

## **EN010012 ExA Deadline 9 Comment**

Application by NNB Generation Company (SZC) Limited for an Order Granting  
Development Consent for the Sizewell C New Nuclear Power Station

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**D9.1 Equality of Arms: gross asymmetry in representation resource capacity**

D9.1.1 According to the Sizewell C Project Examination Library, as Updated 28.09.2021, the tally of the Applicant's submissions alone stands at 1,374 documents of varying length and complexity.

D9.1.2. As an unresourced lay Interested Party (IP), lack of equality of arms in requisite resource capacity has continued to hamper severely ability to undertake

a. timeous appraisal of documents submitted by the Applicant as well as by other Interested Parties, including statutory consultees, under successive Examination Deadlines to date; and,

b. to review all evidence issuing from Issue Specific Hearings and Open Floor Hearings.

**D9.2 Policy presumption and site suitability: SZC and the 2011 nuclear EN-6**

**D9.2.1 PD-032 and REP8-097**

D9.2.1.1 In REP8-097, the Applicant appears to base the DCO Application on questionable assertion (Table 1.1: EN-1 Part 4: Assessment Principles: General points EN-1 4.1.2, referring). Namely,

“The policy presumption is relevant to the application proposals.”

D9.2.1.2 In the first instance, the presumption in para.4.1.2 of the 2011 EN-1 applies manifestly only to DCO Applications deployable by the end of 2025. The Applicant is not disputing that the 2011 nuclear EN-6 does not have effect in respect of the SZC DCO Application. The Application falls outside the EN-6 deployment time frame. The Applicant could therefore neither legitimately claim the benefit of presumption nor logically base the Application on that presumption.

D9.2.1.3 Secondly, para.1.3.4 in the 2021 Draft Overarching National Policy Statement for Energy (EN-1), released for public consultation on 3 September 2021<sup>1</sup>, would appear to provide a following clarification on the 2017 Ministerial Statement to Parliament<sup>2</sup> (PD-032: ExQ2 G.2.6, referring):

“... EN-6 only has effect in relation to nuclear electricity generation deployable by the end of 2025, but also continues to provide information that may be important and relevant for projects which will deploy after 2025.”

The continuing use of the 2011 EN-6 is explained further in the accompanying introductory document, Planning for New Energy Infrastructure<sup>3</sup>, as follows on page 11:

“[EN-6] also provides information, assessments and statements which may continue to be important and relevant for projects which will deploy after 2025.”

The following implications would appear to arise.

- a. For nuclear developments deployable after 2025, EN-6 falls to be treated not as a source of Government policy, but rather as a source of information, assessments and statements which may or may not be important and relevant for those proposals.
- b. The clarification begs a question as to whether what is required is fresh site reassessment from first principles, for the proposed SZC DCO project. In other words, it would not appear sufficient to cite or refer to EN-6 information, assessments and statements as such. These would reasonably require underpinning with up to date primary evidence in all respects.
- c. The Applicant could not implicitly rely on 2011 EN-6 paras 2.2.5 and 2.3.2 (amongst others) in REP8-097 (Table 1.2: EN-6 NPS Accordance Table), as sufficient for affirming suitability of the Sizewell site.

D9.2.1.4 In other words, it would not suffice to maintain that the listing of the Sizewell site in EN-6 means it is best suited and acceptable for the proposed DCO project. In that regard, the following questions could be said to arise:

- a. has the Applicant undertaken comprehensive site reassessment in order to establish and substantiate afresh, from first principles, express preference for the proposed site at Sizewell;
- b. has the Applicant adduced comprehensive assessment evidence on what alternative sites were assessed or reassessed for the proposed EPR nuclear generating station, as well as the proposed ISFS and ILW Store, and why the alternatives were determined unsuitable; and,

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<sup>1</sup> BEIS (2021) Draft Overarching National Policy Statement for Energy (EN-1). Department for Business, Energy & industrial Strategy. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1015233/en-1-draft-for-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015233/en-1-draft-for-consultation.pdf)

<sup>2</sup> Harrington R (2017) Statement on Energy Infrastructure: Written statement - HCWS321. Parliamentary Under-Secretary (Department for Business, Energy and Industrial Strategy). The House of Commons, 07 December 2017. Available at: <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-12-07/HCWS321/>

<sup>3</sup> BEIS (2021) Planning for New Energy Infrastructure: Draft National Policy Statements for energy infrastructure. Department for Business, Energy & industrial Strategy. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1015302/nps-consultation-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1015302/nps-consultation-document.pdf)

- c. has the Applicant adduced substantive up to date primary evidence that adequately and transparently underpins the continuing reliance on EN-6 as documented at length in Table 1.2 in REP8-097?

Regrettably, as an unresourced lay IP, I lack the capacity necessary for evaluating properly all assertions in the Applicant's REP8-097 National Policy Statement Tracker, for the underpinning reassessed fresh primary evidence. Evaluation of adequacy and shortcomings, respectfully by the ExA, would appear critical.

## **D9.2.2 PD-032 and REP7-050**

- D9.2.2.1 Notably, the Applicant's assertion in REP7-050 (responding to ExQ2 G.2.6: page 13, referring) that,

"The NPS remain Government policy",

stands qualified by the Government's clarification provided in the 2021 Draft Consultation EN-1 (see para.D9.2.1.3, above). Namely, the nuclear EN-6 appears apparently downgraded from a "policy" document to a source of "information, assessments and statements which may continue to be important and relevant for projects which will deploy after 2025."

