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Office for Nuclear Regulation

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Civil Nuclear Reactors Programme

NNB GenCo Nuclear Site Licence Application - Licensing and Legal Assessment Report

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EXECUTIVE SUMMARY

Title

Assessment on completion of licensing and legal due process associated with the Office for Nuclear Regulation's (ONR) assessment of NNB Generation Company Limited's (NNB GenCo's) application for a nuclear site licence to install and operate two European Pressure Reactors (EPR) units at Hinkley Point C.

Background

NNB Genco has applied for a nuclear site licence to install and operate two EPR nuclear power reactor at Hinkley Point C in Somerset. As part of its assessment of any site licence application ONR seeks confidence that:

- The licence applicant has full rights of access to, and control of, the site so that it can satisfy the demands placed on it by the licence and the Nuclear Installations Act 1965 (NIA65); and
- Statutory consultations are concluded properly and any issues raised are taken into account.

Subject to these matters being adequately addressed, and taking due account of other ONR assessments relating to the licence applicant's organisational capability; arrangements for compliance with the site licence; and safety reports, ONR then prepares a Nuclear Site Licence and subjects this to appropriate review before it is considered by the Chief Inspector.

This report summarises ONR's assessment of the adequacy of NNB GenCo's arrangements for security of tenure. It describes the outcome of consultations with the Environment Agency (EA) and the Department of Energy and Climate Change (DECC); considers the need for Public Body Notification (PBN) and reports on preparation of the licence.

As the licensing of Hinkley Point C (HPC) involves the transfer of some land from EDF Energy Nuclear Generation Limited's (EDFNGL's) licensed site at Hinkley Point B, the B site must be relicensed at the same time as the C site is licensed. EDFNGL has applied to ONR for relicensing of the B site and, whilst both applications have been assessed in parallel, the outcome of the Hinkley Point B relicensing assessment is considered in a separate report.

Assessment work carried out by ONR in consideration of this request

ONR, with advice from the Treasury Solicitors Department (TSol), has assessed a suite of property documentation and plans which demonstrate ownership, lease arrangements and rights granted (security of tenure) over the land at the proposed HPC site.

Land required for the proposed licensed nuclear site comprises:

- Land held freehold by EDF Energy Nuclear Generation Limited (EDFNGL)
- Land held freehold by EDF Development Company Limited (EDFDCL)
- Land held leasehold by EDFDCL

With regard to the EDFNGL land, NNB GenCo currently occupies this under the terms of a preliminary works lease for which consent was granted to EDFNGL by ONR in February 2012. NNB GenCo has entered into an Agreement for Lease with EDFNGL which enables NNB GenCo to take a 999 year Operational Lease as the site licence comes into force (first Operational Lease).

Since the access road will remain on the Hinkley B licensed site and be leased to NNB GenCo under the terms of the first Operational Lease, ONR has reviewed documents which cover rights of access to the Hinkley Point sites.

With regard to the EDFDCL land, NNB GenCo currently has two leases (for the EDFDCL freehold land) and two under leases (for the EDFDCL leasehold land) which are collectively known as the 'EDFDCL Preliminary Works Leases' which allow occupation of the EDFDCL land until 2023.

NNB GenCo has entered into an 'Agreement for Lease' with EDFDCL for a 999 year Operational Lease for the area currently covered by the preliminary works leases. Should a Development Consent Order (DCO) be granted, the freehold of the remaining (leasehold) EDFDCL land will transfer to EDFDCL under the terms of the transfer agreement with the landowner. The Agreement for Lease ensures that EDFDCL will grant the operational ease to NNB GenCo (second Operational Lease).

ONR has assessed NNB GenCo's proposals for security of tenure across the whole of its proposed site and in particular whether it can demonstrate that it has adequate control of the site and control of access. ONR has considered the position both at the point of licensing and what arrangements have been made for control of access to the Hinkley Point sites after licensing.

In addition, and in accordance with its process for grant of a new licence, ONR has:

- Considered the adequacy of the site boundary and map,
- Consulted the EA, who are a statutory consultee under NIA65 Section 3(1)A,
- Consulted DECC on the issue of Nuclear Liability Insurance and the applicants financial standing
- Considered the need for Public Body Notification
- Prepared a draft licence with the standard 36 licence conditions – apart from initial exclusion of LC2(4). The licence takes account of the Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010
- Consulted with TSoI on the draft licence
- Requested that the licensee prepare a factual check of the licence

Matters Arising from ONR's work

With regard to the EDFNGL land, satisfactory arrangements are in place for completion of a 999 year Operational Lease when the new site licence comes into force replacing the current preliminary works lease.

With regard to the EDFDCL land, current lease arrangements do not provide long term security of tenure. ONR has reviewed the term, the scope and the content of the existing preliminary works leases for the EDFDCL land, particularly the risk of forfeiture. An agreement for a 999 year Operational Lease has been entered into with EDFDCL which has been reviewed by ONR.

Following completion of the planning process, should a DCO be granted by the Secretary of State, the terms of the Freehold Transfer with the landowner together with the Agreement for Lease with EDFDCL as the current leaseholder mean that adequate long term security of tenure will then be in place across the whole of the HPC site.

In reaching a judgement on adequacy of security of tenure for licensing, ONR has indicated that completion of the EDFDCL/NNB GenCo Operational Lease will be a prerequisite for granting regulatory permission for nuclear safety-related construction to commence. Granting of the licence will provide ONR with regulatory powers to control this activity.

ONR has considered the mitigation measures put in place by NNB GenCo should the development not go ahead, resulting in failure to complete the second Operational Lease. The company has made a commitment to make a case to ONR for delicensing land currently covered by the

preliminary works leases. For the remainder of the land, the commitment is to either de-license or re-license it to another licensee.

Matters raised regarding the content of the property documents have been satisfactorily addressed and relevant documents have been executed.

