



DECISION OF DIRECTOR OF DEVELOPMENT AND ENVIRONMENT

DECISION NO. 16/17 DE 11

SUBJECT: Hinkley Point C - Housing Fund

Background:

In 2012, Somerset County Council, Sedgemoor District Council and Taunton Deane Borough council entered into a Section 106 agreement with EDF Development Company Ltd, EDF Energy Nuclear Generation Ltd and NNB Generation Company Ltd in respect of the Hinkley Point C project. The agreement makes a number of provisions for the payment of financial contributions to mitigate the impact of the Hinkley Point C (HPC) development to the Local Authorities affected, including North Somerset Council (NSC). This includes the establishment of a Housing Fund by NNB Genco to help increase the supply of housing to mitigate the impact on the local housing markets arising from accommodating workers from the site.

NSC was not a party to the agreement and is not entitled to enforce the terms but is however entitled to receive funding from the Housing Fund. The Housing Fund may only be applied to specified initiatives set out in the S106 agreement for example: supporting a rent deposit or guarantee scheme for households moving into the private rented sector. Financial payments to NSC for agreed interventions become payable once EDF Energy decide to progress the project. However, under clause 17.2 of the HPC section 106 agreement these payments cannot be received by the council until it has entered into a "Deed of Covenant" with NNB GenCo. The Deed of Covenant (ref: Appendix 1) includes provisions relating to: how the funding shall be held by the council (Clause 4); how the funding should be used and financial reporting (clause 5); the requirement to repay any unspent funds including interest accrued after a period of 4 years from the date the funding was paid (clause 6) ; communications (clause 7). Authorisation is sought to enter into the Deed of Covenant as set out in appendix 1 to enable the council to receive payments through the HPC housing fund should payment be triggered by the terms of the S106 agreement in the future

DECISION:To authorise North Somerset Council to enter into a Deed of Covenant with NNB Genco as set out in appendix 1.

Reasons: To enable the council to receive payments through the HPC housing fund should payment be triggered by the terms of the S106 agreement in the future

Other Alternatives Considered:

Not entering into the Deed of Covenant – NSC would be unable to receive payments from the Housing Fund to mitigate the impact of the HPC development on the local housing market

Risk Assessment:


No specific risks

Financial Implications:

The agreement makes provision for NSC to receive a minimum £697,554 from the housing fund for agreed mitigation measures as prescribed by the S106 agreement

Implications for Future Years:

Funding may be sought by the council over the lifetime of the project. The agreement makes some provisions for the recycling of the Housing Fund to enable it to be reinvested in other housing initiatives

Signed.....

Director of Development and Environment

Dated.....18/5/16

2016

(1) NNB GENERATION COMPANY (HPC) LIMITED

and

(2) NORTH SOMERSET COUNCIL

DEED OF COVENANT

in relation to a deed of development consent
obligations entered into pursuant to section 106 of
the Town and Country Planning Act 1990
relating to
Hinkley Point C, Somerset

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THIS DEED OF COVENANT is made on the day of 2016

BETWEEN:

- (1) **NNB GENERATION COMPANY (HPC) LIMITED** whose registered office is at 40 Grosvenor Place, Victoria, London, SW1X 7EN (Company Number 06937084) ("**NNB GenCo**"); and
- (2) **NORTH SOMERSET COUNCIL** whose principal place of business is Walliscote Grove Road, Weston Super Mare, Somerset BS23 1UJ ("**Recipient**").

WHEREAS:

- (A) On 30 August 2012 NNB GenCo entered into the Principal Agreement pursuant to which NNB GenCo committed to make one or more payments to the Recipient subject to the Recipient entering into this Deed.
- (B) The Recipient wishes to secure the payment to it of the Contributions.
- (C) This Deed of Covenant is entered into for the purposes of ensuring that the Recipient applies the Contributions in accordance with the terms of the Principal Deed.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following expressions shall have the meanings set out below unless the context otherwise requires:
 - "**Contributions**" means such amounts as may become payable to the Recipient by NNB GenCo pursuant to paragraphs 2.3 and 3.3 of Schedule 1 (Accommodation and Housing) to the Principal Deed; and
 - "**Principal Deed**" means the agreement pursuant to section 106 of the Town and Country Planning Act 1990 in relation to the Development Consent Order entered into by (1) West Somerset District Council (2) Somerset County Council (3) Sedgemoor District Council (4) EDF Development Company Limited (5) EDF Energy Nuclear Generation Limited (6) NNB Generation Company Limited and dated 30 August 2012 (or any variation thereof).
- 1.2 In this Deed unless a contrary intention is shown in this Deed all expressions and phrases used in this Deed shall have the meaning ascribed to them in the Principal Deed.
- 1.3 Clause 10 of the Principal Deed shall apply to this Deed as if references therein to "this Deed" were references to this Deed
- 1.4 This Deed shall cease to have effect in the event that (and with effect from the date on which) the Principal Deed ceases to have any further effect pursuant to clause 3or 8 of the Principal Deed.

