

TO: Rt. Hon. Claire Coutinho, MP
Secretary of State for Energy Security and Net Zero

29 January 2024

RESPONSE: REGULATED ASSET BASE LICENCE CONSULTATION

Dear Secretary of State,

We have today submitted a response to your Department's "*Regulated Asset Base Licence Consultation: Modifications to Sizewell C Limited's electricity generation licence*", which launched on 6 November 2023.

We welcome the opportunity to respond to this consultation and are grateful to your officials for providing information and support during the process. We have provided a response on each of the five questions posed in the consultation, including specific recommendations on steps the UK Government should take to protect the interests of consumers.

We support your Department's request for input from consumer representatives, and think that the level of consumer engagement should be broadened and deepened going forward. We have suggested mechanisms to enhance the role of consumers and consumer representatives in the nuclear RAB process. This will act in addition to the statutory duties on Ministers and public bodies, in order to protect the interests of current and future consumers.

We recognise that regulatory issues are complex and technical. However, given the special characteristics of the nuclear RAB model, it should be the responsibility of the UK Government, the licensee, and the economic regulator to nurture an informed and technically literate engagement with the process. We note the important, and appropriate, safeguards to protect the interests of taxpayers and would expect the licensee to make its case strongly in the interests of investors. We think it only right that the consumer interest is similarly and suitably protected as part of the nuclear RAB model.

Consumer engagement is important because the nuclear RAB model is designed to shift the balance of risk onto future consumers, when compared to the mechanisms deployed for Hinkley Point C. The UK Government has argued that the new approach will provide

assurance to investors, to enable a project to proceed; and to taxpayers, to limit calls on the Exchequer in future years. We acknowledge the argument in principle and in theory that the rebalancing of risk may reduce the costs of capital required by investors to such an extent that consumers may benefit overall. This could happen if the savings from a lower cost of capital exceeds the additional risks and “conditional liabilities” that consumers are being asked to take.

To achieve such an outcome, the licensee is being awarded unique rights and privileges as an electricity generator in Great Britain. This includes the ability to gain revenue from consumers during the construction phase – before any electricity is produced – and the ability to increase consumer charges to fund a proportion of cost overruns. We think there should be a corresponding set of responsibilities on the licensee to consumers.

We would like to see the UK Government publish some illustrative examples of how time and cost overruns might impact on consumers. This will help stakeholders understand the possible outcomes and impacts of changes to the RAB parameters which have yet to be set. It has been reported that the costs of Hinkley Point C have substantially increased, and operations are now not expected to commence until at least 2029. If similar cost overruns and delays were to arise under a RAB model, consumers would be liable to fund several billion pounds of further pre-operational costs as well as a proportion of the cost increases over the operational life of the station. We would like to see a costed assessment of such impacts.

Our view is that any RAB model which places a greater burden of risk onto future consumers should in turn include greater transparency, scrutiny, and institutional safeguards to protect consumer interests. We think it essential that the Government publishes a definitive assessment of the economics of the project, explaining clearly why it is in the consumer interest as part of the just transition to net zero and how the detailed decisions on regulatory parameters and thresholds will protect current and future consumers. We welcome the information that has been provided during the parliamentary process on the Nuclear Power (Financing) Act 2022 and in the decision to designate the licensee. But we do not think the existing economic assessment, with quite limited disclosure of the detailed costs estimates, is sufficient, given the commitments being made on behalf of future consumers.

It is also clear that your initial decisions as Secretary of State in setting the key regulatory parameters, like the regulatory thresholds and the initial cost of capital, will in large measure determine the balance between the interests of consumers, investors, and taxpayers. At present, there is insufficient transparency on this fundamental information to enable us to

have assurance that the nuclear RAB model protects consumer interests. We would propose that the Government sets itself a requirement on the face of the licence that there will be full transparency of decisions taken by the Secretary of State, and clearer guidance on the criteria for decision making.

Taken together, the framework for decision making for the Secretary of State and the draft licence modifications do not yet provide us with the necessary assurance that the interests of consumers will be sufficiently protected. We would emphasise that there are many things to welcome. In particular, we support the role of Ofgem as an independent economic regulator, and have taken significant assurance from their Guidance document published alongside the consultation. This guidance provides further insight into how the licence modifications will play out as a bespoke economic regulatory framework for the development of Sizewell C. We think Ofgem's role could and should be enhanced further, to bring it more in line with the role of the regulator in projects like the Thames Tideway Tunnel, which has been referenced a number of times in the UK Government's documents.

We have made recommendations on specific licence modifications which we think will bolster the protections for consumers, without in any way undermining the broad approach being taken by the Government. The Government's proposals do appear to provide extensive safeguards to protect the interests of taxpayers and investors, which may make the Final Investment Decision more likely. But we are concerned that this will be achieved by shifting risk too far onto the shoulders of future consumers, with inadequate transparency and institutional safeguards of their interests.


In particular,

- We would like to see much closer scrutiny of the construction costs of the project during the pre-PCR phase. At present, the approach seems to be for the licensee to report its costs, which will be subject to verification as "allowable expenditure" by an Independent Technical Adviser. We note that this process is referred to as "mechanistic" and that Ofgem have limited role in this phase of the project. The practical effect of the licence modifications is that a significant proportion (yet to be decided) of cost overruns below the level of the Higher Regulatory Threshold can be added to the RAB and over time charged to consumers. The licence at present does not include any additional scrutiny or visibility of the construction phase of the project, if costs overruns and delays occur. We think it would be desirable to have a clear licence requirement of a regulatory review during the construction phase to facilitate scrutiny, given the significant public and consumer interest involved.

- We would like to see clear penalties for construction delays, and a clearer approach to incentivising timely completion of the project set out in the licence.
- We support the considered approach to regulation of the operational phase of the project, and the published guidance from Ofgem. We make recommendations that the licence should acknowledge and recognise the extent of possible change in the electricity and non-electricity energy markets over the next few decades. We think that the licensee should be incentivised to pursue commercial activities in non-electricity energy markets if they hold the prospect of reducing the burdens on electricity consumers. We see a major role for Ofgem in regulating these possible futures.
- We would like to see the licence modifications include commitments to visibility and transparency of decision making and outcomes. One of the responsibilities which the licensee should have to consumers is to share information on progress and outcomes. We recognise that there are limits on disclosure, arising from commercial confidentiality or national security, as noted in the legislation. We think this should however be set at a “high bar”; it should not be used to avoid revealing potentially awkward information.

We would welcome the opportunity to engage further on the stages before publication of the final licence modifications and the Final Investment Decision, alongside a range of other consumer representatives. We would likewise welcome the opportunity to provide further input during the pre-PCR and operational phases of Sizewell C.

Yours

A handwritten signature in black ink, appearing to read 'David Wilson', with a stylized, cursive script.

David Wilson
Chair
Consumer Scotland