The Court
4 Mount Pleasant
BARRY
Vale of Glamorgan
CF63 2HE

26th October 2020

Your Ref: **EPR/HP3228XT/V004**

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Dear Sirs

NNB Generation Company (HPC) Limited appeal application to vary conditions at Hinkley Point C, Somerset. EPR/HP3228XT/V004

Could you kindly record my interest and note the following objections to the above appeal.

My objections arise in part from the premiss that where the conditions on a permit are imposed either at the request/suggestion of the applicant and/or with the agreement of the applicant then the removal and/or variation of said conditions can only arise in exceptional circumstances and with full disclosure on the part of the applicant.

The project being pursued at Hinkley Point is one requiring an Environmental Impact assessment (EIA) as it is a Schedule A1 project. What could be proposed here is that the EIA should be revisited due to some misunderstanding at the time of the grant of the Permit or due to a significant alteration to the Permit being proposed.

The Appellant wrong implies that the Acoustic Fish Deterrent (AFD) system is standalone, a separate matter from the other mitigating arrangements. In fact the AFD is a part of a whole system, it is one third of the mitigating arrangements. If

you take away one part the rest falls down. I would therefore submit that the effect of the Appellant's appeal is to set aside the Permit and return to the EIA stage with the intention of reconsidering the options to take account of what the Appellant is now asserting.

It is not in the public interest for environmental permits to be granted on conditions that applicants know can be attacked later. This would mean that no matter what is agreed at the permit application stage, the Environment Agency and the public can never be sure that the agreement reached is genuinely arrived at rather than a tactical precursor to a later application to undo the agreement/decision – usually to benefit the applicant financially.

The uncertainty, expense, worry, that is involved in re-opening these matters with understandable public involvement, should be avoided whenever it is possible. The applicants/appellants in such cases must face a very high hurdle in proving their case as the need for certainty in the granting of permits should be high and these matters should not be revisited lightly.

When dealing with this type of matter the appellant/applicant should be required to abide by the highest standard of good faith during the process especially disclosure of all material facts that could influence the decision of the authority that has to make the final decision.

The first stage of any similar application/appeal should be a decision whether the appellant has made out a proper case for revisiting what was previously decided. Is there really a change of circumstances requiring a revisit or is it simply a change of attitude on the part of the applicant/appellant.

In order to assess this the appellant in this case should be required to produce all of its documentation relevant to their decision to accede to or suggest the condition for an AFD system in order to ensure that the agreed condition was genuinely entered into and that the applicant was not 'taking a punt' in anticipation of opening up the question if they decide they would prefer to proceed without said condition. Information known to the applicant and/or available to the applicant (following proper due diligence) should not be permitted to found a basis for amending the permit conditions in the way we see in this appeal.

In the present appeal it is difficult, on the basis of the papers submitted, to see what fresh material the appellant is calling. Everything was, or should have been, known to the applicant at the time of the grant of the permit. The process cannot be used to revisit material that has already been considered by the EA when granting the permit or was not put before the EA by the applicant for that purpose. Simply because the Appellant regrets the tactics then utilised by the Appellant is no basis for allowing this application to proceed. Regretting the tactics used is rarely if ever a basis for reopening any cause.

The process ought to take account of a situation where an appellant is relying upon its own failures and/or recklessness in order to seek a controversial amendment to

conditions on its permit. In such a case, if PINS were to decide it was appropriate to review the permit then it should be argued that the default position will be a full reconsideration of the original permit application with a new EIA with the appellant being responsible for the costs incurred as caused due to its own default.

There can be no doubt that since the grant of the permit the general public has become even more aware of environmental issues and is bound to be concerned about this type of application which could be viewed as running a coach and horses through the permitting process. It should be incumbent upon the appellant to satisfy all reasonable, interested parties of its bona fides in order to encourage the public to understand and trust environmental protections that are in place. Science has also moved on such that there may be no point in continuing with this permit as cooling can be adequately dealt with on land instead. There will be excellent reasons for requiring an EIA in the circumstances where the Appellant asserts an issue with the Permit and when it is very likely that different conclusions might be reached on important environmental matters due to scientific progress.

In order to ensure that correct decisions are arrived at, the appellant should be subject to uberrimae fidei, acting under the highest standard of good faith and disclosing all material facts that could influence the decision maker and assist the public to continue to trust the processes. Environmental issues are (rightly) very high up on the agenda for so many people and organisations. The public has come to expect transparency in these matters.

It is beyond belief (or very worrying) that a project that claims to have the expertise to construct and run a nuclear power station is incapable of ensuring it adequately investigates whether it can comply with a foreseeable condition that includes an AFD system. Either the applicant at the Permit stage knew it could comply with what it agreed was an important condition or there was a false assumption on the part of the Appellant that it could have the condition removed later.

It is quite clear that the three steps required by the permit for the protection of fish etc were all part of a single system. The failure to implement any one part of the system is a failure of the system as a whole. When the appellant made its offer to implement all 3 parts of the system it was well aware of the issues that it now claims stand in the way of implementing it. It could be thought by some that the appellant was somewhat cavalier with its offer at the time the permit was dealt with or it failed to carry out its own due diligence. The reality must be that this company must have carried out its due diligence, it decided it could comply with the conditions; the full explanation for the change of attitude must be made available with all appropriate disclosure.

