meeting with me and colleagues from ScottishPower and our parent company Iberdrola on 8 September 2010. The meeting was to discuss whether we had further points to raise, as a participant in a prospective development, on the rules concerning Funded Decommissioning Programmes, in particular the draft 'Decommissioning and Waste Management Plan' guidance and the 'Funding Arrangements Plan' guidance, both issued in February 2008. You asked if we might write setting out for the record the views we expressed in the meeting and I apologise for the delay in doing so.

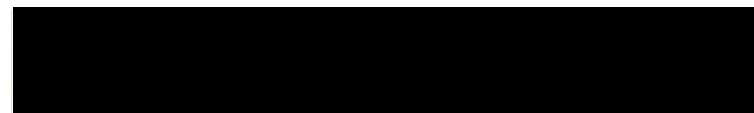
We explained that Iberdrola is partnering with GDF Suez and Scottish & Southern Energy, with a view to undertaking new nuclear build in the UK. In 2009 we acquired, along with our consortium partners, an option to develop land adjacent to the existing nuclear complex at Sellafield. We explained that because the governance of the consortium concerning representation is not yet finalised, we were speaking at the meeting only on behalf of Iberdrola, as a participant in a prospective new nuclear development.

Our comments are set out in the attached note. If you have any questions or would like to discuss any aspect of what we said further, please don't hesitate to contact me.

Yours sincerely,



**Rupert Steele**  
Director of Regulation



## **Iberdrola views given in meeting of 8 September 2010 concerning Funded Decommissioning Plans**

We fully support the principle that the new nuclear industry in the UK should meet its full costs associated with decommissioning, waste management and storage and should make adequate financial provision for this.

### **1. Energy Security and Green Economy Bill**

DECC announced in August the possible measures for inclusion in the Energy Security and Green Economy Bill. This included a reference to the Secretary of State's ability to modify a nuclear operator's Funded Decommissioning Plans and the need to ensure there was an appropriate balance between the Secretary of State's power to protect the taxpayer and the operator's need for clarity over how those powers will be exercised. We believe that operators would welcome more clarity over how the Secretary of State's powers to modify FDPs might be defined, given that guidance may not be sufficient on its own to give investors adequate clarity. We look forward, with interest, to seeing the proposed provisions when the Bill is published.

### **2. 2008 Guidance on Funding Arrangements Plan**

#### *Paragraph 5.2.6 Independence of operator*

The guidance requires that the fund arrangements must be "*independent*" of the operator where independence means "*the absence of the ability to control any aspect of the structure, governance, or operation of the Fund once it has been established*". The requirement to be independent in "*any*" aspect is a particularly difficult test to meet in practice. The addition of a materiality test in the wording may be more practical bearing in mind the purpose of the independence – ie to protect the availability of the funds (see paragraph 5.3.5).

It is, for example, accepted that the operator may appoint a minority of the directors of the fund. This implies that the operator would at least control the aspect of governance being which individuals were appointed to those positions.

#### *Paragraph 5.2.6 Sufficiency of Fund*

The guidance requires that instruments must be put in place to protect against insufficient funds "*for whatever reason*" and as such requires cover for all circumstances. It would not be possible to put in place arrangements that protect against all possible risks; for example, it would not be possible to protect against political risk. We think it would be helpful to find a suitable way to deal with this, either by providing more clarity as to the risks that would not be for the operator to bear, or by allowing for this aspect to be dealt with during installation-specific discussions between the operator and the Secretary of State.

We think that the broad concept of the fund being designed so as to ensure that the prospect of the operator's liabilities having to be met in whole or in part from public funds is remote is a good one. However, we do have some difficulty with the formulation that this risk must be remote "*at all times*" as, if some remote event were

to happen which greatly increased the liability, there might be limitations on the speed and extent of additional funding to deal with this eventuality.

#### *Paragraph 5.3 Fund structure*

The primary purpose of the Fund is to protect the tax-payer from future waste and decommissioning liability and we support this as a primary purpose. However, the guidance at present makes no reference to the need for the Fund to operate in a manner that is cost-effective. It should be permissible to place an obligation on the Fund to operate in a cost-effective manner provided this does not detract from its primary responsibility.

#### *Paragraph 5.3.4 Transfer of monies between Funds*

We would ask that DECC develops a more flexible regime which allows for the transfer of monies between individual funds in certain circumstances, particularly in relation to a situation where an operator has one aspect of the same umbrella Fund in surplus and another in deficit, and where it can be shown not to be detrimental to the wider objectives.

#### *Paragraph 5.3.5 Operator influence over the Fund*

The operator is permitted to nominate a minority of directors of the Fund but is not permitted to have any “*direct or indirect control of, or influence over, the Fund*”. However, by virtue of its employees holding director role(s) in the Fund, the operator will have at least some influence over the Fund. The drafting, at present, is internally inconsistent (and is also repeated again at 5.4.4). We think that employees of the operator may have influence, but not control, over the fund provided that this is achieved in a manner which keeps the fund in an insolvency remote position from the operator.

#### *Paragraph 5.9 Winding up of the Fund*

The guidance currently assumes that any surplus monies can only be returned once decommissioning is complete and all liabilities have been discharged. We think that there may be prudent opportunities to return surplus funds to the operator at an earlier stage, for example at the end of operations. We think that it would be inefficient to keep surplus money in the fund at that stage, and possibly a few other checkpoints, if its return can be shown to be consistent with prudent provision.

