



Department
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Department of Energy & Climate Change

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BY EMAIL:

Our ref: FOI2014/27689

5 January 2014

Dear

RE: Freedom of Information Request – Reference 2014/27689

Thank you for your Freedom of Information request of 3rd December 2014 in which you asked for the following:

Please would you send me under the Freedom of Information Act 2000 full documentation provided to the European Commission in support of the UK application for State Aid agreement on the Hinkley Point C nuclear project, in electronic format if possible, including

a report by KPMG on potential distortions to competition; a report by Oxera on market failures, proportionality and potential distortions of competition; a study by Pöyry on potential distortions to the internal market and alternatives to new nuclear; report by Redpoint on the evolution of the UK electricity sector; & details of the Cost Discovery and Verification process, compiled by KPMG and LeighFisher;

In view of the substance of your request, it is being considered under the Environmental Information Regulations 2004 (EIRs). Under the Environmental Information Regulations (2004), you have the right to:

- know whether we hold the information you require;

- be provided with that information (subject to any exceptions under the Regulations which may apply).

I can confirm that we do hold the environmental information requested, however we are unable to provide you with any of this information because in our view the exceptions in regulations 12(5)(a), 12(5)(e) and 12(4)(d) of the EIRs apply. These exceptions are subject to the public interest test; we have applied a presumption in favour of disclosure as required by regulation 12(2) of the EIRs.

Exemptions

Regulation 12(5)(a) - International relations, defence, national security or public safety

As a Member State of the European Union, the UK has a duty to co-operate with the Commission's State aid investigations. It would be detrimental to the UK's ability to do so if it knew that it would as a result be required to release material provided to the Commission in confidence. It would also be detrimental to the Commission's ability to discharge its investigatory functions effectively and would be likely to risk prejudicing the UK's reputation with the Commission in relation to the confidentiality of information provided for other investigations. Disclosure in this case would be likely to deter parties from providing detailed and candid submissions, and could substantially compromise the ability of the Commission to conduct similar investigations in a candid and confidential manner.

We would acknowledge the public interest in releasing the information as this leads to greater transparency in Government. The section of your letter on the public interest raised the Commission's preliminary view on the case set out in its Opening Decision in January 2014. The Commission's Closing Decision made on 8 October 2014 will be published shortly and responds to all of the issues raised by the Commission in its Opening Decision. It is the Commission's responsibility to satisfy itself that it has addressed its own concerns on the case.

We believe there to be a significant public interest in Member States such as the UK being able to freely exchange information with the Commission, in order to ensure that the Commission can fulfil its functions. Having balanced the public interest arguments, we consider the public interest in releasing the reports at this time is outweighed by the need for the Commission to be able to carry out its investigatory functions effectively which involve them gathering information and carrying out state aid investigations on the basis of candid and detailed submissions. The specific public interest in safeguarding the Commission's decision-making processes therefore outweighs any public

interest in disclosure of the documentation and information in the reports at this time.

Regulation 12(5)(e) - Confidentiality of commercial or industrial information

Regulation 12(5)(e) exempts information where disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. The documentation provided to the European Commission in support of the UK application for State Aid agreement on the Hinkley Point C nuclear project and the reports requested contain information provided in confidence which is commercial and/or industrial in nature fall into this category.

We recognise that disclosure of information could enhance public understanding of the Government's relations with industry in general and of the economic context of the Hinkley Point C project in particular. However, we have also considered the impact that releasing this information would have on maintaining the trust and confidence between the Department and companies who engage with us.

These documents contain information which is commercial and/or industrial in nature, since it relates to the electricity industry and electricity market and to the Hinkley Point C project in particular. Confidentiality is provided by law in respect of the information in question since it was provided to DECC to assist with its submissions to the Commission and was done so on a confidential basis as the information includes financial data relating to the project sponsors where disclosure would adversely affect their market position more generally. Disclosure of the information would also adversely affect the commercial interests of the Department in relation to the negotiation of the contract for difference and associated agreements, which are still under active discussion in Government and for which final decisions have yet to be taken.

Disclosure of information in this case, in a particularly high profile area, would make it less likely that companies would provide the Department with commercially sensitive information in the future. If the Department does not respect such confidences its ability to engage meaningfully with companies and other stakeholders would be likely to be prejudiced, resulting in damage to the Department's own commercial interests.

If the information in question were released it is also likely to potentially impact on other potential nuclear operators who would be less willing to discuss matters freely and frankly with the Government on future occasions. Again this would be highly contrary to the public interest.

We recognise that there will always be some public interest in disclosure to promote transparency and accountability of public authorities, greater public

awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision making, particularly in the area of nuclear power. However we believe that the balance of the public interests, clearly lies in withholding the information.

We are satisfied that the release of this information would damage and adversely affect the commercial position of the Government in the continued discussions on the potential Contract for Difference for Hinkley Point C.

Regulation 12(4)(d) - Material in the course of completion, unfinished documents and incomplete data

Regulation 12(4)(d) is engaged when the request relates to material that is still in the course of completion, unfinished documents or incomplete data. Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete.

The documentation you have requested forms part of the material being used in the process of reaching a decision on the potential Contract for Difference for Hinkley Point C. Although some of the reports are in themselves complete, and despite the fact that they have been provided to the Commission, the matters to which the information relates are still under active discussion and the decision-making process is ongoing. We therefore require a 'safe space' in which to carry out our work away from public scrutiny. The disclosure of this material would harm that safe space and would be contrary to the public interest. It is our view that it would be premature to release any of these documents whilst negotiations are still on-going and may undermine the process.

We believe it is not in the public interest to see the documents requested before any agreement is reached and the details released during the announcement of the initial agreement **Error! Hyperlink reference not valid.** provide the public with sufficient information on the deal, which meets the public interest arguments as regards disclosure.

Any Contract for Difference agreed for Hinkley Point C will be laid before Parliament and published in line with the requirements of the Energy Act 2013. We have also committed to publishing summaries of our value for money assessment which will contain references to the information you require. We believe that the publication of information in due course in relation to any Contract for Difference which is offered will satisfy the public interest for the disclosure of information in this area.

Appeals procedure

If you are unhappy with the result of your request for information, you may request an internal review within 40 working days of the date of this letter. If you wish to request an internal review, please contact the Information Rights Unit at:

Information Rights Unit (DECC Shared Service)
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET

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If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

If you have any queries about this letter, please contact me quoting the reference number above.

Yours sincerely

COMMERCIAL TEAM