2. NNB GENCO'S COVENANT

- 2.1 NNB GenCo covenants with the Recipient that in consideration for the covenants given by the Recipient in this Deed it shall pay the Contributions to the Recipient in accordance with the terms of the Principal Deed save to the extent that the Recipient is in breach of the terms of this Deed.

3. RECIPIENT'S COVENANTS

- 3.1 The Recipient covenants that it shall comply with the provisions of the Principal Deed as if it were a party thereto and clauses 4 to 7 of this Deed.

4. RECEIPT OF THE CONTRIBUTIONS

- 4.1 The Recipient covenants with NNB GenCo that prior to receiving any Contribution it shall establish an interest-bearing account or accounts where those Contributions and/or other sums of money that are payable to it pursuant to the Principal Deed shall be held and shall promptly notify the account details to NNB GenCo.
- 4.2 The Recipient covenants with NNB GenCo that it shall on receipt of the Contributions or other amounts from NNB GenCo place the received sums of money in such account or accounts.
- 4.3 Interest accruing to the account or accounts in which the Contributions are held shall be retained in that account or accounts and shall only be applied in accordance with the provisions of this Deed for the same purposes as for the Contributions to which the interest relates.
- 4.4 Subject to compliance with relevant laws and its own constitutional and internal financial rules, the Recipient shall provide NNB GenCo with copies of all account statements and other correspondence received in relation to the account established pursuant to this clause 4.

5. APPLICATION OF CONTRIBUTIONS

- 5.1 The Recipient covenants with NNB GenCo that in respect of monies that it receives pursuant to the Principal Deed not to spend the relevant monies other than for the purposes specified in the Principal Deed in relation to the relevant Contribution.
- 5.2 The Recipient shall within 6 months of the date on which the first Contribution is paid to the Recipient pursuant to the Principal Deed and every 6 months thereafter until the Contributions have been spent provide NNB GenCo with a statement setting out details of the purposes to which the monies have been applied.
- 5.3 Notwithstanding clause 5.2, NNB GenCo shall in any event have the right (at its own expense) to audit all expenditure funded from the Contributions or other amounts secured under the Principal Deed and the Recipient covenants with NNB GenCo to provide access to all such information and evidence as may reasonably be necessary to enable NNB GenCo to carry out any such audit upon receipt of 2 months' prior notice subject to NNB GenCo agreeing the frequency and scope of such audits in advance with the Recipient and **PROVIDED THAT** in default of such agreement there shall be no more than two audits in the first 12 months following the date of on which the first Contribution is paid to the Recipient pursuant to the Principal Deed and no more than one audit in any subsequent 12 month period.

6. UNSPENT CONTRIBUTIONS

- 6.1 If any amount of money paid to the Recipient under the Principal Deed by NNB GenCo remains unspent within four years of the date that amount was paid by NNB GenCo, the

Recipient shall repay any unspent monies to NNB GenCo or its nominee together interest accrued thereon.

7. COMMUNICATIONS

7.1 The parties agree that where particular mitigation works, projects or benefits are funded from any of the Contributions secured under the Principal Deed:

7.1.1 NNB GenCo shall have the right to be acknowledged as having funded such works, projects or benefits;

7.1.2 EDF Energy branding and/or corporate images or logos shall be included (at the discretion of NNB GenCo) in literature or publicity material relating to such works, projects or benefits;

7.1.3 signage (at the discretion of NNB GenCo) bearing EDF Energy branding and/or corporate images or logos shall be erected or affixed to buildings and other facilities funded out of the Contributions; and

7.1.4 NNB GenCo shall have the right to be involved in publicity activities relating to such works, projects or benefits in consultation with the Recipient.

8. RIGHTS OF THIRD PARTIES

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

9. JURISDICTION

9.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written

SIGNED as a DEED by)
NNB GENERATION COMPANY)
(HPC) LIMITED)
acting by two directors or one director and)
the company secretary:)

Director

Director/Secretary

SIGNED as a DEED by)
NORTH SOMERSET COUNCIL)
acting by _____)
_____)



Authorised signatory/signatories