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Carly Vince  
Chief Planning Officer  
EDF Energy  
**By email only**

Your Ref:  
Our Ref: EN010012  
Date: 23 October 2020

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Dear Carly Vince

## **Planning Act 2008 – Section 89**

### **Application by NNB Generation Company (SZC) Limited for an Order Granting Development Consent for The Sizewell C Project**

#### **Notice by Applicant of intention to submit a request for changes to the application**

Thank you for your letter dated 6 October 2020, and the accompanying Notification Report giving notice of NNB Generation Company (SZC) Limited's intention to submit a request to make changes to the application submitted on 27 May 2020. The letter and the Notification Report have been published on the project page of the National Infrastructure Planning website here:

[Cover Letter](#)

[Notification of Proposed Project Changes Report](#)

The letter states that, in accordance with The Planning Inspectorate's 'Advice Note 16: How to request a change which may be material' (AN16), a Notification Report has been provided identifying the nature of the changes proposed and advises of the Applicant's intention to request that the changes described can be accepted.

The Notification Report identifies fourteen proposed changes and sets out the detail of these in Section 2.3. An indicative programme is also included at Section 5, and this anticipates a formal request for changes, in accordance with Step 4 of AN16, to be made w/c 11 January 2021. Section 4 of the Notification Report sets out the consultation the Applicant proposes to undertake and how this would be reported.

The Applicant seeks advice from the Examining Authority (ExA) on the procedural implications of the proposed changes and on the need, scale and nature of the consultation to be carried out. It also requests the ExA's views on submitting additional or revised information that does not constitute a change to the project.

### **Materiality of the proposed changes**

In the Applicant's view the proposed changes 3 to 10 and 14 are not material, with proposed changes 1, 2, 12 and 13 potentially being material and proposed change 11 being material. The Applicant states that *"taken together, the changes are considered to constitute a material change to the Project."*

It is ultimately for the ExA to decide whether a proposed change is material and the ExA does not at this stage have sufficient information to reach a view as to materiality. It is noted that the Applicant acknowledges that proposed changes 11, 12 and 13 may necessitate the Compulsory Acquisition of *"additional land"* as defined in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations) and this may give rise to new materially different or likely significant environmental effects. The Applicant has not made any comment as to whether there would be any change as to land of which Temporary Possession (TP) is sought and this should be clarified.

On receipt of the formal change request, such factors may lead the ExA to conclude that the changes taken together are material. This means that before accepting the material changes for Examination, the ExA will need to have the following information provided with the change request:

- the information identified in paragraphs (a) to (d) in Figure 3 of AN16;
- if landowner consent is not received and the CA Regulations are engaged, the information prescribed by Regulation 5 of the CA Regulations and clarification that the procedural requirements of the CA Regulations can be met (see paragraph (e) of Figure 3 of AN16); and
- evidence that any new or different environmental effects have been adequately assessed and subject to publicity and that any consultation bodies have been consulted (see paragraph (f) of Figure 3 of AN16).

The Applicant is also advised that it is, of course, possible that the ExA may consider one or more proposed change is acceptable as a change (whether or not material), but another or others not. The Applicant is therefore asked to consider the interdependence of these with each other.

### **Consultation**

Whether or not the proposed changes are material the ExA considers that, in order to ensure fairness, appropriate and proportionate non-statutory consultation should be carried out before the change request is submitted.

The ExA agrees that the consultation must engage all those persons identified in the Planning Act 2008 under section 42 (a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days) including any section 42 persons **not** originally consulted on the application but who may now be affected by the proposed changes. The ExA notes that West Suffolk Council should be included in those persons consulted in accordance with section 42 (b). The Applicant should also consider whether or not persons not already registered to participate in the Examination (and

not falling within section 42) might need an opportunity to comment (such as persons living, or commercial entities operating, outside the Order limits).

The Applicant also proposes, and the ExA agrees, that the public should be consulted through a newsletter and publication in appropriate newspapers. The ExA also considers that site notices should be posted. The ExA recognises that public exhibitions cannot take place due to the current restrictions in place due to the COVID-19 pandemic, however the Applicant should ensure that access to physical documents is available for those who are unable to access material online.

The Applicant also proposes to submit a Consultation Statement, and the ExA recommends that this:

- lists the persons (affected by the changes) under section 42 (a) to (d) who have been consulted (identifying particularly any new persons i.e. those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those section 42 (d) persons who are "*affected persons*", meaning those persons over whose land Compulsory Acquisition powers will be exercised. It is noted that if the CA Regulations are engaged the Applicant will also need to submit a request for additional land and identify the additional Affected Persons;
- provides justification as to why any person under section 42 (a) to (d) is not affected by the proposed changes and has not therefore been consulted (if any);
- provides copies of any newspaper notices or site notices; and
- appends as an annex any consultation responses received.

If the ExA decides to accept the changes (whether or not material), all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at Hearings during the Examination. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant the ExA may request that further non-statutory consultation is carried out to safeguard the interests of and/or inform those potentially impacted by the changes who are not already involved in the Examination.

### **Timing implications**

The Applicant, in Section 5 of the Notification Report, identifies an indicative programme setting out the various steps contained in AN16. On the assumption that the documentation and change requests are submitted in line with that programme and having regard to the AN16 advice, the ExA proposes that the Preliminary Meeting should not be held until after those steps have been taken. As AN16 points out: "*This may delay the start of the Examination stage but would mean that Interested Parties and others would have an opportunity to consider the implications of the change before the start of the Examination and minimise the impact on the statutory six month Examination period.*"

### **Additional and revised information**

The Notification Report also indicates that the Applicant intends to submit revised information prior to the start of the Examination to address minor errata, omissions and qualitative issues relating to the submitted application documentation. In

addition, the Applicant has continued to undertake environmental surveys and has undertaken some additional technical assessment work in response to issues raised by stakeholders following submission of the application. The Applicant proposes to make these available prior to the commencement of the Examination.

The potential changes to the environmental assessments are set out in section 3 of the Notification Report and the proposed submission of additional information is set out in Section 6 of the Notification Report.

The Applicant seeks the views of the ExA on the principle of its preferred approach which is to submit this additional and revised information with the Project change request.

The ExA, in considering whether to accept the submission of the revised and additional information, recognises that no prejudice should thereby be caused to any Interested Party and that they should have a fair and reasonable opportunity to consider this. The ExA agrees with the Applicant that such information should be made available in good time to inform the Examination.

Whilst the ExA recognises that there may be good reasons why parts of this revised and additional information may not be available for submission prior to the formal Project change request, it seems likely that at least some of this information could be made available before that date. Indeed, some may be available at a much earlier stage such as Updates 8 and 9. The submission of this information at the earliest opportunity for consideration by the ExA as to whether this can be accepted would be of benefit to all parties. The Applicant is therefore requested to consider and propose staggered submission dates for this additional information and to explain fully its position in relation to the timing of the provision of such information **by 16 November 2020 at the latest.**

The Applicant is reminded that, where other environmental information is provided, this should be accompanied by confirmation that it has been subject to publicity and that the publicity reflects the requirements of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). Copies of any representations received in response to such publicity should also be provided. If the other environmental information has not been subject to publicity then the Applicant is requested to provide an explanation of why this was not considered necessary.

### **Next steps**

The Applicant is asked to ensure that the change request, that is intended to be submitted during w/c 11 January 2021, responds fully to the points made above and contains sufficient information to enable the ExA to consider whether that change request, individually and as a whole, can be accepted.

If you have any questions about any of the matters raised in this correspondence, please contact the Case Team using the details provided in this letter.

Yours sincerely

*Wendy McKay*

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