Dear Mr White

The Hinkley Point C (Nuclear Generating Station) Order 2013 – S.I. 2013 No. 648

Application for a Non-Material Change (NMC) in relation to the Hinkley Point C Main Development Site

I write on behalf of West Somerset Council following your letter of 28th September 2017 regarding the proposed NMC in relation to the Hinkley Point C Main Development Site.

The Council’s Cabinet considered the content of this response at its public meeting on the 1st November, which included public participation from residents and community representatives.

The content of this response is also informed by the public meeting organised by Stogursey Parish Council on the 14th November prior to the Parish Council meeting where Parish Councillors agreed the Parish Council’s response to the proposal.

Consultation

The Hinkley Point C Main Site is wholly within the District of West Somerset and Parish of Stogursey and, following the Council's request, thank EDF Energy / NNB GenCo for advertising the NMC proposal in the West Somerset Free Press which is the appropriate newspaper for that area.

Materiality

EDF Energy’s covering letter to support the proposed change highlights that Schedule 6 of the 2008 Act makes provision for the Secretary of State to grant both material and non-material changes to a Development Consent Order (DCO). The Council recognises that there is no statutory definition of ‘materiality’ for the purposes of either the 2008 Act or the 2011 Regulations. The ‘Guidance on Changes to Development Consent Orders’ (DCLG Guidance, December 2015) makes clear that such decisions will inevitably depend on the circumstances of a specific case. The Council notes that the guidance
sets out four examples of characteristics which are likely to indicate that a change is material.

EDF Energy’s covering letter sets out the view that the proposed changes do not trigger any of the four characteristics which would lead to the view that the changes are material. In relation to the first characteristic, which is whether or not the proposed change has any new or different environmental impacts, this letter will return to this point as set out below. The Council does agree that the 2\textsuperscript{nd} and 3\textsuperscript{rd} characteristics regarding Habitats and Protected Species and Compulsory Acquisition are not affected by these changes.

The fourth characteristic is the Impact on Businesses and Residents. EDF Energy’s own letter to support this application interprets what they consider to constitute a non-material, as opposed to a material change in applying this fourth characteristic. There are two principle submissions made:

(a) that the guidance is referring to the principles eschewed in Bernard Wheatcroft v Secretary of State for the Environment [1982] P. & C.R. 233 and that this test relates to "the principle of fairness";
(b) that there is "no realistic prospect that the proposed changes would generate materially different issues or representations to those which were addressed during the examination of the application in 2013".

Taking point (a), the Council of course accepts that the general principles of fairness is a very important characteristic of the involvement of the local community in the determination of any consent. Nonetheless, the test here clear is not the extent to which the local community have been consulted at all and been given the opportunity to comment and make representations, but whether the change is considered material enough that businesses and residents should be afforded the ability to make full representations on those changes in the correct forum for its determination. For a non-material change, there is no opportunity for either EDF Energy to respond to comments made by business and residents or vice versa.

In this regard, and very importantly, the Council is aware from discussion and representation made at its Cabinet meeting that significant numbers of local people are of the view that the proposed change is material. They consider that the changes proposed will directly impact upon them and that whilst these impacts have been identified, they were not fully considered as part of the original application. In the circumstances, the Council have suggested that a detailed analysis of the representations made during the Examination needs to be presented by EDF Energy alongside this application to evidence and justify the view within the application statement that the changes are not material because there is “no realistic prospect that the changes would generate materially different representations”.

In advance of the Cabinet meeting EDF Energy wrote to the Council highlighting that it had conducted a review of responses received at the pre-application stage and presented within the Consultation Report submitted with the DCO Application. The letter identified that no representations at that stage discussed the merits of wet verses dry storage.
In addition, whilst there may not have been specific representations made during the pre-application period, given the strength of local feeling – evidenced by the response of Stogursey Parish Council to this application for the NMC – the Council remains of the view that there is a realistic proposition that materially different representations might have been made during Examination in respect of the method of Spent Fuel Storage. As evidence of this, Chapter 21 of the Council's Local Impact Report was focussed on the storage of nuclear waste and set out the Council's view on the relative merits of wet and dry storage, the content of which would have clearly changed if the proposal had been for the now proposed dry store.

In the absence of:
(a) the opportunity for members of the public and the local community to be properly consulted and to be able to provide more detailed representations on the issue of dry storage; and
(b) a detailed analysis of representations made throughout the whole process – pre-application and Examination;

I can confirm that the Council objects that the proposed change to the method of spent fuel storage is non-material.