- a. Arguably, those information, assessments and statements may not necessarily be automatically deployable in support of the SZC DCO Application. A question arises whether fresh primary evidence is reasonably required to underpin assertions claimed to be of continuing importance and relevance.
- b. It appears incorrect to continue treating the nuclear EN-6 as constituting existing policy for a post-2025 nuclear proposal. In this regard, could there be any significance in the fact that the September 2021 Draft EN-1 was issued subsequent to and presumably in light of the Drax Court of Appeal judgement (delivered in January 2021)?

## **D9.2.3 PD-044 and REP8-116**

- D9.2.3.1 The Applicant's response to ExQ3 G.3.0 in REP8-116 inexplicably overlooks an essential qualifying clarification provided both in para.1.3.4 of the 2021 Draft Overarching National Policy Statement for Energy (EN-1), and on page 11 of the accompanying Planning for New Energy Infrastructure: para.D9.2.1.3 above, referring. The response appears to skirt around acceptance of apparent demotion of EN-6 from a source of Government policy to a source of information, assessments and statements for projects deployable after 2025.
- D9.2.3.2 Assuming I haven't grossly misread the 2021 consultation drafts regarding the continuing status of the 2011 EN-6, it is not readily apparent to what extent fresh primary evidence regarding site suitability (as aired in para.D9.2.1.4.a, above, for example) has been addressed adequately.
- D9.2.3.3 Likewise, it is not readily apparent from the Applicant's response to ExQ3 AL.3.0-AL.3.3, inclusive (in REP8-116) to what extent the question of fresh primary evidence regarding assessment of alternative sites (as aired in para.D9.2.1.4.b, above, for example) has been addressed adequately. Arguably, for nuclear developments deployable after 2025, the 2011 EN-6 sits outside the Government's policy frame. It remains for the Applicant, not IPs, to identify and assess alternatives. Government support for a particular EN-6 site would now appear constrained to nuclear developments deployable by the end of 2025.

## **D9.3 Radioactive waste storage consent under the DCO**

### **D9.3.1 PD-021 and REP2-100: section 14 of the Planning Act 2008**

- D9.3.1.1 Responding to ExQ1 R.1.31 (PD-021), the Applicant submits the Interim Spent Fuel Store (ISFS) and the Intermediate Level Waste (ILW) Store are not distinguishable from conventional waste facilities, categorising both simply as "waste facilities". The following observations arise: RR-509 paras 2.2.3-2.2.6, inclusive, referring as well.

- a. Is the absence of distinction in the Applicant's submission strictly correct under planning law?
- b. The Applicant is uncertain whether the ISFS and ILW Store are part of the NSIP or associated development, but claims to presume classification under both categories.
- c. Paragraph B.4.4 in EN-6 Annex B challenges the Applicant's assertion that the ISFSs are integral part of an NSIP. Annex B clearly informs that ISFSs could be located off-site.
- d. Paragraph 2.11.5 in NPS EN-6 does not operate as standalone. It falls to be read together with paragraph B.4.4. Annex B challenges an assertion that the DCO application would not be complete without the storage facilities proposed.
- e. Citing Hinkley Point C as an example, the Applicant argues that inclusion of ISFSs in DCO applications for NSIPs is the norm. The assertion is challenged by the example of off-site arrangement in the case of a fleet of Advanced Gas Cooled Reactor nuclear power stations<sup>4</sup> (which also comprised similar nationally significant infrastructure projects in their own right).
- f. On the one hand, it is claimed the ISFS and ILW Store do not meet the criteria in the Planning Act 2008 for NSIPs in their own right under section 14. Yet, on the other hand, the Applicant claims it is not uncommon for DCO applications to comprise more than one NSIP.
- g. The Applicant suggests the higher activity radioactive waste facilities could be passed off as "waste storage facilities" under the Annex B list in the 2013 DCLG Guidance (on Associated Development Applications for Major Infrastructure Projects). Isn't that overstretch? Doesn't the Annex B list mean storage facilities for conventional waste categories?

D9.3.1.2 In this regard, the REP2-100 response communicates resistance to assessing and considering all reasonable alternatives to on-site location of the ISFS and the ILW Store at the proposed SZC DCO site. The Applicant's unwavering reliance on the 2011 EN-6 as a fount of relevant Government policy is arguably erroneous following the demotion of EN-6 to a source of "information, assessments and statements which may continue to be important and relevant for projects which will deploy after 2025": para.D9.2.1.3 above, referring.

J Chanay  
30.09.2021

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<sup>4</sup> NDA (2017) Sellafield Context Plan 2017-2026. Issue 2, May 2017. Nuclear Decommissioning Authority & Sellafield Limited. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649731/Context\\_Plan\\_Issue\\_2\\_May\\_2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649731/Context_Plan_Issue_2_May_2017.pdf)

Following the cessation of reprocessing of spent Oxide fuels in the Thermal Oxide Reprocessing Plant (THORP), at Sellafield (Cumbria) in 2018, spent fuel from the fleet of operating Advanced Gas Cooled Reactors (AGR) in Britain will instead be held in long-term interim storage at Sellafield. "The fuel will be stored here on an interim basis up until the 2080s, pending packaging and disposal in a Geological Disposal Facility." The 14 AGRs altogether, operating at five sites in England and two sites in Scotland, are all scheduled to close permanently between 2023 and 2030.