

Funded Decommissioning Programme Cost Recovery Scheme: Guidance for prospective new nuclear operators

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1. Introduction

- 1.1. The Energy Act 2008 (the Act) sets out the framework to ensure that operators of new nuclear power stations meet the full costs of decommissioning, waste management and waste disposal. The Act requires the operator to have in place a Funded Decommissioning Programme (FDP) approved by the Secretary of State for Energy and Climate Change before nuclear-related construction of the new power station begins. This must set out the operator's plans for decommissioning, waste management and waste disposal, estimates of the costs of these activities, and arrangements to ensure that sufficient assets will be available to meet these costs.
- 1.2 The Act allows the Secretary of State to require that the prospective operator pay a fee in relation to the cost of obtaining advice in relation to consideration of, or information required in relation to, the FDP. The Act's general provisions are further elaborated in the Nuclear Decommissioning and Waste Handling (Finance and Fees) Regulations 2011 ("the Regulations"). Specifically, the Regulations allow the Secretary of State to recover costs associated with the approval and subsequent modification(s) and reviews of the FDP.

- 1.3 This guidance is intended to provide information to nuclear operators on how the FDP Cost Recovery Scheme (the Scheme) will operate. It explains how charges will be calculated, invoiced, and the process for handling queries and disputes.

2. Cost recovery for DECC

- 2.1. Where the Department of Energy and Climate Change (DECC) incurs costs in obtaining advice in respect of an operator's FDP or proposed FDP it will seek to recover those costs from the operator. This is consistent with the Government commitment of no subsidy for new nuclear build. DECC will seek to recover those costs incurred only in the exercise of those functions under Part 3 of the Energy Act 2008.

3. Costs recoverable by DECC

- 3.1 DECC will seek to recover costs incurred by the Secretary of State when obtaining technical, legal and financial or any other relevant advice that DECC may need to procure in relation to:

- the consideration/approval of a FDP¹;
- the consideration of a modification to a FDP or a modification of the conditions to which the approved FDP is subject²;
- a review of a programme³;
- documents or information produced in response to a notice served by the Secretary of State⁴; and
- the consideration of annual and quinquennial reports produced by the operator in accordance with the Regulations.
- The fees charged pursuant to the Regulations will reflect the costs incurred by the Secretary of State in obtaining advice from the NLFAB (or any successor body), external experts or any other suitably qualified person who is independent of the operator and persons with obligations under the FDP.

4. Principles to be applied in relation to advice that falls within the scope of the cost recovery regime

- 4.1. The regulations require that the cost of such advice will be reasonably incurred. DECC will:

¹ See Section 45(8) of the Act.

² See Section 49(3) of the Act.

³ See Section 53(6) of the Act.

⁴ See Section 52(4) of the Act.

- i) apply the Government's value for money principles in accordance with HM Treasury's Managing Public Money which can be viewed at http://www.hm-treasury.gov.uk/psr_mpm_index.htm.
- ii) be open and transparent about the costs and communicate these in a timely manner.
- iii) ensure that the payment of bills received are directly attributable to the FDP submitted.

5. Nuclear Liabilities Financing Assurance Board (NLFAB)

- 5.1. The NLFAB is an advisory non-departmental public body set up in 2008 to advise the Secretary of State on the financing arrangements set out in a prospective operator's proposed FDP. In addition to advising on the approval of the FDP, the NLFAB will also advise the Secretary of State in the circumstances set out above under paragraph 3.1.
- 5.2. The costs we would seek to recover are the time and expenses of the individual members and the logistical arrangements of the NLFAB.
- 5.3. At present DECC provides independent Secretariat support to the NLFAB. Were the secretariat support to be provided by an external service provider, then we would seek to recover the costs from the operator. The role of the Secretariat is to provide support to the NLFAB so that it is able to perform its functions effectively. It serves a dual function whereby it provides both logistical and secretariat support.

6. Other advisers to the Secretary of State

- 6.1 The Secretary of State will be contracting for external advice from, inter alia, legal and financial advisers. The procurement of this advice will be open and transparent and follow the standard Government procurement procedures in place at the time. The selection criteria will be as though Government were incurring the cost itself and normal value for money principles will apply as set out in HM Treasury Guidance on Managing Public Money.
- 6.2 The Secretary of State will also be requesting technical advice from the Nuclear Decommissioning Authority (NDA).
- 6.3 The performance of the advisers will be managed as if Government were incurring the cost itself. Advisers will be expected to record time spent and expenses incurred in relation to a prospective operator's proposed FDP and charge the Secretary of State according to the contract or other arrangements in place. Where expenses incurred do not exclusively relate to an operators FDP then costs should be attributed pro-rata according to time spent .

7. Administrative and Financial Arrangements

- 7.1. DECC is responsible for the administration of the Scheme and will issue invoices to the operator, and receive payments from the operator for all chargeable activities. The

invoices will set out the costs incurred and a summary of the work provided by the third party.

8. Reporting and Invoicing requirements

- 8.1. In order to ensure the principle of open, transparent and timely communication is met, DECC will provide monthly updates to the operator, setting out what advice has been commissioned and received. DECC will also provide, where possible, a quarterly financial forecast on advice that is likely to be required; on the basis of reasonable expectation at the time.
- 8.2. Invoices detailing the costs payable will be issued by DECC within thirty (30) days of the end of each financial quarter. The four financial quarters are:
- 1 April – 30 June;
 - 1 July – 30 September;
 - 1 October – 31 December; and
 - 1 January – 31 March.
- 8.3. Payment is due to DECC within thirty (30) days of the date of the invoice and as detailed on the invoice.

9. Non-payment (or Recovery) of fees

- 9.1 The Regulations provide that where a fee is not paid within 30 days that the Secretary of State may recover it as a civil debt due to the Crown.

10. Procedure for handling Queries and Disputed invoices

- 10.1. Where an operator raises concerns about the level of fees he can raise his concerns with the Department of Energy and Climate Change. These will be first considered by the Office of Nuclear Development (OND) at DECC. They should be raised with OND no later than twenty working days after the invoice date. OND will provide a response within ten working days of receipt of a query.
- 10.2 Where this does not resolve the issue, there will be a further internal review process to investigate and try and resolve matters.
- 10.3 The above review process does not prejudice the Secretary of State's rights to ultimately pursue recovery of costs through the courts.

11. Contact for Advice and Guidance

- 11.1. Should you need advice on the operation of the charging system or have a specific query, please write to DECC at:

Office of Nuclear Development
Department of Energy and Climate Change
Area 3D
3 Whitehall Place
London SW1A 3AW
Email: fdpcostrecovery@decc.gsi.gov.uk

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