



To all stakeholders

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*Promoting choice and value for  
all gas and electricity customers*

Email: [licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk)

Date: 21 September 2011

Dear Colleague,

**Open letter consultation on switching on Section D of Horizon Nuclear Power  
Wylfa Limited's Electricity Generation Licence**

The purpose of this letter is to invite views on whether we should now switch on Section D of Horizon Nuclear Power Wylfa Limited's ("Horizon Nuclear Power") licence. Responses to this consultation should be received by **20<sup>th</sup> October 2011** and sent to:

Licensing Team  
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[licensing@ofgem.gov.uk](mailto:licensing@ofgem.gov.uk)

On 19 January 2011 Horizon Nuclear Power Wylfa Limited ("Horizon Nuclear Power") applied for an Electricity Generation Licence. In their application they requested that Section D (Supplementary Standard Conditions for Nuclear Generators) of the Standard Licence Conditions ("SLCs")<sup>1</sup> be switched on in their licence.

We considered it appropriate to treat the electricity generation licence application as separate from the request for Section D to be switched on. Having followed the standard

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<sup>1</sup> A copy of the Electricity Generation Standard Licence Conditions can be found at - <http://epr.ofgem.gov.uk/index.php?pk=folder380750>

licence application procedures, we granted an Electricity Generation Licence to Horizon Nuclear Power ("the Licence") on 9 May 2011, with Section D not switched on.

If we decide to switch on Section D of the Licence this does not mean that the licensee can start building or operating a nuclear plant straight away. There are a number of steps and requirements that have to be taken and adhered to before a company can build or operate a nuclear power station. Most of the work carried out on assessing nuclear power station planning applications is currently handled by the Infrastructure Planning Commission ("IPC")<sup>2</sup> on behalf of the Department of Energy and Climate Change. The Planning Act 2008,<sup>3</sup> which established the IPC, requires it to decide upon applications for energy infrastructure in accordance with the relevant National Policy Statements ("NPSs")<sup>4</sup>.

The conditions in Section D are explained in more detail below.

### **What do the conditions in Section D do in practice?**

An electricity generation licence enables the licensee to:

"...generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given..."<sup>5</sup>

An electricity generation licence does not however specify how that electricity should be generated. It should be noted that not switching on Section D does not prevent the licensee from generating electricity using nuclear means. The purpose of Section D is to introduce further rules governing nuclear generation. There are 5 conditions in Section D, information on which is set out below:

#### *SLC D1 - Definitions*

SLC D1 introduces new definitions that provide understanding of terms used in Section D.

#### *SLC D2 – Consultation with the Nuclear Installations Inspectorate*

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<sup>2</sup> The IPC is an independent body that examines applications for nationally significant infrastructure projects that support the economy and vital public services, including railways, large wind farms, power stations, reservoirs, etc. More information on the IPC can be found on their website: <http://infrastructure.independent.gov.uk/>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2008/29/contents>

<sup>4</sup> The energy NPSs can be found on DECCs website:

[http://www.decc.gov.uk/en/content/cms/meeting\\_energy/consents\\_planning/nps\\_en\\_infra/nps\\_en\\_infra.aspx](http://www.decc.gov.uk/en/content/cms/meeting_energy/consents_planning/nps_en_infra/nps_en_infra.aspx)

<sup>5</sup> Section 6(1)(a) of the Electricity Act 1989

SLC D2 requires Ofgem to consult with the Nuclear Installations Inspectorate if we are considering relieving an electricity generation licensee of some or all of its obligations under SLC 5 (Compliance with the Grid Code) and SLC 6 (Compliance with the Distribution Code).

The Grid Code is a code that all electricity generation licensees are required to comply with. It covers all material technical aspects relating to connections to, and the operation and use of, the Great Britain electricity transmission system.

