SCOTTISHPOWER

Rupert Steele OBE
Director of Regulation

Ailsha Dilmohamed
Office for Nuclear Development
Department of Energy and Climate Change
3 Whitehall Place
LONDON
SW1A 2AW

22 June 2010

Dear Ailsha,

CONSULTATION ON THE FINANCING OF NUCLEAR DECOMMISSIONING AND WASTE HANDLING REGULATIONS

Thank you for the opportunity to respond to DECC's consultation on the Financing of Nuclear Decommissioning and Waste Handling Regulations.

ScottishPower is the main UK business of Iberdrola, one of the world's leading utilities. Iberdrola is a major producer of nuclear power in Spain and 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 are broadly supportive of the draft regulations, but the attached response asks that the Government further consider a number of points. In particular:

- The requirement for a fully verified annual report seems excessive. While this procedure should be available by exception, we believe that it would be normally adequate to rely on the quinquennial review. Any routine annual report should be much simpler and not subject to verification.

- We agree that the *in extremis* exception to section 49 is necessary. However, the regulations should make it clear that the exception also applies if continued *operation* of the reactor(s) without the change would cause the relevant breach. Otherwise operators could be faced with lengthy shutdowns while the Secretary of State considered an emergency FDP modification. Such shutdowns would make financing the liabilities more, not less, difficult.

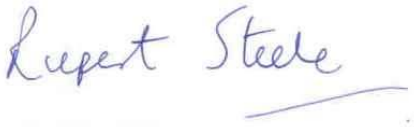
- It is not necessary for all interim stores to be treated as a designated technical matter. Provided that at all times there is sufficient long term storage in place for all the fuel that has been discharged from the reactor, or is loaded in the reactor, that is sufficient. Accordingly, interim storage that is not constructed as part of the

ScottishPower 1st Floor, 85 Buckingham Gate, London SW1E 6PD
Telephone (020) 7651 2000, Fax (020) 7651 2001, Direct (020) 7651 2012
rupert.steele@scottishpower.com www.scottishpower.com

station need only be considered a designated technical matter where the remaining capacity falls below, or is at risk of falling below, that level.

Please contact me (using the details printed on the previous page) or Lynn Wilson (on 0141 568 5054) if you have any questions.

Yours sincerely,



Rupert Steele
Director of Regulation

CONSULTATION QUESTIONS

1. 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? Could the cost recovery proposals be improved to enhance their transparency and effectiveness? Is the proposed maximum fee set at a suitable level? In answering these questions please give your reasons.

We are broadly supportive of the proposals as being transparent and effective. However, the transparency could be improved by two measures:

(a) We would like to have confirmation that the normal public procurement rules will apply and that, in deciding the need for and procuring the services, Government would act in a manner as if it was spending its own money. This would assure developers that the Government will properly seek value for money when securing third party services, in order to obtain the necessary advice while avoiding unnecessary expenditure;

(b) The Government should wherever practicable notify the operator of any third party services (specifying the scope of work and the costs) that it intends to engage, in advance of engagement. This would give operators an early indication of future costs for budgeting purposes and would allow any serious conflicts of interest or other issues to be flagged up.

The inclusion of caps on the supplementary fees is welcomed as a further discipline on costs and we think that the levels are reasonable. We believe that the Government should confirm that it intends to adjust the fee levels (and maximum fee levels) only by reference to inflation and that any wider change would be wholly exceptional.

2. 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?

It is important to be clear what is meant by "verification" given that much of the information that Government is proposing should be covered is forward looking and therefore comes down to a matter of opinion and not of fact. This is not necessarily a problem provided all parties recognise that it is an opinion that is being provided on whether the operator's assumptions are prudent, not a proof that the assumptions are correct. It would be helpful if Government could make this explicit.

The verifier can have significant influence on technical and other solutions, without bearing the costs. It would not be in the interests of the industry or general public if particular verifiers develop controlling market positions through goodwill and reputation as this could leave them essentially controlling thinking in this area. It may be worthwhile to consider some broad measures to counter this possibility.