Comments made by those bodies consulted by ONR for the purposes of licence grant have been taken into account. In particular, DECC has granted NNB GenCo a deferral of Nuclear Liability Insurance and prepared a provision for inclusion in the Nuclear Site licence.

Comments made during preparation of the licence have been addressed.

Conclusions

This report presents the findings of ONR's assessment of security of tenure (which includes leases, access road documents and inter-site nuclear safety co-operation agreements), and the outcome of consultations and matters arising from preparation of the licence.

I am satisfied that NNB GenCo's arrangements for security of tenure are adequate at this stage of the project given that grant of the licence will provide ONR with the regulatory powers it requires to exercise control over the start of construction.

Evidence has been provided that the Agreements for Lease have been entered into. Documents relating to property transfers and associated rights of access for the EDFNGL land will be effective at the point at which the new nuclear site licence comes into force. Arrangements are in place for completion of the EDFDCL lease should a DCO be granted.

I am satisfied that the boundary map is adequate and that, on the advice of the site inspector, licence condition 2(4) 'marking the site boundary' can be excluded initially from the standard set of licence conditions to be attached to the licence.

I am satisfied that relevant bodies, including the EA and DECC, have been consulted and their views taken into account and the provision for deferral of Nuclear Liability Insurance, drafted by DECC, is suitable for inclusion in the new nuclear site licence. Public Body Notification is not considered necessary at this stage in view of the Planning Inspectorates consideration of NNB GenCo's planning application. Nor does ONR have the vires at this stage to direct NNB GenCo. Moreover, local bodies are already informed and engaged with activities such as emergency planning in the event of a nuclear incident under the Radiation (Emergency Preparedness and Public Information Regulations) (REPPiR) framework.

I am satisfied that ONR has followed due process leading to licence grant, that TSol advice has been taken into account and that the licence is suitable for granting.

Recommendations

My recommendations are that:

ONR should consider NNB GenCo's arrangements for security of tenure to be adequate at the point of licensing in view of arrangements put in place to ensure long term security of tenure and the greater degree of regulatory control licensing will achieve. These regulatory controls are sufficient to ensure that NNB GenCo will require regulatory permission from the ONR, on behalf of the Health and Safety Executive, before construction can start. Completion of the EDFDCL/NNB GenCo Operational Lease will be linked to the granting of such permission.

ONR should accept NNB GenCo's commitment with respect to the action it will take in the event that it decides not to proceed with development of HPC.

ONR should include the provision for deferral of Nuclear Liability Insurance granted by the Secretary of State for DECC in the new nuclear site licence.

A new site licence should be granted to NNB Genco co-incident with relicensing of the B site owned and operated by EDFNGL.

LIST OF ABBREVIATIONS

ALARP	As low as is reasonably practicable
BSL	Basic Safety level (in SAPs)
BSO	Basic Safety Objective (in SAPs)
BMS	(ONR) How2 Business Management System
DECC	Department of Energy and Climate Change
DCO	Development Consent Order
HSE	Health and Safety Executive
IAEA	International Atomic Energy Agency
LC	Licence Condition
ONR	Office for Nuclear Regulation (an agency of HSE)
PBN	Public Body Notification
PCER	Pre-construction Environment Report
PCSR	Pre-construction Safety Report
PID	Project Initiation Document
PSA	Probabilistic Safety Assessment
PSR	Preliminary Safety Report
RGP	Relevant Good Practice
SAP	Safety Assessment Principle(s) (HSE)
SFAIRP	So far as is reasonably practicable
SSC	System, Structure and Component
TAG	Technical Assessment Guide(s) (ONR)
TSC	Technical Support Contractor
TSoI	Treasury Solicitors Department
WENRA	Western European Nuclear Regulators' Association

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1 INTRODUCTION

1.1 Background

1 NNB Generation Company Limited (NNB GenCo) has applied for a nuclear site licence to install and operate two EPR nuclear power reactors at Hinkley Point C in Somerset. As part of its assessment of the licence application, ONR's conducts a 'licensing and legal' assessment in order to:

- ensure that NNB GenCo has full rights of access to, and control of, the site so that it can satisfy the demands placed upon it by the licence and the NIA65
- ensure that statutory consultations are conducted properly and any issues raised are taken into account, and,
- prepare a Nuclear Site Licence which has been subject to internal review (including TSol).

2 As part of ONR's assessment of this application, a review of the arrangements for security of tenure has been completed. Since licensing of HPC depends on transfer of land from EDFNGL's Hinkley Point B site, security of tenure for both sites has been assessed in parallel. Site licences are not transferable and the already licensed land must be relicensed to NNB GenCo. Hinkley Point B must be relicensed as a consequence of these transactions and the impact on nuclear safety has been assessed in a separate report (Ref 33).

3 This assessment report presents the findings of the assessment of NNB GenCo's arrangements for ensuring security of tenure. This comprises a suite of property documents presented by NNB GenCo describing leasehold transactions, Deeds of Easement and Deeds of Covenant; and inter-site nuclear safety agreements.

4 As part of its process leading up to licence grant, ONR considers what consultation and notification needs to be undertaken. This report summarises the process leading to licence grant including preparation of the licence and the outcome of consultations with the EA (who are a statutory consultee under Section 3 of NIA 65) and DECC concerning the Licensee's financial standing and arrangements for Nuclear Liability Insurance.

5 This assessment was undertaken in accordance with the requirements of ONR's How2 Business Management System (BMS AST/001) Assessment Process and the BMS How2 Permissioning Process 'Licence New Nuclear Site' and Licensing of Nuclear Installations (Refs 1 & 2).

1.2 Scope

6 The scope of this report covers ONR's assessment of the adequacy of NNB GenCo's arrangements for security of tenure; ONR's consultation with other relevant bodies and the outcome of actions taken during preparation of the draft licence.

