

Nuclear Liabilities Financing Assurance Board (NLFAB) Terms of Reference for the Sizewell C Project

Context

1. The Energy Act 2008 creates a framework by which operators of new nuclear power stations are required to make prudent provision to meet the full costs associated with decommissioning and their full share of waste management and disposal costs. To achieve this, the Energy Act 2008 requires any prospective operator of a new nuclear power station to have a Funded Decommissioning Programme (“FDP”) in place before the commencement of construction, which is approved by the Secretary of State, and to comply with this programme thereafter.
2. The FDP submitted by NNB Generation Company (SZC) LTD (“SZC”) is the second submission of an FDP in the UK made to the Secretary of State (“SoS”). The first FDP was presented by NNB Generation Company (HPC) Limited (“HPC GenCo”) in 2015 in respect of its proposed new nuclear power station at Hinkley Point C (“HPC”). It is the responsibility of the SoS to approve or reject the FDP, subject to the statutory obligation to exercise their power with the aim of securing that prudent provision is made for the technical matters (as defined in the 2008 Act).
3. The Government has published [guidance](#) (the “FDP guidance”) in order to assist operators in understanding the provisions of the Energy Act 2008, and what is expected for an approvable FDP. The FDP guidance sets out principles which the Secretary of State would expect to see satisfied in the FDP prepared by the operator. It is noted that the FDP guidance is non-prescriptive and contemplates that different operators may satisfy the objective and guiding factors set out in the FDP guidance in different ways.
4. The NLFAB is an expert committee which was established in 2009 to give independent advice to the SoS on the FDP submitted by HPC GenCo, specifically on the Funding Arrangements Plan (“FAP”). The NLFAB was then disbanded in 2015/2016 following the SoS’ decision to approve the FDP for HPC. The advice which the HPC NLFAB submitted to the SoS is publicly available and is available on the Government website. These Terms of Reference are applicable to the newly constituted NLFAB which have the responsibility for reviewing the FAP submitted by SZC, subject to the “scope” and “Responsibilities” section detailed below. Once the NLFAB have submitted their advice to SoS and the SoS has taken a decision on the SZC FDP, the SoS will consider whether the terms of reference for the NLFAB

should be amended with consent of the panel to support other projects, or whether this iteration of the NLFAB should be disbanded.

NLFAB's responsibilities and scope

Responsibilities

5. The Nuclear Liabilities Financing Assurance Board (NLFAB) shall be established and maintained by the Department for Business, Energy and Industrial Strategy (BEIS).
6. The Board will provide independent advice to the Secretary of State for Business, Energy and Industrial Strategy ("BEIS"), on the suitability of the FAP forming part of the FDP submitted by SZC for approval by the Secretary of State as required by the 2008 Act, in accordance with the terms set out in this Terms of Reference.
7. The Board is an advisory body and may only provide advice on matters requested under these Terms of Reference or as otherwise requested by BEIS officials.
8. Subject to the Scope set out below, where appropriate the Board shall provide advice to the SoS to support their decision-making as to whether the FAP has met the following factors as set out in the FDP guidance:
 - Provides a clear structure;
 - Contains robust cost estimates which take due account of risk and uncertainty;
 - Is transparent;
 - Contains clear terms and clear divisions of roles and responsibilities;
 - Is a durable arrangement; and
 - Sets out a Fund structure that demonstrates:
 - i. Independence of the Fund
 - ii. Measures to ensure sufficiency of the Fund
 - iii. Restrictions on the use of the Fund Assets; and
 - iv. Insolvency remoteness
9. It is an expectation that the Board's advice will be made public, subject to the exclusion of commercially sensitive and national security information where

necessary. It is the requirement of the Board to set out clear rationale for its findings and positions.

10. The FAP is expected to set out details of any security to be provided as per the Energy Act 2008 and FDP guidance in relation to meeting the estimated costs of carrying out plans set in the Decommissioning & Waste Management Plan (DWMP).
11. The Board will be expected to provide the following advice to BEIS:
 - As requested, progress reports to the Secretary of State on the status of the panel's advice, ahead of submitting final advice to the Secretary of State (further detail in Annex. A);
 - Final advice to Secretary of State following receipt of the final version of the FAP, to be provided against a timescale as agreed between BEIS and the NLFAB in their engagement timeline; and
 - Advice as and when requested by the BEIS Secretary of State or BEIS officials (which will require an open dialogue to be maintained during the NLFAB's performance of its role).
12. Any advice, decisions or inputs required from the Board in accordance with these terms of reference shall be provided efficiently and in a timely manner.
13. For the purposes of assessing the FAP, the Board may commission external advice where appropriate and required. Should the NLFAB consider that advice is required, the Board may inform BEIS to consider and procure as appropriate against the terms of reference as set out above. Further detail on commissioning external advisors can be found in paragraphs 37-38 below.
14. The Chair shall also report the Board's conclusions, in writing, to the relevant operators.