**The Interim Spent Fuel Store**

The Council note that EDF Energy are proposing to change the way in which spent fuel is stored at HPC in the interim. This is determined to be interim storage on the basis that the future plan for the spent fuel (as higher activity waste) for permanent storage is predicated on the UK Government’s Geological ‘Disposal’ Facility (GDF) in accordance with the 2014 Implementing Geological Disposal White Paper. Within the Development Consent Order and supporting technical material therein, EDF Energy’s original proposal was to store spent fuel waste in a ‘wet store’ in pools. The proposal is now, after an initial period of storage and cooling in a pool close to the reactor building, to store the spent fuel securely in concrete and steel canisters. This is known as dry storage. Importantly from the Council’s perspective this change results in a significantly larger interim spent fuel store to accommodate the concrete and steel canisters and the change away from a spent fuel pond – it is proposed to be 229m in length by 73m in width by 30m in height (as opposed to 150m by 65m by 25m).

Within the application, EDF Energy states that further detailed assessment and analysis has been undertaken with regards to the best way to interim store spent fuel at HPC. The application goes on to describe that:

“EDF Energy has previously described that both wet and dry storage technologies are judged to be capable of meeting the high safety and environmental standards which are required to permit their use in the UK. Subsequently EDF Energy decided that, subject to implementation of the Licensee’s formal modification process (including the provision of an adequate safety justification and both Licensee and Regulatory governance), it would change its technology choice for Interim Spent Fuel Storage (ISFS). The final disposal of spent fuel to the Geological Disposal Facility remains unaffected by the choice of technology. The change to dry storage will result in a different way to store the spent fuel assemblies, very similar in concept to that which has now been constructed, commissioned and operated at the Sizewell B power station in Suffolk, where the spent fuel is securely stored dry in concrete and steel canisters as opposed to wet storage in a pool”.

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[www.tauntondeane.gov.uk](http://www.tauntondeane.gov.uk)  
[www.westsomersetonline.gov.uk](http://www.westsomersetonline.gov.uk)
It should be noted that the Environmental Statement accompanying the DCO set out, under Chapter 6 ‘Alternatives’ a ‘multi attribute decision analysis’ of the following options for interim spent fuel storage: namely, pool storage (wet), metal cask storage (dry), vault storage (dry) and canister storage (dry). As such, the Environmental Statement accompanying the DCO provides information relating to the proposals for Interim Spent Fuel storage as proposed at the point of DCO submission (wet storage) and that proposed now (dry storage). Key issues for consideration have been: protecting long term flexibility with respect to possible development in fuel technology, ease of inspection of spent fuel thus enabling review of fuel condition against GDF waste acceptance criteria, reducing financial risks and maximising the benefits from retaining consistency in design with other EDF EPRs.

The regulatory regime for the storage of spent fuel is understandably rigorous and is not something which the Council or any local Authority has any responsibility or technical input. However, it is important that the Council highlight to EDF Energy, the Planning Inspectorate and the Secretary of State that the Council in its role of Community Leadership that the Council on behalf of the community will wish to be assured that the consideration of GDF waste acceptance criteria has adequately informed the proposal for interim dry storage. Furthermore, the Council will want to be assured that from a regulatory perspective, the selection of dry storage is consistent with the wider regulatory aims of the Office for Nuclear Regulation to ensure delivery of a safe and secure solution for interim waste storage.

As highlighted above, the size of the building required to accommodate the spent fuel is significantly larger than the previously approved building under the DCO; it is proposed to be 79m longer, 8m wider and 5m taller. The operational power station as proposed includes the reactor buildings and turbine halls both of which are larger and taller than the proposed ISFS (64m and 46m tall respectively), however the footprint and height of the proposed ISFS makes it one of the most significant buildings within the power station site. For reasons already explained above, local residents consider that the visual impact of such a change, in addition to the type of storage now being proposed, is material. The application for the NMC includes an assessment of landscape and visual impact but it is noted that this is in the context of the operational power station. The Council notes however, the ISFS will be in situ long after the operational power station has come to the end of its life and potentially decommissioned. It will only be removed when all the spent fuel has been moved to a Geological ‘Disposal’ Facility.

A location for a GDF has not been found (and a potential location is arguably less clear than during the consideration of the original HPC DCO application) and it is noted that all existing fuel within the UK from legacy sites would be moved to the GDF prior to any new material from HPC being transferred. Therefore, the ISFS could therefore be in situ for a significant period of time – well into the next century and potentially beyond. In this context a larger store that will be more prominent in the landscape could cause additional adverse impacts, which have not been assessed. More particularly, the ISFS is the closest building within the HPC site to the West Somerset Coastal Path (at its closest point the ISFS is only 21m from the Coastal Path) and the increased height of 5m will be significant and, as above, present over a significant period of time. The Application Statement does not make any assessment of this very long term scenario which is an important omission.
EDF Energy in writing to the Council in advance of the Council’s Cabinet meeting highlighted that prior to Hinkley Point C entering into its decommissioning state, there will need to be an Environmental Impact Assessment undertaken to assess environmental considerations at that time (potentially around 2085). Whilst this is understood, it is highlight unlikely that the ISFS would be moved as part of any assessment within that EIA.