A great deal of the material relied upon by the appellant has been left in technical language such that members of the public cannot be expected to understand fully what is being claimed by the appellant; what their evidence actually shows. Each document relied upon by the appellant should have a plain English counterpart.

Failure to supply such counterparts should be regarded as a significant failure on the part of the appellant in supplying relevant documentation in support of its appeal. The appellant should be told to supply these further documents without delay. The time for objections should be extended once the documents are made available and advertised.

I did try to find assistance within the paperwork to understand expert reports and in particular I looked for help on the Cefas report. I relied upon the Statement of Case from pages 18 onwards. Although I may still not understand the Cefas report I was at least able to understand I was unable to follow everything for at least the following 2 reasons namely:-

- There seems to be an over-reliance on analysis of species other than those designated by the HRA or Ramsar. I wondered if that was a distraction from the more difficult areas that should be addressed.
- Within all of the arguments about numbers of fishes I did not see included the following simple query. References are made to EAV calculations. I assume that these calculations should have taken in the overall impact namely the stock of younger fishes that will be available to be consumed by predators, including birds. If we assume that the amount of predating remains constant then this will mean that the predating is a higher percentage of what is left of the fish stock after the destruction of young at the intake. If the stock taken by predating is reduced presumably this might mean that the predators have suffered their own losses as a result of the diminished stock.

An independent expert is well able to explain their advice in both technical and lay language. Failure to supply a plain English document in support of each expert report is a choice by the Appellant. It creates in the public an impression of smoke and mirrors, of looking to hide issues in plain sight; such an impression is easily avoided – it should be avoided.

It is a simple point but an important point. If members of the public are invited to make representations on this, or any, public inquiry then those representations must be “informed” and this can only arise with appropriate documentation being made available. No member of the public can be expected to take expert advice that they have to pay for.

The quality of the material supplied by the appellant is poor. Reliance on statistics that are 10 years old is insufficient and may encourage the public to believe that either these figures have been specially chosen to prove a case or alternatively the appellant has chosen not to collate additional statistics that may impact adversely on its arguments. This also goes a long way to confirming that there really is nothing new being relied upon by the Appellant so what is there for the inquiry to consider as fresh evidence?

The appellant should be made to produce all material in its possession or control that might add to the sum total of knowledge relating to the impingement,

entrainment, entrapment, etc to ensure proper transparency. If the appellant cannot produce any further statistics at this time then it should explain this failure and correct it. It ought also accept that there is nothing new that is substantial enough to revisit the permit.

It is unclear why the appellant now seeks to claim that an AFD system is not necessary when it appears to have argued for this and/or accepted this was necessary when obtaining its original permit. The appellant received its permit on the basis that it was going to develop an appropriate system. The arguments that it now raises against the system relating to the special circumstances of the Severn Estuary were factors that were always known to it and do not provide any relevant change of circumstances.

If the appellant wishes to argue that it has made every attempt to produce a workable system and that this is an impossibility then it should, in the interests of proper transparency, produce its complete file of papers dealing with all attempts to produce the system and all minutes of board meetings where these were discussed. In that way the public will better understand the position that the appellant is in.

In any event the arguments to support the view that such a system would not "add any value" to the other 2 parts of the system makes no sense when the appellant produces material that appears to assert that the Acoustic Fish Deterrent would be expected to deter about 95% of certain species from entering their system.

I cannot determine if it was known when the permit was granted that eels are deaf and may not benefit from the AFD. If that was not appreciated then this would appear to be a good time to consider what is available for the safety of eels. Perhaps science has moved on so that there is greater availability of deterring systems and, just as importantly, the availability of remote submarine working to service the installation. This would be a reason for the EA to revisit the Permit conditions to consider what conditions should be added to give protection to the designated species that do not seem to have benefited from the proposed systems.

The *Revised Predictions of Impingement Effects at Hinkley Point C – 2018 Edition 2* appears to be relied upon quite heavily. I am sure I will not be alone in saying that I find that report somewhat opaque. It is not at all clear how the various conclusions are arrived at; to what extent the numbers are measurements or assumptions. The input into that report by others seems to be unusually significant. It may help to understand that report better to have the documentation to show how it developed. The number of revisions is unusual. Disclosure may help to demonstrate how independent the report is in practice and perhaps help to explain the content. It does seem that there are a number of assumptions made that may or may not be correct but which may impact upon the conclusions reached.

I have read all of the objections that have been added to the website and I am very happy to adopt, without repeating, those technical objections that are set out by those with some specialist knowledge. I rely in particular on the representations

submitted by Natural Resources Wales dated 26th April 2019 and 26th July 2019, both addressed to the National Permitting Service at Sheffield.

I would wish to object to the alteration of the permit in the way requested. It would be an encouragement to others to make promises that they know or suspect they cannot meet in order to obtain permits that they would not otherwise obtain. Even if any offer by the applicant is made in ignorance of whether or not they can perform on such an offer, this is still unacceptable. With the potential for damage being so great it would be unacceptable recklessness. The possibility that this appeal might produce a precedent for other important developments is an encouragement to consider the basic points made above about openness and how to achieve it as well as considering whether this type of appeal should ever be considered.

Thank you for accepting these representations. I look forward to clarification of at least some of the matters that I have raised in order that I, and others, can reconsider our positions if appropriate. It is my view that in a situation such as the present the appellant has to act with complete openness and ensure that those making decisions have everything before them, whether it is supportive of the appeal or otherwise.

Yours faithfully

Dennis Clarke

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