The Distribution Code covers the technical aspects relating to the connection and use of the distribution licensee's distribution network. It specifies the day-to-day procedures that govern the relationship between the distribution licensees and users of their distribution system for planning and operational purposes in normal and emergency circumstances. It is also designed to ensure that the distribution licensee can meet its Grid Code compliance obligations.

#### *SLC D3 – Compulsory Acquisition of Land etc*

Schedule 3 of the Electricity Act 1989 ("the Act") provides for the Secretary of State to authorise a licence holder to purchase compulsorily any land required for any purpose connected with carrying on the activities which it is authorised by its licence to carry on. SLC 14 (Compulsory Acquisition of Land etc) of the electricity generation licence sets out the purposes for which the powers and rights conferred under Schedule 3 shall have effect. SLC 14 allows the licensee, under specific circumstances, to apply to the Secretary of State for a compulsory purchase order in respect of a specific piece of land. This condition is effective in all electricity generation licences.

SLC D3 extends the circumstances under which a licensee may apply to the Secretary of State for powers and rights under Schedule 3. The extended circumstances relate to the construction or extension, and activities related to the construction or extension, of facilities for the storage treatment or despatch of nuclear fuel or radioactive waste.

The Authority *does not* have the power to take a decision in respect of whether the land in question can be compulsorily purchased. Any such decision falls to the Secretary of State (although where the land in question belongs to another licence holder, the Authority's consent to the Secretary of State's authorisation must be sought under paragraph 2(1) of Schedule 3).

#### *SLC D4 – Other Powers, etc*

Schedule 4 of the Act gives powers to licensees, subject to the necessary consents and giving of notices, to carry out certain kinds of work for any purpose connected with the carrying on of the activities which they are authorised by their licence to carry on.

SLC 15 details the activities that the licensee is enabled to carry out by the effect of the powers and rights conferred under Schedule 4. In particular, paragraph 6 of Schedule 4 relates to the acquisition of wayleaves by the licensee; it enables the Secretary of State to grant the necessary wayleave if this has not been given by the owner or occupier of the land. This condition is effective in all electricity generation licences.

SLC D4 extends the circumstances under which a licensee may apply to the Secretary of State for powers and rights under Schedule 4. The extended circumstances relate to the carrying out of works relating to the installation of electrical plant to be used in connection with a generating station or facilities for the storage, treatment or despatch of nuclear fuel or radioactive waste or in connection with the operation of such station or facilities.

As for compulsory purchase applications, wayleaves may only be granted by the Secretary of State.

#### *SLC D5 – Ancillary Services*

This condition relieves the licensee of the requirements under SLC 11 (Ancillary Services) where the licensee is unable to comply without breaching the terms of any licence issued under the Nuclear Installations Act 1965.

### **Way forward**

We welcome comments and views on the issues discussed in this open letter consultation. Views are in particular welcome on the following points:

- **Should we switch on section D of Horizon Nuclear Power's licence<sup>6</sup>?**
- **Are there any other considerations that ought to be taken into account before we reach a decision?**
- **Please provide any relevant documentary evidence to support your views.**

Responses should be received by the **20<sup>th</sup> October 2011** and sent to the address details provided above.

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<sup>6</sup> It would be helpful if reasons could please be provided in support of any view expressed.

Unless marked confidential, all responses will be published by placing them in Ofgem's library and on its website [www.ofgem.gov.uk](http://www.ofgem.gov.uk). Respondents may request that their response is kept confidential. Ofgem shall respect this request, subject to any obligations to disclose information, for example, under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

Respondents who wish to have their responses remain confidential should clearly mark the document/s to that effect and include the reasons for confidentiality. It would be helpful if responses could be submitted both electronically and in writing. Respondents are asked to put any confidential material in the appendices to their responses.

Ofgem will carefully consider responses received to this consultation to help inform its final decision. Following this Ofgem will make its final decision in respect of whether to bring Section D into effect in the Licence held by Horizon Nuclear Power Wylfa Limited.

Yours faithfully,

**Declan Tomany**

**Associate Partner, Legal - Smarter Grids & Governance**