Scope

15. Certain terms of the FAP are dependent on the proposed terms of the RAB licence conditions and the proposed financing arrangements for SZC. The Board has been provided with a detailed explanation of the proposed RAB structure and financing arrangements (which remain subject to negotiations and all relevant approvals). Where these explanations do not directly relate to the FDP, the Board shall treat these as settled and not comment on them unless BEIS or the Secretary of State specifically requests this.
16. The Board's remit is to advise only on the suitability of the FAP (in accordance with the Responsibilities section above and this Scope section).

17. The Board will not advise or comment on, and will assume for the purposes of their advice that the Secretary of State is satisfied with, the remainder of the Sizewell C FDP including, but not limited to the terms of the DWMP, the Waste Transfer Contracts, Section 46 Agreement, and ancillary documentation related to the RAB.
18. BEIS have formally instructed the Nuclear Decommissioning Authority (“NDA”) to provide advice to the Secretary of State pursuant to section 7(4) of the Energy Act 2004 on the DWMP sent to BEIS from SZC. As part of this review, the NDA are also responsible for engaging with BEIS on the proposed Waste Transfer Contract. The NDA are responsible for the cost estimates that sit within these documents. The DWMP and Waste Transfer Contract will be made available to the NLFAB when and if appropriate. It is beyond the scope of the NLFAB to review these documents, except where these have relevance to the NLFAB’s assessment of the FAP against these terms of reference.
19. The SZC project is intended to be a replica of the Hinkley Point C (“HPC”) project and will replicate the approach to its FAP. However, the SZC project will utilise a RAB funding model and there will be specific features of the SZC FAP which will differ from HPC. The Board is therefore asked to look at the SZC FAP in its entirety, but with particular focus on the RAB related features which relate to the funding of the FDP, and that these meet the requirements set out in the Energy Act 2008 and FDP Guidance. Subject to scope the Board will be asked to look at how the RAB structure interacts with the FDP in certain scenarios which will be set out by BEIS, these scenarios are not intended to be exhaustive or prescriptive and the Board are free to identify and evaluate alternative scenarios where appropriate. In addition, the Board will be asked to look at the structure of the independent Fund Company (“FundCo”) responsible for the management of the Fund. Where appropriate, the Board will be signposted in a marked-up annotation of the SZC FAP where advice is required. The Board should have in mind that the Government is comfortable with the replication strategy employed between HPC and SZC, when reviewing those aspects of the FAP which are identical to HPC.
20. Any advice which the NLFAB provides to the Secretary of State will be used to support the SoS’s overall decision-making process when deciding whether to approve (including with modifications or conditions if considered appropriate) or reject the FDP submitted by SZC. When making this decision, the Secretary of State will take into account all relevant information, including (but not limited to) the advice provided by the NLFAB.

Assumptions

21. The Board may be asked to provide advice to the Secretary of State on the basis of certain assumptions with regards to the RAB structuring. It is outside the scope of the NLFAB to comment on these matters, for example on the special administration regime or the limbs of the Government Support Package (“GSP”) apart from where they directly relate to the NLFAB’s consideration of the FAP. The expectation is that the Board will consider these matters as settled as per the evidence provided by BEIS. In any circumstances when these assumptions no longer apply, the Secretary of State will seek further advice, if appropriate, as to the suitability of the FAP.

Membership

22. The Chair and Members of the Board are nominated by the Secretary of State for Business, Energy & Industrial Strategy.
23. There shall be 3 members including one Chair. The Board will be composed of personnel with a range of relevant skills and expertise such as energy law and regulation, infrastructure finance and nuclear decommissioning. Members will be appointed through an open and competitive process that is in line with good practice for public appointments.
24. BEIS will provide the NLFAB with a dedicated Secretariat, consisting of one FTE, who will take minutes of the meetings which will be approved by the Board.
25. As set out in their terms and conditions, Members of the NLFAB will be appointed on a part-time basis. Initial appointments of all members, including the chair, will be for one year. Contracts can be renewed by BEIS as deemed appropriate. Sponsoring Ministers retain the right to terminate appointment at any time in light of individual members’ performance, changes in the Board’s work requirements or completion of the work required.
26. In order to maintain the Department’s high standards of public life, any appointments made by the Secretary of State may be terminated in the event that an appointee is convicted of a criminal offence and/or where the Secretary of State believes that the appointee’s conduct means that he/she is no longer a suitable person for the office of the NLFAB.
27. The Department for Business, Energy & Industrial Strategy will remunerate the Chair and Members for their work for the Board.