1.3 Methodology

7 Assessment of security of tenure is based primarily on documentation presented during, and as a follow-up to, a series of Level 4 meetings. ONR's assessment has focused on land ownership and rights of access to, and control of, land which falls within the proposed licensed site. In addition, ONR has reviewed documents which cover land ownership and rights of access to the Hinkley Point sites i.e. the Access Road documents.

- 8 TSol has been consulted, has reviewed the property documentation provided and has been involved in the Level 4 meetings – providing ongoing legal advice (Refs. 4 and 27).
- 9 In addition, and in accordance with its process for grant of a new licence, ONR has:
- Considered the adequacy of the site boundary and map,
 - Consulted the EA, who are a statutory consultee under NIA65 Section 3(1)A,
 - Consulted DECC on the issue of Nuclear Liability Insurance and the applicants financial standing
 - Considered the need for Public Body Notification
 - Prepared a draft licence in accordance with its internal process with the standard 36 licence conditions – apart from initial exclusion of LC2(4)
 - Consulted with TSol on the draft licence
 - Requested that the licensee prepare a factual check of the licence
- .

2 ASSESSMENT STRATEGY

- 10 ONR set out its Intervention Strategy for assessment of the application submitted by NNB GenCo which identifies the scope of the assessment and the standards and criteria that have been applied (Ref 3).
- 11 This assessment report covers the Licensing and Legal work-stream identified in that strategy and considers whether NNB GenCo can demonstrate that it has full rights of access to, and control of, the proposed nuclear site so that it can satisfy the demands placed upon it by the licence and the NIA65.
- 12 Other activities undertaken by ONR as part of the above strategy aim to ensure that statutory consultations are conducted properly, any issues raised are taken into account and, that the proposed site licence has been subject to internal review (including TSol).
- 13 EDFNGL's application for relicensing Hinkley Point B site has been assessed in parallel since relicensing of the B site will occur at the same time.

2.1 Integration with other Assessment Topics

- 14 Assessment of the suite of property documentation together with the site boundary map has taken account of
- ONR's decision to initially exclude Licence Condition 2(4) until such time as it is practicable to mark it by fences or other appropriate means.
 - ONR's assessment of NNB GenCo's arrangements for complying with LC16, site plans, designs and specifications. In particular, to ensure that the proposed site layout is consistent with the restrictions flowing from the Transfer document in respect of the EDFDCL land. The site boundary plan provided under this licence condition will be attached to the new nuclear site licence.
 - ONR's intent to use the primary powers embodied in LC19 (4) to specify that NNB GenCo seeks ONR's consent to commence construction i.e. pouring of the first nuclear safety related concrete.
 - ONR's assessment of NNB GenCo's arrangements under LC36 (1) relating to the need to provide and maintain adequate financial resources.
- 15 These are reported separately in ONR-CNRP-AR-12129 'NNB GenCo Hinkley Point C site – licensing: licence condition compliance arrangements'.

3 LICENSEE'S SAFETY CASE

16 NNB GenCo has not provided its demonstration of security of tenure as a safety case rather, it has been presented as a suite of documentation either at or arising from Level 4 meetings (Ref 7).

4 ONR ASSESSMENT

17 This assessment has been carried out in accordance with ONR How2 BMS document AST/001, "Assessment Process" and How2 Permissioning Process 'Licence New Nuclear Site'.

4.1 Scope of Assessment Undertaken

18 The aim of ONR's licensing and legal assessment is to:

- ensure that NNB GenCo has full rights of access to, and control of, the site so that it can satisfy the demands placed upon it by the licence and the NIA65
- ensure that statutory consultations are conducted properly and any issues raised are taken into account and,
- prepare a Nuclear Site Licence which has been subject to internal review (including TSol review).

4.2 Assessment

19 The assessment addressed in this report falls into two main parts. Firstly, assessment of NNB GenCo's arrangements for security of tenure and secondly, those activities undertaken by ONR leading up to licence grant. ONR has prepared a draft site licence and sought advice from TSol. ONR has consulted with relevant bodies and taken any matters arising into consideration in reaching its decision regarding grant of the site licence.

4.2.1 Security of Tenure

4.2.1.1 Overview

20 Paragraph 105 of the Licensing of Nuclear Installations states that *'where an applicant does not own the site, evidence is normally required in the form of a lease or some other legally binding contract or documentation setting out the relationship between the prospective licensee and the owner of the site'*.

21 In May 2012 NNB GenCo took two strategic decisions which affected security of tenure. Firstly, the decision to seek licence grant ahead of DCO grant and secondly, to write to ONR with a request to change the proposed footprint of the licensed site and effectively to move the proposed nuclear site boundary to the west leaving the Access Road on the Hinkley Point B site.

22 Land required for the proposed licensed nuclear site comprises:

- Land held freehold by EDF Development Company Limited (EDFDCL)
- Land held leasehold by EDFDCL
- Land held freehold by EDF Energy Nuclear Generation Limited (EDFNGL)

23 With regard to the EDFDCL land, NNB GenCo currently has two leases (for the EDFDCL freehold land) and two underleases (for the EDFDCL leasehold land) which are collectively known as the 'EDFDCL Preliminary Works Leases' which allow occupation of the EDFDCL land until 2023.

24 NNB GenCo has entered into an 'Agreement for Lease' with EDFDCL for an agreed 999 year Operational Lease. Should Development Consent be granted, the freehold of the remaining (leasehold) EDFDCL land will transfer to EDFDCL under the terms of the

transfer agreement with the landowner. The Agreement for Lease ensures that EDFDCL will grant the Operational Lease to NNB GenCo.

