

Nuclear Energy (Financing) Act 2022: Statement for the purposes of section 7(6)

1 Introduction

- 1.1** This statement is made under section 7(6) of the Nuclear Energy (Financing) Act 2022 (“**NEFA**”). It sets out the procedure the Secretary of State expects to follow in determining whether to exercise the power under section 7(1) of NEFA.
- 1.2** Section 7(1) of NEFA gives the Secretary of State the power to modify a condition of a relevant licensee nuclear company’s (the “**licensee**”) electricity generation licence where they consider the circumstances described in section 7(2) of NEFA apply.
- 1.3** The Secretary of State’s licence modification powers under section 7(1) of NEFA are subject to prior consultation on proposed modifications pursuant to section 8(1) of NEFA.
- 1.4** The circumstances under section 7(2) of NEFA are that:
- a) the total expenditure expected to be incurred by the licensee in order to complete the construction of the nuclear project is likely to exceed any cap on such expenditure included in its electricity generation licence; and
 - b) in consequence of paragraph (a), an adjustment is needed in relation to how the licensee’s allowed revenue is to be calculated.
- 1.5** Subject to paragraph 1.6, this statement may be reviewed and updated by the Secretary of State from time to time.
- 1.6** The Secretary of State shall consult with the licensee and any other stakeholders likely to be materially affected by any amendments (excluding any minor or administrative amendments) to this statement prior to amending this statement.
- 1.7** References in this statement to sections are to sections of NEFA.

2 Applications

- 2.1** A licensee may submit an application (an “**IAR Application**”) to the Secretary of State asking them to modify its electricity generation licence pursuant to section 7(1) where the total expenditure expected to be incurred by the licensee in order to complete the construction of the nuclear project is likely to exceed the cap set out in the special conditions of its electricity generation licence.
- 2.2** Any application pursuant to paragraph 2.1 must be supported by details of:
- 2.2.1** the amount of capital spend in excess of the cap the licensee expects to incur in the period prior to completion of construction of the nuclear project, up to and including the commercial operations date, in current GBP prices which the Secretary of State is being asked to approve;
 - 2.2.2** the total expenditure expected to be incurred by the licensee in order to complete the construction of the nuclear project in current GBP prices, and the assumptions on which this is based;
 - 2.2.3** any expenditure accounted for under paragraph 2.2.2 which constitutes or is expected to constitute capital or operational spend which would not be considered

allowable under any restrictions in the special conditions of the licensee's electricity generation licence;

- 2.2.4 the current cap as set out in the licensee's electricity generation licence in current GBP prices;
- 2.2.5 the reasons why the licensee does not expect to be able to manage its expenditure within the existing cap;
- 2.2.6 the licensee's plan to achieve commercial operations including how this relates to the expenditure assumptions provided under paragraph 2.2.2;
- 2.2.7 an updated schedule for the completion of the construction of the nuclear project; and
- 2.2.8 where the schedule diverts materially from the previous schedule, the reasons why the licensee does not expect to be able to complete the nuclear project in accordance with the previous schedule,

in each case, together with suitable supporting evidence.

3 Determinations

3.1 At any time within 1 month of receipt of an IAR Application, the Secretary of State may either:

- 3.1.1 request such additional information and supporting evidence of any details set out in paragraph 2.2 as they reasonably require to consider the licensee's IAR Application; or
- 3.1.2 notify the licensee that they require additional time to consider whether additional information and/or supporting evidence is required.

3.2 Once the Secretary of State has all the information they need to consider the licensee's IAR Application, they will first review and verify the amount of the allowable expenditure the licensee expects to incur in order to complete construction of the nuclear project and where they determine that:

- 3.2.1 it is likely to exceed the cap on expenditure, they will consider whether to approve any additional allowable spend having regard to the matters set out in paragraph 3.3; or
- 3.2.2 it is not likely to exceed the cap on expenditure, they will notify the licensee that its IAR Application has been rejected.

3.3 In making a determination pursuant to paragraph 3.2.1, the Secretary of State will:

- 3.3.1 have regard to the matters sets out in section 6(4) of NEFA, namely:
 - (a) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
 - (b) the interests of existing and future consumers of electricity, including their interests in relation to the cost and security of supply of electricity;
 - (c) costs, expenditure or liabilities of any description that the licensee may reasonably be expected to incur in carrying out its activities;
 - (d) the need to secure that the licensee is able to finance its activities;

- (e) the need to secure that the licensee has appropriate incentives in relation to the carrying out of its activities;
 - (f) such other matters as the Secretary of State considers appropriate;
- 3.3.2** in respect of the need to secure the licensee is able to finance its activities pursuant to section 6(4)(d) of NEFA, have regard to any government support package provided to the licensee in respect of the project;
- 3.3.3** consider whether any of the expenditure in excess of the cap which is the subject of the then current IAR Application could be avoided by prudent management action (and for this purpose what constitutes 'prudent management action' will be assessed by reference to the circumstances which are known, or ought reasonably to have been known, to the licensee at the time of the IAR Application for projected expenditure in excess of the cap);
- 3.3.4** consider how much expenditure in excess of the cap is appropriate and reasonable for the licensee to incur, taking account of all the circumstances;
- 3.3.5** if applicable, consider how any additional allowable spend which has previously been approved by the Secretary of State has been spent;
- 3.3.6** consider the robustness of the licensee's plans and cost estimates;
- 3.3.7** have regard to the advice of any independent technical adviser, the Office for Nuclear Regulation, the Environment Agency, and the Gas & Electricity Market Authority; and
- 3.3.8** have regard to such other matters they consider relevant in all the circumstances.
- 3.4** Unless the Secretary of State has issued a notice in accordance with paragraph 3.2.2, within 4 months of receipt of an IAR Application (or if the Secretary of State has requested additional information and/or supporting evidence in accordance with paragraph 3.1, within 4 months of receipt of all such additional information and/or supporting evidence being provided to the Secretary of State), the Secretary of State will notify the licensee:
 - 3.4.1** that they have approved the licensee's IAR Application in full or in part and the amount of any additional allowable spend they have approved (if any);
 - 3.4.2** that they have rejected the licensee's IAR Application in full; or
 - 3.4.3** that they require more time to consider the IAR Application and the revised date by which they expect to respond, which date shall not be longer than 6 months following the IAR Application.
- 3.5** If (and to the extent) that the Secretary of State approves the IAR Application (in whole or in part), they will modify the licensee's electricity generation licence pursuant to section 7(1) of NEFA so that the additional expenditure that the Secretary of State has approved in response to the IAR Application will be treated as additional allowable spend under the electricity generation licence.
- 3.6** Any determination of additional allowable spend by the Secretary of State is without prejudice to the Gas & Electricity Market Authority's determination of actual additional allowable spend which is logged to the regulated asset base in accordance with the conditions of the licensee's electricity generation licence.

- 3.7** Any determination by the Secretary of State to reject the licensee's application pursuant to paragraphs 3.2.2 or 3.4.2 or to only approve it in part pursuant to paragraph 3.4.1 is without prejudice to the licensee's right to submit a new IAR Application in future.

4 Fees

- 4.1** In consideration for the Secretary of State considering an IAR Application, the licensee undertakes to indemnify the Secretary of State in respect of the costs they incur in considering such application and reaching their determination, including in respect of any appeal of any such decision.
- 4.2** Fees payable pursuant to paragraph 4.1 must be paid as a condition precedent to the Secretary of State's determination taking effect and in any event within 30 business days of an invoice being issued to the licensee.

5 Interpretation

- 5.1** For the purposes of this statement references to:
- 5.1.1** 'additional allowable spend' shall have the meaning given to the term "Additional Allowable Spend" in the licensee's electricity generation licence;
 - 5.1.2** 'construction' shall have the meaning given to it in section 7(5) of NEFA;
 - 5.1.3** 'relevant licensee nuclear company' shall be taken to mean the relevant licensee nuclear company as defined pursuant to section 1(4) of NEFA; and
 - 5.1.4** 'IAR Application' shall mean an application as described in paragraph 2 of this statement.