#### *Paragraph 5.10.1 FAP to be robust against change*

The guidance currently states that “*Each operator must ensure that its Funding Arrangements Plan is robust against change, including, for example any change in regulatory requirements*”. We fail to see how an FAP can be made robust against unknown and unquantifiable future regulatory change. If requirements change, it will be for the FDP to be adjusted accordingly and consequential changes made in the FAP with a view to restoring a prudent position in a reasonable time frame.

#### *Paragraph 5.10.6 Development of suitable protections*

The guidance currently states that “*the Secretary of State would expect operators to work with the financial and insurance industry to develop suitable protections*”. Although these industries may be able to develop such products, the ability to do so, other than at prohibitive cost, will depend crucially on the spectrum of the coverage

that is sought. As mentioned previously, it is also improbable that they will protect in any circumstances against political or regulatory risk, for example.

### **3. 2008 Guidance on Decommissioning and Waste Management Plan**

#### *Table 5 Assumption – Effect of Reactor Design on Base Case (operational life)*

All advanced reactors are currently designed and bought assuming a 60 year operational life, but the guidance assumes a reactor life of 40 years. International experience suggests that, for light water reactors, a lifetime of 40 years is short and there are many nuclear plants of the present generation that have been given a licence extension to 60 years, both in the USA and Europe. DECC should reconsider the information that has become available since 2008, when the guidance was first published and re-consider whether this assumption is over-prudent.

If the base case remains at 40 years, we would find it unacceptable that a developer would have to apply for an FDP based on 40 years and face the risk that at a later date the Secretary of State may object to an extension of the FDP to 60 years.

We understand that the difficulty seen by DECC in approving a 60 year base case may be that it will be difficult to give weight to the contributions to the fund in the last few years, because DECC considers that there may be limited experience of actual operation and reliability of 60 year old plant. We are considering the contrary arguments and evidence base in relation to this view.

If it is finally considered difficult to rely on 60 years, we think it may be possible to consider models where the funding of the fixed elements of the FDP is secured over a slightly shorter period than 60 years, with only the variable elements funded over the actual lifetime. Indeed, it may be possible in such a model to avoid a fixed view of reactor lifetime, and create an FDP that is robust to a range of lifetimes and that would not need amendment even if the plant life ran somewhat over 60 years.

We understand that the Secretary of State will consider FDP applications with an operational life of more than 40 years and are encouraged by that. However, our preference would be to have the base case changed to use a significantly longer facility lifetime than 40 years.

#### *Table 5 Assumptions – ILW and SF management and disposal*

There will clearly be cost efficiencies arising from having a single long-term storage facility for waste and SF rather than having one at each of the individual sites. This prudent approach to cost minimisation should be included in the base case as soon as reasonably practicable – i.e. as soon as it has been demonstrated that such stores are or can be expected to be available. We expect that the work currently being undertaken by the NDA, under contract to the NIA, will help to evidence this.

In the UK, spent fuel and waste is currently transported between facilities on a regular basis. However, if the new fleet of nuclear build is required to store spent fuel and high-level waste on site, this regular transportation will all but cease until the repository is ready to accept spent fuel and intermediate level waste. When the repository becomes available there will be a requirement to move large quantities in a short space of time. A centralised facility for the long-term storage of spent fuel and intermediate level waste would allow the transportation of these products to occur on a more regular and manageable manner.

#### *Table 5 Assumptions – SF management and disposal*

It is also important to avoid possible perverse incentives in the design of the repository/encapsulation system. Suppose there are cost trade-offs between the design of the encapsulation and the design of the repository systems. If the repository costs are covered by the fixed price, but the encapsulation costs are not, there will be an incentive for the Government to steer that trade-off so that the repository cost is minimised even if the overall most cost effective solution might be different. The Government should be obliged to consider the complete encapsulation and repository costs in the overall design.

In addition, there will clearly be cost efficiencies and waste minimisation opportunities arising from having a single national encapsulation facility rather than having one at each of the individual sites. This prudent approach to cost minimisation is not currently included in the base case but should be included as soon as reasonably practicable. We expect that the work currently being undertaken by the NDA, under contract to the NIA, will help to evidence this.

#### **4. Use of MOX in new the build fleet**

We note that there is currently no allowance for the use of MOX fuel in the Government's facilitative measures for new nuclear build. The new generation of reactors are all certified for MOX fuel and the UK is one of the few countries that have developed the technology required for manufacturing this kind of fuel. Furthermore, MOX fuel is currently used for nuclear generation in several countries including France, Germany, Belgium, Switzerland and Japan and is not considered as a major barrier to the final management of waste.

We recognise that there are some details which modify the basis of the management of waste from MOX fuel as opposed to uranium. These include the fact that, for the same burn-up, it takes longer to cool, it has a higher actinide inventory and it produces more heat as a result of the isotope concentration, but these effects can be taken into consideration and accommodated in a future repository. And of course, there are some 100 tonnes of separated civil plutonium currently held at Sellafield; the use of MOX fuel in the new build fleet could provide a beneficial outlet for this material.

It makes sense for the existing process to go forward based on a "once through" uranium fuel cycle. However, in the event that the Government wishes to permit the use of MOX fuel, the necessary facilitative actions need to be set in hand.