Ways of working

General working

28. The NLFAB will fulfil its functions by convening over video conference, as required, to give careful consideration to matters brought before it by BEIS.
29. A majority decision is required for the Board to form an official view. The Chair should determine and document a process they deem to be transparent, effective and efficient.
30. Where the full board cannot be convened and urgent action is required, the Chair has the authority to act in conjunction with any other NLFAB member(s) as they deem fit to address the matter. In the absence of the Chair, another member (chosen by the available members) may chair the meeting. The Chairperson of the meeting shall exercise any power or duty of the Chair of the NLFAB in relation to the conduct of the meeting.
31. Each member shall have the right to vote in a debate where a vote is deemed necessary. In the event of a no majority decision, the Chair shall have a second or casting vote, whether or not he/she has previously voted on the matter.

Engagement with FDP negotiations and reviews

32. NLFAB's engagement with review processes will be set out in an engagement plan, developed by BEIS, before the commencement of such events. The engagement plan will define the requirements of the NLFAB members with respect to notice periods to convene meetings and timing to prepare the progress update report and final NLFAB advice to the SoS.
33. The expectation is that the Board will not be involved in any negotiations of the FAP between BEIS and the operator, but will be asked to review the final or near final version of the FAP and prepare the progress update report and final NLFAB advice. The NLFAB may call upon the Operator to seek clarification of content within its FAP. BEIS will facilitate and attend any conversations as required. This will be set out in more detail in the engagement plan. Notwithstanding this, BEIS may request the Board's advice prior to the submission of the final or near final version of the FAP to assist in its development.
34. The engagement plan will be prepared with the aims of ensuring the NLFAB is able to provide independent scrutiny of the FDP proposals, whilst ensuring that negotiations and review events can continue apace and the NLFAB can remain agile.

35. Board engagement and meetings will be agreed well in advance and papers submitted ahead of meetings, albeit the Board will be expected to demonstrate a degree of flexibility in order to incorporate negotiation and review timetables.

Commissioning external advice

36. To preserve its independence, the Board should not engage with parties involved in the reviews processes, except where engagement is required in order to provide advice on instructed matters. All engagements should be arranged through the NLFAB Secretariat, which in turn must ensure it follows the relevant BEIS governance processes and documents such engagements appropriately.
37. The Board may also commission external advice as it deems reasonably appropriate. This must be agreed in advance with the secretariat, including the costs of said advice and how this will be paid for. Should this be necessary, BEIS will consider the request of the NLFAB and procure as appropriate as set out in paragraph 14 of these terms of reference. Commissioning of any such work must be executed through the NLFAB Secretariat which in turn must ensure it follows the relevant BEIS governance processes and documents the process appropriately.

Declaration of interest

38. The members of the Board must declare any personal or business interests which may, or may be perceived to, influence their judgements in performing their functions. The NLFAB Secretariat will keep a register of interests which members must ensure is kept up to date.
39. If a particular matter gives rise to an actual or potential conflict of interest, members are required to inform the Secretariat in advance and withdraw from discussions or consideration of the matter where this is considered necessary.

Annex A.

Ask of Panel – Request for Progress Update

40. In accordance with the Responsibilities and Scope section of this document, the NLFAB will, in addition to final advice submitted to Secretary of State, be expected to provide BEIS with a progress update report.

Progress Update Report

- This report will be provided by the NLFAB once they have had opportunity to commence an initial review of documentation received from BEIS. It is expected that this will include a draft FAP submitted by the Operator.
- It is not expected that the NLFAB will have conducted their review in detail, nor at this point are the NLFAB expected to have begun drafting their final advice to the SoS.
- The purpose of this report is to update BEIS on the progress made by the NLFAB, flag if there are any immediate concerns with the documentation received and if anything additional is required in advance of submitting final advice to the Secretary of State.
- The NLFAB will be expected to look at the prudence of the RAB arrangements and those elements of the FAP which are specific to SZC when producing the progress update report. The Board will not be asked to provide a view on the totality of the FAP at this point.
- It is expected that this report will be used by BEIS to feed back through our internal governance structure and update key departmental stakeholders on the progression of the NLFAB's work.
- The NLFAB may produce this report in a style and format that they consider most appropriate.