RESPONSE TO THE CONSULTATION DOCUMENT ON THE FINANCING OF NUCLEAR DECOMMISSIONING AND WASTE HANDLING REGULATIONS

Introduction

Horizon Nuclear Power

1. Horizon Nuclear Power (HNP) welcomes the opportunity to respond to the Government's consultation on the Financing of Nuclear Decommissioning and Waste Handling Regulations (the "Regulations Consultation").

2. HNP is a joint venture between E.ON UK and RWE npower. We aim to develop and construct around 6GW of new nuclear power station capacity in the UK and have already acquired interests in land at Oldbury in Gloucestershire and Wylfa on Anglesey in Wales. We have also concluded grid connection agreements for both sites.

Executive Summary

3. The progress being made in relation to issues surrounding nuclear waste and decommissioning through the publication of this Regulations Consultation and the consultation on a Fixed Unit Price Methodology and Updated Cost Estimates is an important step in enabling potential new nuclear operators to continue working on the development of their projects. Specific aspects of the Regulations Consultation which give us concern are summarised further below in this Executive Summary and in more detail in the main body of our response.

Availability of Information

4. In addition, we are concerned that only relatively limited information is available to potential operators at this stage and that, depending on the state of progress of any individual project, operators will only have had a limited opportunity to carry out verification of some of the issues raised in the Regulations Consultation. We recognised, however, that a final investment decision to proceed with a new nuclear project is not likely to be taken until a later stage when there is greater clarity in relation to the whole range of factors affecting new nuclear build, not just in relation to waste and decommissioning but also for example, in relation to the planning regime and process.

Cost Recovery Proposals

5. We welcome the cost recovery proposals but would ask for greater transparency as regards calculation of the proposed costs and further clarification as regards the terms of draft regulation 4.

Independent Verification

6. In relation to the independent verifier, amongst other matters, we would ask for further clarity about the objective criteria for selecting an adequately qualified verifier. We would also query the scope of third party verification, in particular the appropriateness of verifying the 'prudence' of a provision as well as the verifier's obligation to recommend "necessary recommendations" pursuant to Regulation 5(8).

Materiality Threshold

7. We broadly agree that the proposed materiality threshold is set at an appropriate level. However, we believe that the method for calculating cumulative modifications is not practically operable and would, in addition, propose a de minimis concept.

Designated Technical Matters

8. As regards designated technical matters, we would propose a narrower scope of designations as certain matters will be subject to operational decisions which will only be made at a much later stage.

Reporting Periods

9. We agree that the quinquennial reporting period is appropriate but feel that an annual report would be too frequent. We would propose that only a quinquennial report is necessary, with the proviso that an additional report should be delivered to the Secretary of State where exceptional circumstances arise during a quinquennial period that might warrant such a report, and with the effect of re-setting the quinquennial period for the next quinquennial report. Further to this, we would propose a six-month timescale for submitting the quinquennial report.

Financing of Nuclear Decommissioning and Waste Handling Regulations

10. Our responses to the specific consultation questions appear below and follow the numerical order of the questions as they appear in the Regulations Consultation document.

Consultation Questions on the Financing of Nuclear Decommissioning and Waste Handling Regulations

Section 2: Cost Recovery

Q1: Do the proposals create a transparent and effective means of recovering the costs incurred by the Secretary of State in relation to the matters described in Table 1?

11. We welcome the proposal to create a transparent and effective means of recovering the relevant costs and believe that setting maximum fee levels is useful. However we would be grateful for further transparency as to how the proposed costs have been calculated. The consultation paper notes that the proposal was arrived at after considering the costs associated with other regulated industries such as the offshore oil and gas industry, but we have been unable to identify any equivalent cost model in publicly available information.

12. We have also identified a number of specific areas where some clarification may be required in the terms of draft Regulation 4: please see below, at the end of our response to the question headed "General Comments".

Q1: Could the cost proposals be improved to enhance their transparency and effectiveness?

13. We believe the proposals should (i) only permit the Secretary of State to recover his reasonable costs; and (ii) require the Secretary of State to provide full transparency as to how the total costs have been arrived at (e.g. by providing the operator with documentary evidence substantiating the breakdown of actual costs incurred).This would ensure that the amounts to be passed through to operators do not include any unnecessary items or profit element.

14. In relation to draft Regulations 4(4) and 4(6), these regulations refer to the "costs of" the Secretary of State, whereas the consultation document refers to "costs incurred by". As noted above, we also believe that there should be further clarification of what constitutes "costs", and, in particular that this should be limited to "reasonable costs incurred by" the Secretary of State.

Q1: Is the proposed maximum fee set at a suitable level?

15. We believe the proposed maximum fee is set at a suitable level.

Q1: General comments

We have the following specific comments on the drafting of Regulation 4:

(i) Regulation 4: The reference to section 49, which refers to section 48, includes both modifications requested by operators (or any other person who has obligations under the programme) and those proposed by the Secretary of State.

As drafted, it is unclear as to whether or not regulation 4 also applies to a modification proposed by the Secretary of State. The timing for the payment of the basic fee is linked to the time when the relevant documents are delivered to the Secretary of State (regulation 4(3)(b)). However, if a proposal is made by the Secretary of State, the relevant documents will be delivered to the operator by the Secretary of State and, in this case, clearly no document will need to be delivered to the Secretary of State by the operator pursuant to section 49(2)(a).

We do not believe that the operator should pay the Secretary of State's costs in relation to obtaining advice for making a proposal.

(ii) Regulation 4(1): The reference to "49(2)" is incorrect and should be changed to "49(3)".

(iii) Schedule: The text in the second column relating to section 49(3) is incorrect and should be replaced by the appropriate text from Table 1 of the consultation document.

