

**D&W**  
DUNDAS & WILSON

TEAM: Nuclear



“We appointed D&W to advise on environmental issues in our nuclear power generation new build programme. We found them to be both practical and knowledgeable, combining legal rigour with a wider appreciation of the business context. We were impressed by the speed of execution and responsiveness to client needs”

Dr Jean McDonald, Head of Legal, British Energy Group plc

With over five decades of safe nuclear operations in the United Kingdom and the public better informed about the realities of nuclear regeneration, progress in all areas is on the horizon.

The acquisition of British Energy will provide an injection of pace and determination to delivery of the new build programme set out by EDF in their public statements. Participation by the other major nuclear operators indicates a real appetite for involvement in the United Kingdom nuclear new build sector. With a significant majority of public support in favour of replacement of existing nuclear power stations, and wide recognition of nuclear as part of a balanced energy mix, the benefits of new nuclear generation as the low carbon option seems secure.

Decommissioning too is making real progress, with the fuel pond clean up at Dounreay being completed, and Nuclear Management Partners Limited taking ownership of Sellafield Limited, there is momentum driven out of experience to continue the decommissioning process. Of the 21 installations that have been consented for decommissioning, progress is encouraging. The overriding requirement to decommission each of the installations safely without giving rise to any public concern about this process must remain the key factor as decommissioning continues at all of the sites around the United Kingdom.

As pricing for storage is clarified in 2009, and the development of consents around the deep geological repository continues, more clarity and opportunity will develop in storage facilities. The move towards project financed facilities for low and intermediate level storage facilities will certainly create high levels of interest in this area.

The nuclear industry is clearly on the move. The strength of the approach in the United Kingdom will ensure that all voices are heard, that all considerations are properly reviewed and provided for, and that all areas of nuclear industry work within the United Kingdom have the level of scrutiny and safety which the public are entitled to expect. The revival and longevity of nuclear power generation in the United Kingdom is dependent on getting it right this time. By making sure that we do, we will be securing low cost, carbon-free, base load power for ourselves and many generations to come.

We hope, at this exciting time in the nuclear industry, you will find the information on some of the issues that we have addressed in the following pages to be helpful and informative.

Andy Renton

## Consenting....Compliance....Construction.

## Justification/Stakeholder Involvement

The Infrastructure Planning Commission (IPC) will be responsible for the consent process for nuclear new build. It will require any applicant to have conducted pre-consultation procedures with relevant stakeholders, including the local community, local authorities and statutory advisors.

The role of providing strategic communication is a key element in the application process and an important factor for consideration by the IPC in their determination of the application.

Understanding strategic communication and being able to demonstrate the role of strategic communication in consultation processes will enhance any applications, presentation and prospects. As part of the justification process, potential applicants ought to be already structuring their stakeholder communication strategy so they can demonstrate satisfactorily to the IPC that the relevant consultation processes have been undertaken, can be demonstrated to have been undertaken and have been peer review for the purpose of an IPC application.

A number of initiatives have already begun, with further meetings set up in January to continue local consultations.

The importance of managing the stakeholder communication through the justification process cannot be over-emphasised.

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## Strategic Siting Assessment

To enable the Government to identify sites which are strategically suitable for nuclear new build and operational by the end of 2025, the Government has undertaken a consultation against the criteria which the proposed sites have to meet. This process has not yet been concluded but it is well advanced and the expectation is that a number of sites previously identified as likely candidates will be contained within the strategic siting assessment review as suitable sites.

The process has begun with a number of obvious candidate sites but anyone can nominate a site, subject to nomination criteria, which are:

1. It must be endorsed by a credible nuclear power operator, ie an operator who already operates a nuclear power plant or be able to demonstrate that it is a credible site for a new nuclear power plant; and
2. Evidence that engagement has been undertaken with the local communities in the vicinity of the nominated site.

Those nominations which are successful in meeting the rigours of the criteria will then be nominated by the Secretary of State as strategically assessed sites for location of new nuclear power generation and will form part of the nuclear national policy statement against which the IPC will be required to deliver decisions on applications for development of new nuclear power stations.

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## Environmental Assessment

If a nominated site included in a National Policy Statement is to be developed, there requires to be an environmental assessment carried out on the site. This will be a required component of any application to the IPC and any development proposal of the site included in the Nuclear National Policy Statement will require an environmental impact assessment (EIA) to accompany an application for consent.

The purpose of the EIA is to ensure that the effects on the environment of the development at the nominated site are fully understood and taken into account before the development proceeds.

The EIA process has a number of important and complex interactions which may have material impact on the suitability of a nominated site.

