

EIR 12/1147 Response – EDF Energy’s Funded Decommissioning Programme for Hinkley Point C

Thank you for your email dated 23rd July, in which you made the following request:

All communication between senior officials and EDF Energy regarding its funded decommissioning programme for its proposed Hinkley Point C reactor.

All reports commissioned by the department assessing EDF Energy's funded decommissioning programme for its proposed Hinkley Point C reactor.

The timeframe I would set would be the last six months so from 23 January to 23 July 2012.

We have considered your request in accordance with the both the freedom of Information Act (“FOI”) and the Environmental Information Regulations 2004 (EIRs) as the information you sought disclosure of falls within the scope of both regimes.

Section 43(2) of the FOI

The information to which the FOI applies relates to correspondence between senior officials in the Department and EDF about its proposed FDP. The relevant exemption in this case is section 43(2) of the FOI which exempts information the disclosure of which would be likely to prejudice the commercial interests of any person.

This exemption in the FOI is subject to the public interest test. There is a public interest in the disclosure of commercial information in order to ensure that there is proper scrutiny of the government’s actions. However to disclose information during the period in which the Department is scrutinising EDF’s FDP will reduce trust between EDF and the Department, making the discussions between Government and EDF considerably more difficult and making EDF more reticent in engaging in a free and frank exchange of views in turn leading to poorer decision making.

In our view, given the potential impact on engagement with future operators and with EDF on the content of their FDPs, the public interest as regards this exemption lies in withholding the information.

Regulation 12(4)(d) of the EIRs

The information in question falls within the scope of regulation 12(4)(d) of the EIRs which provides that information is exempt from disclosure where it relates to information in the course of completion, unfinished documents and incomplete data.

The Department has obtained a number of reports from Non Departmental Public Bodies (“NDPBs”) which provide advice and opinion on particular aspects of EDF’s FDP submission. However these reports are all preliminary or interim reports; they are part of a process which is ongoing and the organisations in question will be providing further analysis on the same subject matter. The information which you have requested therefore relates to material which is still in the course of completion and comes within the scope of this exception.

Again we need to consider the public interest arguments for disclosing or withholding the information. As pointed out above there is a public interest in the transparency of discussions between the department and prospective new nuclear operators and in the comments of outside organisations on the proposals for an FDP put forward by EDF.

However there is an extremely strong countervailing public interest that officials have, in the process of making decisions the free space to think in which to consider issues and expert advice free from the glare of public scrutiny which the disclosure of the information in question would lead to. This is all the more acute where those issues are live and the Department’s deliberations are ongoing.

Further the Department has close working relationships with the NDPBs who have been providing advice on specific aspects of the FDP. If the information provided by these bodies were to be disclosed prematurely it is highly likely that these organisations would be more reticent in providing their views in the future if they felt the information they had provided was to be disclosed prematurely and before their final views had been received.

Given these considerations are view is that the public interest lies in withholding the information in respect of this exception.

Regulation 12(5)(e) of the EIRs

The information in question also falls within regulation 12 (5)(e) of the EIRs. This provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. confidentiality of commercial or industrial information.

Again we need to consider whether the public interest lies in maintaining or disclosing the information. As already identified above there is a public interest in transparency regarding engagement between the government and prospective new nuclear operators.

However there is also a countervailing public interest in protecting the economic interests of organisations who have provided information to the Department as an element of their negotiations. There is also a high public interest in preserving confidentiality in order to retain the trust of the parties with whom the government is currently in negotiations with. If the Department were to disclose the information contained in the reports it has received from organisations it would undermine the

relationship that it currently has with EDF and would adversely affect the course of the FDP scrutiny process. Further disclosure of the information in this case and at this stage would also impact on its relationships with other potential nuclear new build operators who would be less willing to engage with the government if they were aware that information concerning their proposals and analysis of those proposals might be disclosed during their formative stage.

Further the public interest arguments cited in respect of withholding information in the reports prepared by the NDPBs in respect of regulation 12(4)(d) are also relevant here.

Giving these considerations our view is that in respect of this particular exception the public interest lies in withholding the information.

In due course however, information relating to the Funded Decommissioning Programme for Hinkley Point C will be placed in the public domain.

In conclusion I am afraid that we the Department is unable to disclose the information that you have requested.

If you are unhappy with the way the Department has handled your request, you may ask for an internal review. Please contact the DECC Information Rights Unit (foi@decc.gsi.gov.uk) who will arrange an internal review of your case. Under Regulation 11(2) this needs to be done no later than 40 working days after the date of this letter.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF