

Planning Inspectorate
National Infrastructure Planning
Sizewell C Team
Temple Quay House
2 The Square
Bristol
BS1 6PN

Our ref AEO/WWB/NOR01698.1

Your ref Sizewell C DCO SIZE-AFP059

24 September 2021

Dear Sirs

Application by NNB Generation Company (SZC) Limited (the "Applicant") for an Order granting Development Consent for the Sizewell C Project ("the Application")

Walker Morris is instructed by Northumbrian Water Limited ("NWL") in the above matter. NWL is the statutory undertaker responsible for the provision of water services in Sizewell. NWL trades locally as Essex & Suffolk Water.

We write further to our letters dated 23 July 2021 and 24 August 2021, lodging a holding objection to the above Application.

As the ExA is already be aware, NWL is continuing to engage with the Environment Agency ("EA") regarding the wider Water Industry Environment Programme ("WINEP") in relation to ensuring water can be supplied sustainably to SZC.

NWL has instructed Wood Consultants to provide recommendations for the new annual licensed quantities for NWL's River Waveney licence and the EA's WAGS licence. NWL had anticipated that Wood Consultants would be in a position to submit their findings and report on Friday 24 September 2021.

Unfortunately, due to the complexity of the modelling entailed this report is not expected to be available until 30 September 2021. NWL has stressed the urgency of the matter with Wood Consultants, who are progressing the work as quickly as possible. NWL has updated the Applicant with respect to this delay and any additional updates will be provided to all relevant parties should this be required.

NWL remains committed to pro-active engagement with the Applicant, the EA and the ExA.

In addition to the update regarding the ongoing work in connection with WINEP, NWL also encloses a copy of its Written Summary of its Oral Submissions at Issue Specific Hearings 11 and 14.

We would be grateful if receipt on this correspondence and enclosure would kindly be acknowledged.

Yours faithfully

Walker Morris LLP

Walker Morris LLP

Encs. NWL Written Summary of Oral Submissions: ISH 11 and 14

Issue Specific Hearings 11 and 14
Written Summary of Oral Submissions on behalf of
Northumbrian Water Limited

[Agenda Item 2 at both ISH]

1. This is a written summary of the oral submissions made on behalf of Northumbrian Water Limited (“NWL”) at the Issue Specific Hearing (“ISH”) 11, held on 14 September 2021 and ISH 14, held on 17 September 2021.
2. These submissions do not repeat and should be read alongside the letters written by Walker Morris (“WM”) on behalf of NWL dated 23 July 2021 [REP 5-257], 24 August 2021 [REP 7-257] and 3 September 2021 [REP 7-147] and the Technical Note dated 10 September 2021 [AS 413].

Current Proposed Infrastructure Solution

3. There is an inadequacy of the water resource in the Blyth Water Resource Zone (“BWRZ”), so the current proposed infrastructure solution (“CPIS”) is to construct a new pipeline to supply water from the Northern Central WRZ (“NCWRZ”).
4. The NCWRZ relies on abstraction from the River Waveney and the associated Waveney Augmentation Groundwater Scheme (“WAGS”). If there is sufficient water supply in the NCWRZ then it is common ground with the Applicant (“SZC”) that the CPIS would be adequate to meet the needs of the Plant without compromising the ability of NWL to meet its other statutory obligations.
5. So, the existing headroom under the existing licences (after other customer demands are met) should be sufficient to meet all probable future obligations on NWL under the Water Industry Act 1991 (“the WIA”) and would therefore enable the necessary supply to the Plant (hence the CPIS). However, the WAGS abstraction licence has always been the subject of Water Industry National Environment Programme (WINEP) investigations and so a mains water supply to the Plant was always subject to the investigation concluding that WAGS could support forecast demand.

6. It is also common ground with SZC that the CPIS cannot be secured in time to meet the construction timeline of the Plant, hence the proposed desalination plant at SZC (which would ensure SZC could be constructed and if necessary operated (see SZC oral submissions¹) without drawing on the NWL Network).
7. The general pressure on water supply in this part of East Anglia (categorised by the Environment Agency (“the EA”) as a ‘seriously water stressed area’) is such that the EA is reviewing abstraction licences and the volumes that can be extracted.

Recent developments and why further work is required

8. The EA informed NWL (on 26 August 2021²) that a sustainability reduction may be applied to NWL’s abstraction licence for the River Waveney (the intended source of supply for the SZC transfer main) and the WAGS abstraction licences. The EA could reduce Essex and Suffolk³ Water’s River Waveney abstraction licence by 60%. The proposed reduction of abstraction volumes in respect of the River Waveney abstraction licence is, therefore, a new matter which NWL, and all other relevant stakeholders, were previously unaware of.
9. This situation means NWL cannot be confident that there will be sufficient water resource in the WRZs to allow it to meet its statutory obligations and the requirements of the CSZC Plant.
10. If the water resource in the NCWRZ is inadequate, there are as yet no other plans – which need to be realistic and deliverable - to meet the needs of the Plant. Moreover, if the ability to abstract from the River Waveney were to be capped, there are very few other sources of water available to NWL. Accordingly, NWL would require significant capital projects such as (for instance) a desalination plant, or sewerage effluent reuse plant, to meet anticipated future demand.

¹ It is no part of NWL’s case to suggest that the desalination plant would be required for the operation of the Plant. Mr Rhodes, on behalf of SZC, made it clear that only a temporary desalination plan has been applied for, but it was acknowledged that a permanent plant would be technically possible and also stated on behalf of the Applicant that whilst a permanent plant would require an application and assessment etc, SZC considered that the retention of the plant during the operational phase would not give rise to significant environmental effects (on the basis of the work done to assess the temporary plant).

² Appendix 2 of WM letter dated 3/9/21 [REP 7-147].

³ NWL trades locally as Essex and Suffolk Water.

11. Therefore, as explained in NWL's letter dated 3 September 2021 [REP 7-147], there is now a significant risk that NWL will not have sufficient water to supply SZC during both the construction and operational phase of the development, having regard to NWL's statutory duties and the wider water supply demands as established through the Water Resource Management Plan ("WRMP") process.
12. NWL has consistently made clear to SZC that any water supply available to the project would be subject to the ongoing Water Industry National Environmental Programme ("WINEP") process. SZC has been aware throughout of the risks which water supply may pose to the successful delivery of the project.
13. Further modelling is required to assess the precise quantum of sustainable water supply in the NCWRZ. In the absence of this work being fully completed, NWL considers there is a material and significant risk that it may not be able to supply any water, or related infrastructure, to SZC until after NWL's regulatory plans are approved.
14. The consequence of all of the above matters, taken together, is that depending on the final outcome of NWL's WINEP investigations, if there is insufficient headroom to supply SZC, NWL will be unable to confirm that it is in a position to supply any water to SZC at any stage of the project's lifecycle, pending options appraisal and then approval by Defra, the EA and Ofwat of NWL's PR24 (Price Review 24) Business Plan plans (part of the WRMP 2024 process). This regulatory approval process is unlikely to complete until Spring 2024. Once funding for a capital project has been approved, NWL would undertake detailed feasibility of scheme(s), including matters such as the need to acquire land and obtain planning permission etc.
15. Accordingly, NWL respectfully requests that the ExA schedules a further hearing to consider water supply matters in more detail, once additional technical information is available. It is anticipated that the modelling by Wood Consultants commissioned by NWL will now be ready by 30 September 2021. The EA's position is that it then needs c.2 weeks to provide likely indicative new annual licensed quantities for NWL's abstraction licences. As Mr Robinson explained at ISH11, once NWL has the report from Wood Consultants, it will also undertake additional modelling work to confirm the impact on deployable output. Providing that the EA agree with the output of the report from Wood Consultants, NWL

expects that it will have reached a position on whether there will be sufficient capacity to supply SZC, within two weeks of the Wood Report being received by NWL. If the EA does not agree with the proposed annual licence numbers, then further work will be required and NWL will not be able to confirm its position. Therefore, subject to the EA's position, the further modelling work currently being undertaken will enable NWL to know the likely impact on the supply surplus in the NCWRZ and whether SZC will be able to be provided with the required water supply without having to deliver new supply schemes.

The need for Grampian-type conditions/restrictions in the DCO

16. As explained at ISH 11 and 14, constructive discussions with SZC have taken place and are continuing. In light of SZC making clear that it will incorporate protective provisions in the DCO [Part 10 of Schedule 18] to ensure that SZC will not serve notice on NWL pursuant to s.41, s.45 and s.52 of the WIA, unless otherwise agreed by NWL in its absolute discretion, NWL considers that, subject to the detailed drafting proposed (yet to be finalised but the subject of productive negotiation), the proposed protective provisions avoid the need for Grampian-type conditions/restrictions to be incorporated in the DCO (as previously sought by NWL, see for example the WM letter dated 3 September 2021).
17. The inherent uncertainty in terms of water supply that exists reinforces why it is imperative to ensure that SZC comes forward in tandem with, and in a timescale consistent with, the provision of necessary water infrastructure.
18. The inclusion of the protective provisions makes a material difference to the position from NWL's perspective, given the distinctions that exist under the WIA in relation to domestic and non-domestic supply. At ISH11, SZC undertook to provide a written note on the operation and application of the relevant parts of the WIA (and the relationship of the WIA to the Water Framework Directive). As Mr Philpot QC stated, this explanation of the statutory regime ought to be uncontentious and therefore NWL does not seek, at this stage, to undertake the same exercise separately. Rather than seek to duplicate matters, once the note is disclosed to the ExA, NWL will confirm its agreement with the content in so far as it is possible to do so and, in the event of any material difference (for instance, in terms of interpretation, construction, or effect), NWL will set out any disagreement in a note. At this stage therefore (at ISH 11/14) a brief outline of the main distinctions is sufficient (see further below).

Outline of distinctions between domestic and non-domestic supply

Domestic

19. The provisions of the WIA *compel* statutory undertakers to provide both new infrastructure and water supply, for domestic purposes to 'household premises', irrespective of any environmental or capacity issues which may result.

20. Given that SZC will require the construction of what will effectively be a temporary 'new town' to house a large number of construction and Plant workers (although SZC's operation is not predominantly a 'domestic' use, as Mr Robinson explained at ISH 14, the water to be provided to the accommodation blocks (at least in part) may fall within the definition of a 'domestic' supply), there is a clear risk that NWL will be compelled to provide not only a new water main [pursuant to s.41] (irrespective of any environmental consequences arising from its construction) but supply the water itself pursuant to s.45 and s.52 (irrespective of any capacity restriction) for domestic purposes, if the DCO does not adequately address the issue. Having to supply any domestic needs presents a critical risk to NWL's ability to serve the needs of its existing customers in the absence of additional infrastructure.

21. It will be apparent from the above that the WIA does not adequately address a situation where new development is proposed in an area of inadequate infrastructure or capacity and where the rights granted by the Act are inconsistent with the ability to meet those rights. In the present case, NWL is therefore concerned that there may be a 'disconnect' between the phasing of the proposed development and the ability to supply adequate water to it.

22. Prior to ISH 11, SZC had indicated an intention to requisition a main pursuant to s.41 of the WIA. As set out above, SZC has now made clear that it will incorporate protective provisions in the DCO [Part 10 of Schedule 18] to ensure that SZC will not serve notice on NWL pursuant to s.41, s.45 and s.52 of the WIA, unless otherwise agreed by NWL in its absolute discretion. On that basis, NWL considers that, subject to the detailed drafting proposed, (yet to be finalised but the subject of productive negotiation), the concerns outlined at ISH11 in relation to domestic supply are readily capable of resolution by the mechanism proposed and, if incorporated in the DCO, would avoid the need for Grampian-type conditions/restrictions (as previously sought by NWL, see for example the WM letter dated 3 September 2021).

23. With respect to domestic water supplies, it is imperative that NWL is provided with protection at the planning stage (by way of suitable wording within the DCO itself) to ensure that the statutory provisions in the WIA do not compel NWL to provide either infrastructure or water which would be environmentally unsustainable and/or result in capacity shortfalls for existing customers.

Commercial (non-domestic supply)

24. In summary, by virtue of s.55(3) of the WIA, a water undertaker can refuse to supply water for a non-domestic use in 2 circumstances:

24.1. If, in order to meet its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings with water for domestic purposes, the water undertaker would incur unreasonable expenditure in carrying out such works; or

24.2. If such supply would put at risk the ability of the water undertaker to meet existing or probable future obligations.

25. As noted by Mr Philpot QC on behalf of SZC at ISH11, s.56 of the WIA provides for a dispute mechanism, in relation to a refusal by a water undertaker to supply water for non-domestic uses pursuant to s.55(3) of the WIA.

26. At this juncture, by virtue of the statutory scheme and in particular s.55(3), unless NWL is confident that it can meet all its statutory duties now and all “probable future obligations” with existing infrastructure, or without having to incur “unreasonable expenditure” to meet those obligations, NWL cannot commit to entering into a s.55 Agreement to supply water and infrastructure for non-domestic purposes to SZC. To do so would lead to direct conflict with NWL's statutory duties.

27. Those duties include the duty arising by virtue of s.37 of the WIA, under which NWL has a statutory duty to develop and maintain an efficient and economical system of water supply in its area, and to make arrangements for providing supplies of water to premises in its area and persons who demand them. The mechanism for delivery of this is the Water Resources

Management Plan ("WRMP"), which AMP7 WINEP forms a part of (see the NWL Technical Note [AS 413]).

28. The WRMP is critical to both the delivery and funding of infrastructure to meet the needs of NWL's existing customers and the needs of future customers, both domestic and commercial. Where a significant future water supply demand arises, which has not been taken into account during the WRMP process, the ability of NWL (or any other statutory undertaker) to economically provide for additional infrastructure/capacity may be compromised. This may result in materially increased costs falling upon existing customers to fund new or amended schemes which do not meet the objectives of efficient and economic water supply, effectively in breach of NWL's statutory duty pursuant to s.37 of the WIA.

29. At ISH14, it was explained in outline that the proposed protective provisions to be incorporated in the DCO at Schedule 18, also set out the mechanism under, and the circumstances in, which a supply of potable water to SZC would be provided.

30. NWL informed the ExA at ISH14 that it had provided SZC with a short statement summarising NWL's position⁴ in light of the progress in negotiations on the DCO amendments but that rather than read it at ISH14, the statement would be included in this written summary:

"NWL is committed to working with SZC Co. to develop the terms of a supply agreement under section 55 of the Water Industry Act.

The date that NWL can supply the SZC site will be dependent on the outcome of abstraction sustainability investigations which will conclude in September 2021. These investigations will confirm if there is sufficient existing sustainable water resources available to meet forecast customer demand, including that of Sizewell C, or if additional water resources need to be developed.

If additional water resources need to be developed, these will be identified in NWL's draft Water Resources Management Plan 2024 (WRMP24) which will be submitted to Defra in August 2022. The final WRMP24 is unlikely to be approved by Defra prior to August 2023. The funding requirement for new water resource schemes will be included in NWL's Business Plan 2024. This is unlikely to be approved (i.e. deemed acceptable) by Ofwat until 2024.

⁴ And reiterating submissions made at ISH11.

In summary, NWL will endeavour to supply the commissioning and operational mains water needs of SZC subject to:

- i. sufficient sustainable resources being available to meet forecast customer demand, including that of Sizewell C; and
- ii. if additional water resources need to be developed, the approval and allowance in funding from all of the involved regulators. Given the water industries periodic review of prices, this work for a new water resource, if needed, cannot begin until 2025 and full availability of this new resource may not be available to SZC until after 2030.”

Conclusion

31. NWL must act in accordance with its legal duties to existing customers and must ensure that the demand placed on the network by the construction and operation of SZC does not prejudice NWL’s ability to supply existing customers, or to comply with the environmental licences under which it has to operate.

32. As the correspondence from NWL and WM makes clear, NWL has at all times engaged with SZC in a positive and constructive way and does not seek in any way to hinder the proposed development. However, for the reasons explained in correspondence, at ISH 11 and 14 and summarised above, NWL has to protect its position in relation to the various obligations that arise under the WIA. Therefore, a holding objection was submitted on a precautionary basis only, until such a time as a solution is found which prevents NWL from exposure to undue risk (having regard its statutory duties). That solution requires a suitable mechanism proposed by the Applicant (which NWL considers should be included within the terms of the DCO itself) that ensures NWL will not be required to provide the relevant water supply until necessary additional infrastructure is in place.

33. Subject to the incorporation of the required protective provisions in Schedule 18 of the DCO, NWL is satisfied that its holding objection can be withdrawn.

NWL

24 September 2021.