(iv) Schedule: In the row relating to section 53(6), only a section 53(5) information request is referred to. Is the intention that no fee should be payable in relation to a s53(2) request (we note that no reference was made to s53(2) in the main body of the consultation document)?

Section 3: Independent third party verification

Q2: Do the proposals create an effective framework for verification to take place? Are the responsibilities and requirements clear? Is it clear how the Secretary of State would expect the verification to take place?

We have a number of queries in relation to the independent verifier:

16. It would appear that, since the Secretary of State will be able to rely on the verification, the verifier will owe a duty of care to the Secretary of State. We believe that this may impact on the terms of business (in particular fees, limitation of liability, etc.) required by potential verifiers. We would therefore propose that the regulations provide that a verifier's liability be capped at a level of, say, twice the fee charged, in order that operators may obtain services from verifiers at a reasonable cost.

17. The draft regulations do not set out objective criteria for the verifier. It is not clear whether the Secretary of State would be able to reject verifications on the basis that it is not satisfied that the verifier is adequately qualified, or, if he did so, what would be the consequences for the operator.

18. Regulation 5(2) in essence states that the verification must cover (a) the cost estimates of the designated technical matters; and (b) the level of prudence for the financing of the designated technical matters. Whilst it is possible and should also be practicable for a third party to verify the cost estimates and to opine on whether or not a prudent provision has been made as far as the amount of costs is concerned, it is more problematic for a third party to be able to verify and opine on the structure of (or any structural issues relating to) the fund. We would anticipate that the determination of an acceptable fund structure will be subject to agreement between government and the operator and should not be something that a third party should be able to review further. Therefore we believe this should not be within the scope of third party verification.

19. We have concerns with the definition of "necessary recommendations" in Regulation 5(8) and, in particular, the obligation on the verifier to recommend further improvements to the level of prudence adopted by the operator. The verifier's role should not be to make value judgements in relation to decisions taken by the operator, but rather to confirm the operator's compliance with the requirements of the Energy Act 2008. Thus, if the operator's provision is already "prudent", a third party should not be allowed to suggest "improvements", particularly if these could become requirements on the operator. The verifier should be permitted to make suggestions as to how what is proposed should be improved to get over the hurdle of what is prudent, but beyond that, the verifier should have no further role. Sections 46 and 49 of the Energy Act simply require "prudent provision" – not "very prudent" or any other specific level of prudence.

Section 4: Modifications to an approved programme

Q3: Given the checks and balances in place, (annual and quinquennial reviews, independent verification, and in extremis, the Secretary of State's power to modify), is the proposed materiality threshold set at a level that will capture strategic changes to the FDP but still protect the taxpayer?

20. We broadly agree that the proposed materiality threshold is set at an appropriate level.

Q3: Is the proposed approach for the notification of modifications to a FDP that are below the materiality threshold a reasonable one?

21. We do not believe that the process set out for cumulative modifications is sensible or practically operable. The effect of the proposal appears to be that only the modification that takes the cumulative change over the 5% threshold requires prior approval. Depending on the circumstances, this could mean in certain circumstances, for example, that a modification with a 0.1% change would need approval whilst a modification with a 4.9% impact would not and we assume it is not intended that previous modifications should have an ex-post approval requirement. We would propose that the requirement in relation to modifications below the 5% threshold should be one of notification only.

22. In addition, a de minimis concept should be introduced so as to disregard for all purposes any insignificant modifications and to avoid imposing an undue burden on operators. Given the likely size of the fund (running into billions of pounds) we would consider a de minimis level of £500,000 to be appropriate.

23. In relation to draft Regulation 6(3)(b), the word "financing" should presumably refer to "financing arrangements", as mentioned in paragraph 4.17 of the consultation document.

Q3: Does the definition of the content of a funded decommissioning programme in draft regulation 3 accurately define the liabilities to be captured by the modification?

24. We do not have any comments.

Section 5: Designated technical matters

Q4: Do the proposed designations strike the right balance between protecting the taxpayer on the one hand whilst avoiding undue administrative burdens to the operator?

25. We believe that the scope of the designations is too broad. We accept that anything for which consent has been given should be included, but since other matters will be subject to operational decisions in the future, we do not believe that it is appropriate to second guess at this stage whether, for example, interim on-site storage facilities should be included in the designation.

Section 6: Reporting requirements

Q5: Is an annual and quinquennial reporting period appropriate?

26. We believe that a quinquennial reporting period is appropriate but that an annual report is too frequent and therefore unnecessary. However, we appreciate that circumstances might arise during a quinquennial period that might warrant a report to be submitted to the Secretary of the State (e.g. a reduced payment to the fund) and if such circumstance occurs, an additional report should be delivered on an exceptional basis. We would propose that this should have the effect of re-setting the five year period for the next quinquennial review.

27. Whilst at least the first quinquennial period may commence on approval of the FDP, we believe that going forward, reporting periods should be synchronised with the commencement of commercial operations, so as to link in with the periodic safety reviews required by the Nuclear Installations Inspectorate.

Q5: Are the timescales for submitting the reports adequate?

28. We believe that the timescale for submitting the reports is too short, even on the assumption that much of the work will have been prepared prior to the end of the quinquennial period, and propose that a period of six months following the end of the period is more appropriate.

Q5: Is there any additional information that should be included in either report?

29. We do not have any comments.

Q5: Given the nature of the liabilities and the content of the quinquennial report, should the in-depth quinquennial review be undertaken on a more frequent basis? If yes, what are your reasons for undertaking a more frequent review and when should they take place?

30. Save as noted in paragraphs 25 and 26, we do not believe that an in-depth review should be carried out on a more frequent basis than five-yearly.