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for energy consumers

All Stakeholders

Email: licensing@ofgem.gov.uk

Date: 1 December 2015

Dear Colleague

Minded-to decision to switch on Section D of NuGeneration Limited's Electricity Generation Licence

The purpose of this letter is to advise that we are minded to switch on Section D (Supplementary Conditions for Nuclear Generators) of NuGeneration Limited's electricity generation licence.

If you wish to make any representations that you consider are relevant to our final decision, please email these to licensing@ofgem.gov.uk by 5 January 2016.

Background

NuGeneration Limited holds an electricity generation licence.¹ Standard licence condition 3 (Application of Section D (Supplementary Conditions for Nuclear Generators))² ("SLC 3") provides that we may issue a direction to bring section D into effect within the licence from a date specified in the direction. From that date, the licensee will be obliged to comply with the requirements of Section D to the extent and subject to the terms specified in the direction. Section D contains a number of conditions specific to nuclear generation, for example, supplementary conditions enabling the licensee to request the Secretary of State exercise certain powers related to compulsory acquisition and access to land. The conditions in section D are summarised in annex 1 of this letter. A number of licensed generators currently have section D in effect in their licences.

Nugeneration Limited has written to us to request that section D is switched on in its licence. NuGeneration has set out that the inclusion of Section D in its licence is necessary to enable the licensee to develop and commence operation of a nuclear generating station. We are minded to agree to switch on section D, which would make Nugeneration's licence consistent with that of other nuclear generators.

If we decide to switch on Section D in 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, and decisions to be taken by other relevant authorities. For example, the Planning Inspectorate is responsible for considering applications for consent

¹ Granted on 16 March 2012. Published on our electronic public register: <https://epr.ofgem.gov.uk/Document>

² A copy of the standard conditions of the electricity generation licence is available here: <https://epr.ofgem.gov.uk/Content/Documents/Electricity%20Generation%20Standard%20Licence%20Conditions%20Consolidated%20-%20Current%20Version.pdf>

to construct such projects, and making recommendations to the Secretary of State - who will make the decision on whether to grant or refuse development consent. Before submitting an application to the Planning Inspectorate, the developer is required to carry out public consultation on their proposals.³

Way forward

If you wish to make any representations that you consider are relevant to our final decision on whether to switch on section D of Nugeneration Limited's licence, please email these to licensing@ofgem.gov.uk by 5 January 2016, or send by post to:

Industry Codes and Licensing Team
Ofgem
9 Millbank
London
SW1P 3GE

We normally publish all responses on our website. However, if you do not wish your response to be made public then please clearly mark it as not for publication. We prefer to receive responses in an electronic form so that they can be placed easily on our website.

We will carefully consider any representation to help inform our final decision on whether to bring Section D into effect in the licence held by NuGeneration Limited.

Yours faithfully,

Lesley Nugent
Head of Industry Codes and Licensing

³ More information about the Planning Inspectorate's process can be found on their website:
<http://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>

Annex 1: Summary of conditions in section D of the electricity generation licence

SLC D1 - Definitions

SLC D1 introduces new definitions related to terms used in Section D.

SLC D2 – Consultation with the Nuclear Installations Inspectorate

SLC D2 sets out that Ofgem will consult with the Nuclear Installations Inspectorate⁴ 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 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). The Authority cannot consent if:

(a) the land is being used by the licence holder to whom it belongs for the purposes of an installation necessary for the carrying on of the activities which he is authorised by his licence to carry on; or

(b) it appears to [the Authority] that the land will be so used and that the use will commence, or any necessary planning permission or consent under section 36 or 37 of this Act will be applied for, within the period of five years beginning with the date of the application for his consent.

⁴ Now the Office of Nuclear Regulation: <http://www.onr.org.uk/>

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 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.