Part of the complexity will require a number of different assessments to be co-ordinated so, for example, the EIA will require to include an Appropriate Assessment under habitats legislation. Further examples of the complexities that arise in the EIA process are the introduction of "no alternative" tests and identification of competent authorities who have to be consulted in the process.

The EIA ought to be a collaborative effort, with input coming from all statutory advisors, local authorities and stakeholder interest groups, covering all aspects of environment impact which might arise from construction processes through to the management of waste.

The importance of the EIA to the consenting process is critical. It must be a robust, comprehensive and informed document addressing all relevant issues which may arise.

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## IPC Consenting

The Infrastructure Planning Commission, which will be established under the new Planning Act, will radically change the consenting process for nationally significant infrastructure projects. It will act independently of Ministers and will grant orders covering a wide range of consents previously required by numerous pieces of legislation. It is anticipated that the Commission will work to realistic timetables and that the long running planning inquiries will be a thing of the past.

Key to the new strategy is the concept of national policy statements. These will be subject to wide consultation and a parliamentary procedure designed to ensure that they have the widest possible acceptance and authority. The IPC is required to determine applications in accordance with the NPS, unless certain criteria applies.

In the energy sector, it is thought there will be a number of National Policy Statements, covering areas including nuclear new build and the grid transmission system. There may be an overarching energy policy, which will also cover renewables, but the nuclear NPS will be location specific, identifying where new nuclear power stations will be acceptable. The Government has already consulted on the strategic siting assessment process and siting criteria. It is likely that the call for nomination of sites will happen early in 2009, with an adoption of the Nuclear National Policy Statement in 2010.

It is anticipated the new process under the IPC will greatly improve the consenting procedure. But if the process is to be secure, then applicants will have to ensure a rigorous and robust approach to the evidence presented in their application to the IPC.

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## Grid Connection

As with any generating station, unconstrained access to the national electricity grid is a major factor in considering whether a generating project is viable. The current condition of the national electricity grid raises real concerns about whether unconstrained access by new nuclear power stations will be available.

The siting of new nuclear power stations in the United Kingdom has identified grid access as one of the main criteria for locating the proposed new stations, with Hinkley Point and Sizewell being identified as best suited for grid access in respect of large electricity export. In order to build new nuclear power stations in unconstrained areas, new or upgraded transmission lines are required. Even where the new nuclear power stations are sited at existing or decommissioned sites, where the new nuclear generation is of a greater export capacity than the decommissioned site, upgrades may be required. It is essential that the cost of upgrading transmission lines, and the timing of delivery of a suitable strengthened national electricity grid to allow unconstrained access from nuclear generation, is an integrated part of the new nuclear generation planning. It is hoped the creation of the IPC will expedite projects for grid connection and grid strengthening to enable a coherent and comprehensive plan for production and transmission of nuclear power across the United Kingdom. Generators developing new nuclear power will have to work closely to agree transmission connection agreements with National Grid Electricity Transmission plc (NGET). NGET will have to work closely in complying with the requirements for IPC consent to ensure timely delivery of an integrated system which can meet the needs of nuclear new build.

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## Post Consenting

Management of supply chain and resource for the new nuclear fleet is a critical component of successful delivery. The availability of skilled engineers, UK based contractors, technology companies and civil engineering resource suggests that there will be a real tightening of the market around the commencement of the new build process.

To smooth out this process, a critical analysis of potential delivery timescales will have to be undertaken so relevant resources are made available in the correct sequence and timing. The limited number of EPC contractors with nuclear new build experience suggests that separation of construction between nuclear island and adjacent structures may be the appropriate course to follow, but with a significant number of plants envisaged over the coming years, and with Government suggesting a much higher proportion of generation coming from nuclear in the future, retention, transfer and implementation of retained knowledge and experience will be a critical feature of project delivery.

Modern contracting in the UK is a much more collaborative and incentivised process than has applied historically in the nuclear sector. New approaches and structures may be required to ensure delivery of the correct processes for a secure, safe and sustainable new build programme in the United Kingdom.

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“I have instructed D&W on numerous occasions in recent years. In addition to the outstanding quality of D&W’s advice on energy and regulatory issues, I have been particularly impressed by their timely delivery and above all their pragmatic and practical approach. It is also noteworthy that their advice is provided in language that is clear to non-lawyers. I have no hesitation in recommending the D&W team.”

Pierre Bernard, Secretary General and Head of European Development,  
Elia System Operator SA

"consistently solid and client-friendly"

Chambers UK 2009

"leading source of counsel"

Chambers UK 2008

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