- 25 With regard to the EDFNGL land, NNB GenCo currently occupies this part of the Hinkley Point B site under the terms of a Preliminary Works Lease for which consent was granted to EDFNGL in February 2012. NNB GenCo has entered into an Agreement for Lease with EDFNGL which enables NNB GenCo to take a 999 year Operational Lease as the site licence comes into force. The Agreement for Lease ensures that the Operational Lease will be granted. As well as NNB GenCo, other signatories to the Agreement for Lease include EDFNGL, EDF Energy PLC; The Secretary of State for Energy and Climate Change (SoS); the Nuclear Liabilities Fund (NLF); the Nuclear Decommissioning Authority (NDA); Magnox Limited and National Grid Electricity Transmission PLC (NGET).
- 26 This is an important document as it provides the framework for The Operational Lease and all the other Access Road agreements. It binds all parties to the arrangements and the timeline. EDF Energy are a party to the Agreement in that they provide a guarantee of payment of the Lease premium. The SoS and NLF are parties in order to grant consent to the lease. The NDA are a party to ancillary documents (including a Nuclear Safety Co-operation Agreement and a Deed of Covenant) and NGET are a party to a Deed of Easement.
- 27 NNB GenCo's site licence application of 29th July 2011 indicated that a section of the Access Road would, in future, form part of the C site. However, a decision was taken in July 2012 not to transfer this licensed land to the C Site and, consequently, it will remain on the B site. NNB GenCo wrote to ONR with an amended site plan (Ref 15). However, the Access Road will form part of the area to be leased to NNB under the terms of the Operational Lease and consequently the boundaries of NNB GenCo's proposed nuclear site and the NNB GenCo/EDFNGL Operational Lease are different. As NNB GenCo will hold the lease for the relevant part of the Access Road which will remain within the B site boundary, EDFNGL, the NDA, Magnox Ltd. (Hinkley Point A site) and National Grid will be given rights of access over it.

4.2.1.2 Adequacy of Security of Tenure – the EDFDCL land

- 28 Over the course of the Level 4 meetings ONR, in consultation with TSol, has explored the basis for security of tenure over the EDFDCL land. At the point of licence grant, NNB GenCo has in place the current EDFDCL Preliminary Works Leases together with the Agreement to Lease and an agreed Operational Lease. Since the EDFDCL/NNB GenCo Operational Lease will not be entered into until and if Development Consent is granted, ONR has considered whether this demonstrates an adequate level of security of tenure.
- 29 ONR has sought further information and clarification on a number of points arising from consideration of the EDFDCL/NNB GenCo Agreement to Lease and the NNB GenCo/EDFDCL Operational Lease. These have either been satisfactorily explained or the Agreements for Lease or Operational Lease clauses have been amended and ONR is satisfied that matters arising have been addressed. (Ref 4). The term of the Operational Lease, the fact that it gives NNB GenCo 'quiet enjoyment' and the fact that there are no forfeiture/rights or re-entry clauses support the longer term demonstration of security of tenure once the Operational Lease has been completed.
- 30 At ONR's request, NNB GenCo completed a mapping exercise to ensure that the area of their proposed licensed site was consistent with leasehold plans. As a result NNB GenCo informed ONR that they had identified a small area of land which was not included in the EDFDCL leases to NNB GenCo (Ref 29). An additional lease was prepared for this land which has been reviewed by ONR and TSol.

- 31 On the advice of TSol (Ref 27), ONR's Licensing Specialist and the HPC site inspector have reviewed NNB GenCo's arrangements for complying with the restrictive covenants contained in the Land Transfer Agreement which flow down to the Operational Lease and reviewed these against the proposed site layout submitted under LC16 (Ref 5). These have been found to be consistent. In addition, no operational concerns have been raised by ONR's assessors regarding the proposed site layout. The definition of 'Permitted Use' has been reviewed and judged satisfactory from an operational perspective at this stage of the project.
- 32 Prior to completion of the Operational Lease, NNB GenCo's basis for security of tenure at the point of licensing is the suite of EDFDCL Preliminary Works Leases. The focus of ONR's assessment has been the potential for forfeiture of the leases. NNB GenCo has provided evidence of the steps it is taking to ensure compliance with the lease terms (Ref. 6) which ONR has reviewed.
- 33 ONR considers the risk of forfeiture of the Preliminary Works Leases to be sufficiently low such that it should not be considered to be an impediment to licence grant. The Agreement to Lease, between EDFDCL and NNB Co provides some confidence that property transactions will be completed between those two parties but overall they are still dependant on a positive DCO outcome.
- 34 Whilst construction of the nuclear installation cannot begin under the terms of the Preliminary Works Leases, ONR has indicated to NNB GenCo that it intends to use its primary powers under LC19(4) to specify that NNB GenCo should seek ONR's regulatory permission to commence construction i.e. pouring of the first nuclear safety related concrete. Long term security of tenure, which will be achieved once the EDFDCL/NNB GenCo Operational Lease is completed, will be required before regulatory permission is granted.
- 35 ONR has discussed with NNB GenCo the consequences of failure to proceed with the development, for example, should the Final Investment Decision (FID) not be approved or in the event that the Development Consent Order (DCO) is not granted. The latter would mean that transfer of the freehold from the landowner to EDFDCL would not take place and consequently the conditions of the EDFDCL Agreement for Lease could not be met.
- 36 Under these circumstances, NNB GenCo has made a commitment to ONR which is 'owned' by NNB GenCo's HPC Project Director to progress delicensing of the EDFDCL leasehold and freehold land. (Ref 10). As part of this commitment, NNB GenCo acknowledged the need to maintain a competent licensee to ensure that this commitment can be met. ONR considers that this commitment provides satisfactory mitigation for the stalled development scenario outlined in paragraph 35.

4.2.1.3 Adequacy of Security of tenure - the EDFNGL land

- 37 NNB GenCo currently occupies land on the Hinkley Point B site under the terms of a Preliminary Works Lease for which ONR granted consent in February 2012. This Preliminary Works Lease will be in place at the point of licence grant.
- 38 NNB GenCo and EDFNGL have entered into an Agreement for Lease which provides for a 999 year Operational Lease which will be completed at the point at which the new site licence comes into force.
- 39 ONR, in consultation with TSol, has explored the basis for security of tenure over the EDFNGL land and reviewed the terms of the Agreement for Lease and the Operational

Lease. The Agreement for Lease provides confidence that all parties are bound to complete the property transactions at the point at which the new site licence comes into force. All parties have given an undertaking to this effect (Ref 30).

40 ONR has sought further information and clarification on a number of issues. Points raised have either been satisfactorily explained or the Agreements for Lease or Lease clauses have been amended and ONR is satisfied that they have been addressed. (Ref 4) and our conclusion is that the Operational Lease provides evidence of adequate security of tenure.

41 Should a DCO not be granted NNB GenCo has indicated that it would enter formal discussions with EDFNGL and either progress delicensing of the EDFNGL freehold land or seek to relicense it to EDFNGL (as it was previously part of the B site).

4.2.1.4 Adequacy of Security of Tenure - The Access Road

42 A suite of documents has been drawn up which govern the legal basis for access to and egress from all three adjoining nuclear sites. Whilst some of these documents grant rights of access to others which are not directly related to security of tenure for the HPC site, ONR has considered whether they provide the necessary rights for the other Hinkley Point sites in order for them to fulfil their duties under their respective site licences.

43 Two parcels of land relevant to the Access Road are to be transferred by means of the 'Sale and Purchase Contract for the Highway' to EDFNGL. Firstly, the 'roundabout property' from EDFDCL (who own the freehold) and secondly, a section of Wick Moor Drove from NNB GenCo. Only the 'roundabout property', which is currently unlicensed land, will become licensed land but it will be included in boundary of the Hinkley B site. All parties have been granted rights over the roundabout property via the First Deed of Easement.

44 The 'second property' refers to a section of the Access Road (outside the proposed nuclear licensed site and current Hinkley Point B site) which currently forms part of Wick Moor Drove public highway. NNB GenCo has requested Compulsory Purchase Order powers in its DCO application that will enable it to acquire that land, stop up the public highway (i.e. it will no longer be a public highway) and transfer it to EDFNGL as part of the Highway Contract. EDFNGL will then lease (and therefore grant access rights) to NNB GenCo by means of a Supplemental Lease which has the same term (999 years) as the Operational Lease.

45 As this property is not part of either licensed site it is not directly relevant to security of tenure of the land. However, the documents demonstrate how rights of access for all three Hinkley sites are preserved.

46 A Second Deed of Easement to be completed on stopping-up of the Access Road granting access rights to all parties. The Access Road documents have been prepared such that they will be signed and entered into Escrow. At the point of stopping up of Wick Moor Drove the agreements will be deemed delivered i.e. the act of one triggers completion of the others.

47 With regard to the A site, the main 1996 Transfer reserved rights of access for Magnox Limited (Magnox) over the Access Road and these were transferred to the NDA by means for the Transfer under the Energy Act 2004.

48 Under the terms of the NNB GenCo/EDFNGL Operational Lease, EDFNGL (as landlord) retain rights of access/egress over the Access Road. Specific rights are granted to NNB GenCo in the event that EDFNGL carry out work on the Access Road. In particular, this

ensures that EDFNGL provide an alternative equivalent road for access to and egress from the HPC site over the HPB site. Similarly, NNB GenCo has the right to substitute an alternative road to the Access Road but it must serve the same purposes and EDFNGL would have the same rights over it. In addition, NNB GenCo must provide an alternative equivalent road that EDFNGL can use where NNB GenCo carries out work on the Access Road which means it cannot be used. (Operational Lease Schedule 1, para 1.1). EDFNGL also have to be given access to any Emergency Access Road on the Property during an Offsite Nuclear Emergency or Site Incident (Schedule 2, para 1.2).

- 49 The Deed of Covenant for the Access Road sets out the various covenants of NNB GenCo, NDA, EDFNGL and Magnox by which they each covenant for the benefit of the others. It effectively set out how rights may be exercised. For example, how access is to be maintained; that the Access Road will not be obstructed; that time is allowed for consultation if any work is proposed; that sign off by other parties is needed and that work is carried out to an agreed specification.
- 50 There are two Agreements for Surrender and two Deeds of Surrender for the Access Road. Should HPC be de-licensed before HPB then the Access Road will be surrendered from the Operational Lease back to EDFNGL. As a result, in this scenario, the Operational Lease will need to be varied to grant NNB rights over the Access Road.
- 51 A Deed of Covenant has been entered into in relation to a further stretch of Wick Moor Drove (referred to as the proposed southern roundabout) in which it covenants with the other signatories not to stop-up this section of Wick Moor Drove without EDFNGL, NDA and NGET consent. Whilst not relevant to the actual area of land to be licensed it is also significant in maintaining access to all three sites.
- 52 Both ONR and TSol have reviewed the suite of documents which cover the property transactions, arrangements for their execution and completion (Ref 30). Table 1 summarises timing of completion of transactions for the main areas of land at the point of licensing. Matters raised have been addressed and no issues of concern have been identified. On TSol advice, ONR's Licensing Specialist and the respective site inspectors have reviewed parts of the lease from an operational perspective and are content with the relevant clauses (Ref 11).

4.2.1.5 Other Documents

- 53 NNB GenCo and EDFNGL have completed a Deed of Grant which governs the grant of rights from NNB GenCo to EDFNGL for EDFNGL to use the helipad to be located on the HPC site and to have car parking rights at HPC.

4.2.1.6 Other matters

- 54 During the development of the property documents and plans, NNB GenCo advised ONR that they had discovered a slight title deficiency in that a small section of land (approximately 36 square meters) had not been purchased by EDFDCL as envisaged. This small parcel of land still belongs to the pre-existing owner but is currently being purchased by EDFDCL. Consequently, this small area of land falls between the B and C sites (Ref 14).

4.2.1.7 Inter-site Co-operation Agreements

- 55 Two new Nuclear Safety Co-operation Agreements have been negotiated between NNB GenCo, Magnox Limited and the NDA (A/C) and NNB GenCo and EDFNGL (B/C). These agreements govern the relationship between the adjacent sites in order to ensure their

smooth operation. The Agreements set out the general principles of co-operation by ensuring

- All parties to keep each other informed of their Operational Requirements.
- No party will take or omit any action which would cause a failure to comply with Operational Requirements.
- Proposed modifications by one party to plant, operating procedures or other matters which may affect the nuclear safety of another Party are to be notified to the other Parties.

56 ONR requested that the definition of 'Relevant Nuclear Regulations' in the A/C agreement be reviewed and this is now consistent with the wider definition of 'Operational Requirements' included in the B/C agreement.

57 There is also a new Hinkley Point Nuclear Site Licensee Nuclear Safety Agreement (NSLNSA) which governs the relationship between the A/B sites and now includes the NDA as a party to the agreement.

58 NNB GenCo has developed an 'Adjacent Facilities Protocol' which sets out the practical steps for inter-site co-operation and communication regarding future activities which are due to be undertaken that may impact the activities of the adjacent sites. ONR has reviewed this protocol and has also had sight of copies of minutes which demonstrate the active nature of inter-site communications. The protocol was also reviewed at a Level 4 meeting in relation to the Batch 2.2 site licence application submission relating to hydrogeology and proposed earthworks and found to be satisfactory (Ref 8 and Ref 9).

59 EDFNGL have developed a set of Management Control Arrangements (MCAs) to govern any work undertaken on the Hinkley B licensed site (i.e. in the area of the Access Road). ONR has reviewed these arrangements and matters raised have been satisfactorily addressed

4.2.2 Adequacy of the Site Boundary and Map

60 The boundary of the licensed site must encompass the licensable activities. Guidance on the map is contained in Annex 3 of Licensing Nuclear Installations (Ref 2). ONR's Licensing specialist has checked the map against these criteria and found it to be satisfactory.

4.2.2.1 Initial exclusion of LC2 (4)

61 LC2 (4) states...*"The licensee shall mark the boundaries of the site by fences or other appropriate means and any such fences or other means used for this purpose shall be properly maintained."*

62 During the early stages of the construction schedule NNB GenCo will undertake site preparation, major earthworks and preparation of the formation level for construction of the plant. ONR has accepted that erecting and maintaining nuclear site boundary markings during this stage is impracticable and could expose personnel to an unacceptable risk of injury. Therefore, ONR has agreed to exclude paragraph 4 of Licence Condition 02 from the NNB GenCo HPC nuclear site licence until such time as it is safe to erect and maintain an appropriate means of marking the nuclear site boundary. There is a perimeter fence around the wider development site. There will be no nuclear hazard on the licensed site in the early stages of construction.

- 63 Further information leading to this decision is contained in ONR-CNRP-AR-12129 'NNB GenCo Hinkley Point C site – licensing: licence condition compliance arrangements'.
- 64 The nominated inspectors for the HPA, HPB and HPC sites walked the site boundary and verified that the map provided by NNB GenCo for attachment to the licence accurately reflects the boundary and GPS co-ordinates were verified (Ref 32).
- 65 NNB Genco and EDFNGL have produced overlays of their respective boundaries and prepared a combined plan (Ref. 13). As a result of this exercise, a small change has been made to the Hinkley Point B licensed site boundary and a new map submitted.

4.2.3 Consultation and Notification

4.2.3.1 Consultation with the Environment Agency

- 66 Section 3 (1A) of NIA65 places a requirement on ONR to consult the appropriate Agency before granting or revoking a licence. This is to ensure that granting of the licence will not conflict with the relevant environment regulator's environmental protection responsibilities or prejudice its processes under the Environmental Permitting Regulations 2010 (as amended) (EPR2010), or other environmental legislation. The arrangements for this consultation are set out in Memoranda of Understanding between ONR and each agency.
- 67 ONR has consulted the EA (Ref 16) in relation to NNB GenCo's application to seek confirmation that it has no objection to the granting of that licence. The EA has confirmed that information contained in NNB GenCo's application is consistent with the EA's principles for the protection of the environment and, as a separate legal process does not prejudice its processes under the Environmental Permitting Regulations 2010 (as amended) (EPR2010) or other environmental legislation (Refs 17 and 18). Its determination under ERP2010 for three operational permits for HPC is ongoing.

4.2.3.2 Public Body Notification

- 68 Section 3(3) of NIA 1965 gives ONR the discretionary power to direct a licence applicant to inform public bodies of the application and to invite them to make representations to HSE with respect to the use proposed to be made of the site under the licence. The purpose of this "Public Body Notification" (PBN) process is to allow public bodies who may have statutory duties in relation to the site to be informed of the licence application and to advise ONR (on behalf of HSE) whether their duties might be affected by the licensable activities. This enables ONR to consider whether there is a need to amend any of the licence conditions that are normally attached to the nuclear site licence.
- 69 However, the power under S3 (3) was specifically excluded for a nuclear power station where a consent under S36 of the Electricity Act 1989 was required. This is because a Public Inquiry was anticipated to be held for all such applications, rendering PBN superfluous. Under the Planning Act 2008 nuclear power stations are 'nationally significant infrastructure projects' and the planning consent process has changed. Prospective developers are now required to seek a DCO which must be approved by the Secretary of State following a recommendation from the Planning Inspectorate.
- 70 ONR sought advice from TSol to establish the relationship between NIA65 and the Planning Act 2008 – specifically, to confirm whether the exclusion for nuclear power stations from PBN remains. TSol advised that, where applications for a DCO have been made under the Planning Act 2008, section 3(3) of NIA 1965 will not be available to HSE prior to the grant of a that DCO. ONR does not, therefore, have the legal vires to direct NNB GenCo to conduct a PBN for Hinkley Point C at this stage (Ref 19).

71 Although ONR considered carrying out an equivalent process to PBN it concluded that it is not considered necessary at this stage in view of the Planning Inspectorates consideration of NNB GenCo's planning application. Moreover, local bodies are already informed and engaged with activities such as emergency planning in the event of a nuclear incident under the Radiation (Emergency Preparedness and Public Information Regulations) (REPPIR) framework. ONR will consider the outcome of the planning process and determine whether any changes to the licence conditions are needed.

4.2.3.3 Nuclear Liability Insurance

72 The licensee is required to provide cover for third-party claims up to limits prescribed by NIA65 and for the arrangements to be approved by the Minister. In the case of HPC, DECC is responsible for the review of the adequacy of the licensee's cover, which may be provided by insurance, indemnity or other approved means. A nuclear site licence may, with the consent of the Secretary of State, include provision regarding the time from which such cover is to apply. For example, this may be linked to the point at which nuclear fuel is to be brought onto the site for the first time.

73 Unless provision has been made for a deferral of cover as described above, cover must be in place when the new nuclear site licence comes into force. To avoid the risk of the licensee not having the legally necessary cover in place, ONR sought confirmation from DECC that NNB GenCo had made appropriate arrangements for liability cover.

74 DECC confirmed to ONR that NNB GenCo made a request to DECC for a deferral of cover until it is ready to bring nuclear fuel onto the HPC site for the first time.

75 DECC advised ONR that NNB GenCo's request for deferral has been granted by the Secretary of State. It is conditional, amongst other things, on keeping potential claimants advised through NNB GenCo's website of the time when the deferral is replaced by insurance or other means. NNB GenCo has accepted the conditions specified by DECC in a company commitment document (Ref 20).

76 DECC has prepared a provision for deferral which has been reviewed by ONR which will be incorporated into the new nuclear site licence (Ref 28).

4.2.3.4 Financial Standing

77 ONR has written to DECC in order to seek confirmation of the financial standing of the prospective licensee (Ref 21). DECC has responded that they are not aware of any issues that they would wish to draw to ONR's attention relating to the licence applicant's financial standing (Ref 26).

78 In addition, ONR's specialist inspector has looked at the adequacy of NNB GenCo's arrangements relating to the need to provide and maintain adequate financial resources as part of his assessment of their LC36 arrangements - particularly LC36(1). He has presented his findings against ONR's expectations in ONR-CNRP-AR-12-098. He considers that the evidence provided by NNB GenCo, when judged against ONR's criteria, provide sufficient confidence that NNB GenCo will provide and maintain adequate financial resources to ensure the safe operation of the HPC nuclear licensed site.

4.2.4 Preparation of the Licence

79 ONR has drafted a nuclear site licence (Ref 31) which would license the following nuclear installations: **Two thermal neutron reactors, being reactors designed to be fuelled with uranium dioxide of low enrichment with the isotope U²³⁵ moderated and cooled**

by water, together with any machinery, equipment, appliance, or storage facility required for the operation thereof.

- 80 This wording is consistent with the Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010 (Ref 25). The draft licence has completed an internal review. Specific comments made by TSoI have been incorporated (Ref 22). The licensee has been invited to check the draft licence for factual accuracy and had provided comments (Ref 24).

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

- 81 This report presents the findings of the ONR assessment of security of tenure (which includes leases, access road documents and inter-site nuclear safety co-operation agreements), and the outcome of consultations and matters arising from preparation of the licence.
- 82 I am satisfied that NNB GenCo's arrangements for security of tenure are adequate at this stage of the project given the arrangements in place to achieve long term security of tenure and the fact that grant of the licence will provide ONR with the regulatory powers it requires to exercise control over the start of construction.
- 83 Evidence has been provided that the Agreements for Lease have been entered into. Documents relating to property transfers and associated rights of access for the EDFNGL land will be effective at the point at which the new nuclear site licence comes into force. Arrangements are in place for completion of the EDFDCL lease should DCO be granted.
- 84 I am satisfied that the boundary map is adequate and that, on the advice of the site inspector, licence condition 2(4) 'marking the site boundary' can be excluded initially from the standard set of licence conditions to be attached to the licence.
- 85 I am satisfied that relevant bodies, including the EA and DECC have been consulted and their views taken into account. The provision for deferral of Nuclear Liability Insurance, drafted by DECC, is suitable for attaching to the new nuclear site licence. Public Body Notification is not considered necessary at this stage in view of the Planning Inspectorates consideration of NNB GenCo's planning application. Moreover, local bodies are already informed and engaged with activities such as emergency planning in the event of a nuclear incident under the Radiation (Emergency Preparedness and Public Information Regulations) (REPPiR) framework.
- 86 I am satisfied that ONR has followed due process leading to licence grant, that TSol advice has been taken into account and that the licence is suitable for granting.

5.2 Recommendations

- 87 My recommendations are as follows.
- ONR should consider NNB GenCo's arrangements for security of tenure to be adequate at the point of licensing in view of the arrangements put in place to achieve long term security of tenure and the greater degree of regulatory control licensing will achieve. These regulatory controls are sufficient to ensure that NNB GenCo will require Consent from the Executive before construction can start. Completion of the EDFDCL/NNB GenCo Operational Lease should be linked to this Consent.
 - ONR should accept NNB GenCo's commitment with respect to the action it will take in the event that it decides not to proceed with development of Hinkley Point C.
 - ONR should include the provision for deferral of Nuclear Liability Insurance granted by the Secretary of State for DECC in the new nuclear site licence.
 - The new nuclear site licence, as drafted, should be granted to NNB GenCo co-incident with relicensing of the B site owned and operated by EDFNGL.

6 REFERENCES

- 1 *ONR How2 Business Management System. Assessment Process. AST/001 Issue 4. HSE. April 2010. www.hse.gov.uk/nuclear/operational/assessment/index.htm.*
- 2 *Licensing of Nuclear Regulations, ONR, 2012*
- 3 *ONR Intervention Strategy – NNB GenCo Site Licence Application 2011/402124*
- 4 *TSol Log of issues – NNB GenCo/EDFDCL land and resolution of matters raised TRIM: 2012/414750*
- 5 *Hinkley Point C Power Station – Compliance with the transfer restrictions TRIM 2012/354137*
- 6 *Compliance Schedule with Lease provisions TRIM: 2012/414687*
- 7 *NNB GenCo Ltd: Property Document Bundle first submitted 1st August 2012; updated and resubmitted 9th October. Documents are listed in Annex 1. emails: TRIM: 2012/405115; Plans TRIM: 2012/414667; Further Plans TRIM: 2012/414663. Full index TRIM: 2012/455024. Final Table of Rights TRIM: 2012/461194*
- 8 *Intervention Report - Adjacent Facilities Protocol discussion in relation to Batch 2.2 submission TRIM: 2012/323141*
- 9 *NNB GenCo Adjacent Facilities Protocol and minutes TRIM 2012/354126*
- 10 *Letter and Commitment to Manage the Hinkley Point C Nuclear licensed Site in the event that DCO is not Granted or FID not approved TRIM;2012/400194*
- 11 *Access Road documents – TSol advice TRIM: 2012/414786 & 2012/446299*
- 12 *NNB Genco – Letter to ONR including revised NSL boundary proposal and map (rev J) TRIM:2012/310993*
- 13 *Plan 160 – Boundary Overlays – Hinkley B and C sites TRIM 2102/396538*
- 14 *Title regarding land belonging to the trustees of the Estate TRIM: 2012/414691*
- 15 *Letter from NNB Genco advising final boundary (version L) TRIM: 2012/414428 and 2012/397365. Final boundary map 2012/414430*
- 16 *ONR Letter to the Environment Agency – statutory consultation under NIA 65 2012/272144*
- 17 *First Response from the Environment Agency – 23rd August 2012 TRIM: 2012/445892*
- 18 *Second response from the Environment Agency TRIM: 2012/436467*
- 19 *TSol advice on Public Body Notification TRIM: 2012/314072 & TRIM: 2012/454040*
- 20 *Commitment from NNB GenCo regarding Public Liability Insurance with regard to the PROVISION made by DECC. TRIM 2012/389896*
- 21 *ONR Letter to DECC regarding financial standing and nuclear liability insurance TRIM:2012/269625*
- 22 *Comments from TSol and ONR Policy on the draft licence TRIM: 2012/312690; TRIM 2012/454153; 2012/454167 & 2012:454133*
- 23 *ONR Letters to NNB GenCo requesting that they carry out a factual check of the draft licence TRIM: 2012/416676 and TRIM 2012/381712*
- 24 *Response from NNB GenCo regarding factual check TRIM 2012/414402, 2012/454153 and 2012/455024*
- 25 *The Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010*

- 26 *Response from DECC regarding financial standing and nuclear liability insurance. TRIM 2012/415241*
- 27 *TSol Interim note of advice on security of tenure. TRIM 2012/414814 & 2012/446315*
- 28 *Final Provision from DECC regarding deferral of Nuclear Liability Insurance TRIM 2012/454121*
- 29 *Supplemental Lease of EDFDCL land following title review – November 2012 TRIM: 2012/444844*
- 30 *ONR response to NNB GenCo's undertaking (and other parties) regarding release of property documents in preparation for completion at the point of licensing. TRIM: 2012/444872*
- 31 *Draft Nuclear Site Licence to be granted to NNB GenCo in respect of the Hinkley Point c site.*
- 32 *Intervention Reports: walking the site boundaries TRIM: 2012/451928 & 2012/395948*
- 33 *Project Assessment Report: Relicensing Hinkley Point B TRIM: 2012/405616*

Table 1 : Timing of main property transactions

Land in question	Current	At the point of the NSL coming into force	In the event of DCO grant
EDFNGL Land	Preliminary Works lease Agreement for Lease and 999 year Operational Lease executed by the parties who have given an undertaking to complete as the site licence comes into force	Completion of 999 year Operational Lease	No change
EDFDCL land	Preliminary works leases (4) Agreement for Lease (999 year Operational Lease) and 8 th November supplemental lease completed	Agreement for Lease (999 year Operational Lease) and 8 th November supplemental lease completed	Completion of 999 year Operational Lease following DCO grant
Roundabout Property	EDFDCL freehold (unlicensed)	EDFDCL freehold transfer to EDFNGL followed by completion of Operational Lease to NNB GenCo Roundabout Property incorporated in Hinkley Point B licensed site	No change
Access Road – First Deed of easement	Executed by the parties	Completed – allowing signatories rights of access over the roundabout property	No change
Access Road Deed of Covenant	Executed by the parties	Completed – governing how rights granted over the access road are to be exercised	No change

Table 1 : Timing of main property transactions

Land in question	Current	At the point of the NSL coming into force	In the event of DCO grant
Access Road – further Deed of Easement and Deed of Covenant	Escrow Deed agreed to complete further relevant documents following DCO grant	Escrow deed agreed	Completed automatically following DCO grant and notice to stop-up part of Wick Moor Drove