The Council notes that the wet ISFS was able to be ‘sunk’ into the ground by up to 23m in accordance with the parameters submitted as part of the DCO (para 2.3.34 of the application statement) whereas the proposed dry store would sit at ground level. It is noted from Table 2.1 “Reasons for Proposed Changes” that the reason for changes to the ISFS relates to “Design Optimisation” rather than either “Flamanville / Taishan Feedback” or “Compliance with UK Regulations”. It is suggested therefore that to help mitigate the long term visual impact and impact on the Coastal Path of the ISFS that the dry store is also ‘sunk’ into the ground.

The Council objects to the additional visual impact of the increased size and prominence of the waste store close to the West Somerset Coastal Path and within the wider landscape in the long term.

Importation of Waste

Whilst not explicit within either the DCO Application or this application for a Non-Material Change, the Council wishes to reiterate the position regarding the policy objection in place relating to the importation of waste or spent fuel from other nuclear installations set out in the Hinkley Point C Joint Supplementary Planning Document which was adopted by West Somerset Council and Sedgemoor District Council in September 2011.

Box 20

Approach to Nuclear Waste Storage

The HPC project promoter should consider and evaluate all potential effects of the radioactive waste aspects of the HPC project and review the mitigation proposals and compensation that would be necessary to mitigate impacts on local communities. The HPC project promoter should seek to align strategies for the management of radioactive waste with any local guidance set out in the forthcoming Somerset Waste Core Strategy and ensure that:

- All practical measures are taken to minimise any adverse effects of the interim nuclear waste proposals in line with and appropriate mitigation measures are identified.
- That mitigation and compensation are agreed with the authorities that will address and mitigate against any perceived and actual detrimental effects of radioactive waste storage proposals.
- Appropriate measures are set out for the long term decommissioning and site restoration proposals for any interim waste storage facility and these are set out clearly in a DCO application.

- That all necessary steps are taken to ensure that absolutely no waste from other nuclear establishments is stored on site at Hinkley Point C.
Sea Wall / Temporary Aggregate Jetty and Other Changes to Buildings

Subject to both the Environment Agency and Natural England being satisfied, the Council raises no objection to the proposed discharge of pumped groundwater, water produced during the excavations of the heat sink and treated sewage effluent via new pipework on the temporary aggregate jetty.

The change to the sea wall will not in the Council's view have any adverse effect and therefore the Council has no objection to the proposed change in alignment.

Cumulative Changes

Whilst the changes to the other buildings as part of the operational power station are relatively minor in nature and the Council does not raise any objections to them as individual changes to the DCO scheme, the Council is mindful that the cumulative number of changes to buildings, structures and the layout and parameters of the scheme approved under Non-Material Change 1 and as part of this proposal is considerable. Particularly, the Council is mindful of the important fact that whilst changes in isolation may not appear significant or material, simply because EDF Energy are submitting such changes separately from one another does not mean that they do not need to be fully and cumulatively assessed. In addition, it should be borne in mind that there are of course other works (through the site preparation works), falling outwith the DCO process, which are also relevant to the scheme in relation to environmental impacts.

The importance of undertaking this process is set out in both the DCLG Guidance from December 2016 and the Planning Inspectorate’s Advice note 16.

The DCLG Guidance states at paragraphs 2.3 and 2.4:

"2.3 Ultimately, however, it is the responsibility of the ExA to decide whether new information submitted into the examination by applicants constitutes a material change to the application. Even if an applicant has not requested a material change to an application, the ExA may still ask for the information set out in Figure 2 on page 4 before deciding whether and how to examine the new information.

2.4 If a series of incremental non-material changes to an application are made then a point may be reached where the ExA will need to consider whether collectively the combined impact of the changes has had the effect of making a material change to the original application."

In addition, the DCLG Guidance states at paragraph 19:

“the cumulative effect of previous changes made to the Development Consent Order may also be relevant when considering whether a further application for change should be treated as a new application”.

In order to ensure that the cumulative impact of these changes combined are properly assessed, are before the decision maker to allow them to properly determine the application and can be consulted upon, we suggest that EDF Energy should submit a plan showing:
(a) the changes between NMC 1 and NMC 3; and also
(b) the changes in combination between the originally approved DCO and then NMC1, NMC2 and NMC3.

We would also suggest that EDF energy should assess any additional changes to the scheme that have occurred outwith the DCO process and have formed part of separate permitted development rights or Town and Country Planning Applications.

Yours Sincerely

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