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Date: 28 November 2011

Dear Ms Boersma,

**Decision in relation to Horizon Nuclear Power's request for Authority consent under Standard Licence Condition 15 of the electricity generation licence**

On 04 November 2011, Horizon Nuclear Power (Horizon) submitted to the Gas and Electricity Markets Authority (the Authority) its application to obtain the Authority's consent under Standard Licence Condition 15 (SLC 15) of the electricity generation licence to exercise rights of entry on land for the purposes of establishing whether or not the land is suitable for the construction or extension of a generating station given by paragraph 10 of Schedule 4 of the Electricity Act 1989 (the Act).

This letter outlines our decision in respect of Horizon's application. In coming to our decision we have considered Horizon's application, contacted affected parties and conducted a short public consultation, and considered responses to the consultation.

Background

Schedule 4, paragraph 10(1) of the Act allows the holder of a generation licence to access land in order to survey the land for the purpose of ascertaining whether the land would be suitable for the use for any purpose connected with the carrying on of the activities which the licence holder is authorised by their licence to carry out. Schedule 4, paragraphs 10(2) to 10(5) of the Act set out the conditions which must be satisfied before the entry on the land may be exercised.

SLC 15(4) provides:

*"Paragraph 10 of Schedule 4 to the Act shall apply to the licensee if:*

- (a) it wishes to exercise its rights of entry on land for the purpose of establishing whether or not the land is suitable for the construction or extension of a generating station; and*
- (b) it obtains the consent of the Authority before exercising those rights."*

Accordingly SLC 15 of the generation licence restricts the powers available under paragraph 10 of Schedule 4 in two ways:

- by limiting the purpose for which the licensee may enter land; and
- by requiring prior Authority consent.

In 2008 Ofgem published a decision document on the procedure for dealing with requests for Authority consent under SLC 15 of the electricity generation licence.<sup>1</sup> This outlined the information required from applicants and the timeframe for making a decision – that is, 20 working days from receiving an application. We have followed this process in respect of this current decision.

### Assessment criteria

In assessing Horizon's application we have considered the following criteria using evidence provided in the application itself and by stakeholders through the consultation:

- Does the applicant hold a generation licence?
- Is access to land required to establish whether the land would be suitable for the construction or extension of a generating station?
- Has the applicant requested access from the occupier and has this been refused?
- Does the licensee intend to bore/search the sub-soil? If so, has the land occupier been informed?
- Is the licensee aware of their obligation to make good any damage done to the land?

### Feedback from the Consultation

To allow stakeholders to comment on Horizon's application we held a consultation from 16-23 November 2011. We also contacted affected parties by letter and telephone (where possible) to notify them of the consultation and Horizon's application. Contact details were either provided by Horizon with consent of the individual or were publicly available.

The consultation exercise was an opportunity for stakeholders to notify Ofgem of concerns if it appeared that Horizon was seeking access to land for purposes other than to establish whether or not the land is suitable for the construction or extension of a generating station.

Ofgem received one response to the consultation on 23 November 2011. The substance of the response was that our consultation documents should have been made available in Welsh and Welsh versions of the documents were requested. Concerns about the brevity of the consultation period were also raised.

We contacted the respondent by telephone on 17 November 2011. During the conversation the member of staff asked the respondent whether there was anything we could do to assist the respondent in responding to the consultation. The respondent requested that we notify their land agent (which we then did). The request for the consultation and related documents to be made available in Welsh was made on 23 November 2011 (the closing date for the consultation). Given our commitment to provide a decision within 20 working days of receiving an application, we have decided not to re-issue the consultation documents in Welsh. However, given the location of the land in question we accept that our written communication with consultees should have been bilingual. We are reviewing our policy in this area in light of the complaint and in accordance with Ofgem's Welsh Language Scheme, as approved by the Welsh Language Board.

The stakeholder also raised issues about the length of the consultation period. While we are under no obligation to consult, we aim to do so in such cases where possible. However, in this case any consultation time is unfortunately restricted by our commitment to provide a decision within 20 working days. As the consultation was focussed on a very specific issue – whether or not Horizon are looking to establish whether or not the land is suitable for the construction or extension of a generating station – we do not believe this warrants a long consultation period. This was explained to the stakeholder by phone on 17 November 2011.

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<sup>1</sup> See <http://www.ofgem.gov.uk/Licensing/Work/Documents1/SLC15%20consultation%20letter23April.pdf>

We also note that during the conversation on 17 November 2011, the respondent raised broader concerns about the development of a generating station in the area for both personal and cultural reasons. However, such concerns are outside of the scope of this current application process.

In summary, no evidence from stakeholders has led us to believe that Horizon is seeking access to land for reasons other than those allowed under the Act, as qualified by SLC 15 of the electricity generation licence.

### Ofgem's decision

On behalf of the Authority, we see no grounds to prevent Horizon Nuclear Power from exercising the entry rights under the Act (as qualified by SLC 15 of the generation licence). We are satisfied that all of our criteria, as outlined above, have been met. In particular:

- Horizon Nuclear Power currently holds an [Electricity Generation Licence](#).
- Access to land is required to establish whether the land would be suitable for the construction or extension of a generating station. The ecological and archaeological surveys are all intended to ascertain whether or not the land in question could be used for the construction of a generating station. We have no evidence that this access to land is required for any other reasons.
- Horizon has requested access to the relevant lands from the relevant occupiers and has provided evidence of this in its application. In a number of instances access has been refused.
- Horizon does not intend to bore the sub-soil.
- Horizon are aware of their obligations to make good any damage done to the land and have stated that they would like to work with the occupier's land agent to agree upon the initial condition of the land to be surveyed to ensure that Horizon can meet their obligation under the Act. Further, as the surveys proposed by Horizon are relatively non-invasive, we do not believe that these will adversely affect the undertakings of the current land occupiers.

We note that the Authority does not have the power to give an authorisation for Horizon to carry out the surveys outlined in its application. Further, this consent is given subject to Horizon complying with its statutory obligations under Paragraph 10 of Schedule 4 of the Act.

### Next Steps

Before entering any land for the purposes of exploration Horizon is required under Paragraph 10 of Schedule 4 of the Act to give 14 days' notice of the intended entry to the occupier.

Please contact Wil Barber at [wil.barber@ofgem.gov.uk](mailto:wil.barber@ofgem.gov.uk) or on 020 7901 7436 if you have any queries in relation to the issues raised in this letter.

Yours sincerely,

Ian Marlee

**Partner, GB Markets**

Signed on behalf of the Gas and Electricity Markets Authority