Article 5 (8) of the regulations refers to the definition of "necessary recommendations" as follows:

> *(8) In this regulation "necessary recommendations" means recommendations made by the verifier, that in the verifier's view would further improve the prudence of the matters set out in paragraph (7)(e).*

We understand "prudence" to take into consideration the appropriate level of caution (i.e. sufficient but not excessive caution) in estimating costs. It is unclear to us whether the requirement to "*further improve the prudence*" is intended to get closer (whether by increasing or reducing the estimates) to that appropriate level or whether the verifier is required to consider increasing the level of caution, potentially to a level that is more than

appropriate and could therefore be considered excessive. In a third alternative, the drafting may simply be referring to further matters that would be viewed as being prudent measures. We would welcome clarification on this point; perhaps a better form of wording would be as follows:

> *(8) In this regulation "necessary recommendations" means recommendations made by the verifier, that in the verifier's view would be desirable to ensure the matters set out in paragraph (7)(e) are prudent.*

3. It is Government's intention that only changes that meet the definition of the materiality threshold should require the Secretary of State's prior approval. 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?

The proposals for materiality appear to be satisfactory.

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

The proposals appear to be satisfactory.

Draft Regulation 6(2)(a) states that a change to an operator's decommissioning/waste management liability or a change to its waste disposal liability of >±5% of the current net present value, as adjusted from time to time for inflation, will trigger a modification of the FDP. We take this to mean that changes in the inflation assumptions do not trigger a revision of the FDP and the test is whether the real terms NPV of either component moves by more than 5%.

We are however unsure whether the text of the Regulations as drafted achieves this. There does not appear to be a definition of "net present value" nor is it clear what inflation adjustments are assumed in "from time to time". We would be grateful if you could review the Regulations to ensure that they work as intended – and either change them to clarify this point or provide some explanation as to how they should be interpreted.

We welcome the decision to provide for an *in extremis* process where changes to the FDP can be made ahead of review by the Secretary of State where this is necessary for regulatory or statutory compliance. It is important that this also applies if continued *operation* of the reactor(s) without the change would cause the relevant breach. Otherwise operators could be faced with lengthy shutdowns while the Secretary of State considered an emergency FDP modification. Such shutdowns would make financing the liabilities more, not less, difficult.

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?

Linking the regulations to the legislation appears to be satisfactory.

4. Do the proposed designations strike the right balance between protecting the taxpayer on the one hand whilst avoiding undue administrative burdens on the operator? Please give your reasons.

No. The defined designated matters cover the construction and maintenance of interim stores (excluding such stores constructed as part of the station). If further interim stores are required during the life of the plant, it appears sensible in general to treat them as an integral part of the plant's operations (in the same way as refuelling will be) and also

exclude them from the designated technical matters. The costs of construction, management and maintenance should therefore be normal operational expenditure and not form part of the Fund. The exception is the amount of interim storage needed for any spent fuel in short term storage and any fuel loaded in the reactor. To the extent that the available interim storage was less than that level or at risk of being less than that level, it would be reasonable for this to be considered a designated technical matter.

Once the plant has shut permanently and generating revenues have ceased, the operating costs of stores on the site can only be met from the decommissioning funds if their continued viability is to be assured.

5. Is an annual and quinquennial reporting period appropriate? Are the timescales for submitting the reports adequate?

Analysis in the nuclear area tends to be very thorough and it may be difficult to conclude any thorough technical or financial analysis on an annual timescale. We therefore suggest that any requirement for an annual report should be streamlined essentially to be a list of relevant developments over the year and that verification is not required.

The timescales for submitting the reports look fairly tight, especially if verification is required. We envisage that operators would start writing the report well before the end of the period in question, but it could be very difficult to comply if a major issue arose in the last month of the period under review. We think that it would be prudent to allow an additional month for each type of report.

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

We have no suggestions.

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?

We have no reason to believe there is any requirement for more frequent reporting. The combination of quinquennial reports and the provision for review if the materiality threshold, is exceeded – together with the long term nature of a nuclear plant – provide a high level of assurance that material changes in the FDP will be assessed in good time to ensure that financing is not put at risk.