

Nuclear Free Local Authorities briefing



Date: 3 May 2001

Subject: **Consultation: Sellafield Plutonium Mixed-Oxide Fuel Plant**

Consultation deadline 23 May 2001

Supporting authorities are asked to respond, however briefly, opposing the MOX plant. The Secretariat is well aware that the time-scale is too short. If officers are able to make submissions subject to the caveat that they are subject to subsequent confirmation that would be appreciated. Late submissions will also be valuable. The rationale for both these courses is set out at below. A suggested response is included at 4. below.

The DETR and the Department of Health seek views on the economic case for allowing the Sellafield Plutonium Mixed-Oxide (MOX) fuel Plant (SMP) to operate. The Departments have curtailed the usual period for consultation.

The NFLAs oppose the SMP on environmental, non-proliferation and economic grounds. This has been argued in three prior consultations. Operating the SMP would only be lawful if its disadvantages were offset by sufficient advantages: in particular can the SMP generate sufficient business to cover its costs including decommissioning the plant and managing its waste?

Consultees in this fourth round of consultation are specifically asked to comment on BNFL's business case BUT are ridiculously *denied* all basic information to enable comment ostensibly because of commercial confidentiality. This is in breach of legal principles governing consultation. Such information as is provided demonstrates that the economic tests applied are inadequate and inconsistent. Indeed, the falsification of safety quality control data on BNFL's MOX fuel, made in a "demonstration" plant at Sellafield, and sent to Japan in 1999, badly damaged the SMP's business prospects with its principle prospective customers.

The consultation documents are at:

<http://www.environment.detr.gov.uk/consult/mox/sellafield/index.htm>

Hard copies can be obtained from 020 7944 6366 (C. Herdman)

Comments can be sent by e-mail, fax or post by no later than 23 May to

e-mail: mox_consultation@detr.gsi.gov.uk

fax: 020 7944 6340

post: Claire Herdman, Radioactive Substances Division DETR, 4/F6 Ashdown House, 123 Victoria Street, London SW1E 6DE

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1. Consultation package

The consultation package consists of:

- a covering letter of 28 March
- a consultation paper with *Annex 1* being the Government's 1999 Consultation Papers
 - *Consultation on the Economic Case for the Sellafield MOX Plant* ('the 99 case')
 - *Minister's Decision on the justification for the uranium Commissioning of the Mixed Oxide Plant*
- an *Annex 2* to the consultation paper consisting of:
 - BNFL: *The Economic and Commercial Justification for the Sellafield MOX Plant*
 - BNFL: *Second MOX Market Review for DETR, March 2001*
 - *Endorsement by the DTI*

2. Consultation process

2.1 Absence of crucial information undermines legal validity of process

Consultees are asked to comment whilst being denied *absolutely vital information* to allow them to do so meaningfully. The DETR appears to have limply accepted that it is appropriate for all information that would "allow customers or competitors to understand the specific economics and processes of the BNFL MOX fabrication business"¹ to be excluded from the documents provided for comment. Yet it is precisely BNFL's "economic case" that consultees are asked to *comment* on.² BNFL list the seven areas of information excluded from the consultation.³ The exercise therefore borders on the farcical and most certainly on the unlawful as a result. Authorities responding are asked to protest about this. See draft letter under 4 below for full details.

2.2 Absence of sufficient time to comment undermines validity of the process

"Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation."⁴

The period provided has been only eight weeks. The DETR concedes that "This is shorter than the normal period recommended..." but states that the period "...reflects, as the Code does, that there have already been a series of consultation papers on this issue since 1997."⁵ The Code does state that "Where reconsultation takes place on the basis of amendments made in the light of earlier consultation, a shorter period may also be necessary." However a close reading of the Code shows that less than 12 weeks is only permitted where this is either (a) "unavoidable" or (b) where "Ministers' reasons for departing from the code are given *and* special measures have been taken to ensure that consultation is nevertheless as effective as possible". In the present case no case has been made that the reduction in the period is "unavoidable" and there have been no "special measures."

The Code separately acknowledges that: "Consultees' circumstances should always be taken into account in fixing a period. Organisations may have many staff or members that need to be consulted, sometimes through a structure of committees with members from all over the country, which will rarely be able to meet simply to fall in with a consultation timetable. An otherwise adequate period may be less so if a substantial holiday period falls

¹ Annex 2, p5 foot

² Consultation paper p5, para 11

³ Annex 2, p19, para 4.2

⁴ Criterion 5

⁵ Consultation paper p6, para 13

within it.” The NFLAs and individual member authorities fit this description and the Easter holidays have been part of the period.⁶

3. **Substance of Consultation**

There was almost no detailed information in previous consultations. However an economic assessment of SMP was carried out by the NFLA Policy adviser, Fred Barker, and others for *Friends of the Earth*. This concluded that the costs of operating the SMP would exceed the benefits and indeed BNFL say they have contracts for only 9.6% of what they describe as their “reference case”.⁷

Because consultees are denied fundamental detailed information, it is difficult to comment on matters other than methodology.

Mr Barker has considered the documents provided under the present consultation. His critique notes that:

1. BNFL have not factored in *all* unavoidable future costs;
2. BNFL have applied a weaker test of profitability: previously Environment Agency consultants advised the criterion to be met was “unquestionable economic advantage” whereas BNFL now describe the test as merely “marginally positive”;
3. BNFL have not factored in sunk costs;
4. BNFL have provided inadequate information for meaningful consultation;
5. BNFL unreasonably assume that contracts will arise for all foreign plutonium separated at Sellafield by reprocessing;
6. BNFL apply inappropriate sensitivity tests:
 - the Company assumes that *sales* may dip only 20% below the 100% hoped for; however the current situation for sales is: contracted (9.6%), letter of intent (12.6%), under offer (22.7%) and forecast (55.1%). Therefore BNFL should assume sales may dip at least 55.1% less than the hoped for 100% and possibly as much as 77.8%;
 - the Company assumes that it will achieve a minimum of 80% of the hoped for price, when they should assume that the price may be as low as 60%
7. The Company has undertaken no assessment of the merits of alternative uses for the SMP. For example it could be used to convert plutonium into a waste suitable for disposal.

A full copy of Mr Barker’s note can be immediately emailed on request.

4. **Suggested response**

To: mox_consultation@detr.gsi.gov.uk

“This authority welcomes the opportunity to comment.

I regret that the period for consultation does not meet the Government’s Code of Practice on Consultation. The Code shows that less than 12 weeks is only permitted where this is either

⁶ The full code is at www.cabinet-office.gov.uk/servicefirst/index/consultation.htm

⁷ Annex 2 , p9

(a) “unavoidable” or (b) where: “Ministers’ reasons for departing from the code are given *and* special measures have been taken to ensure that consultation is nevertheless as effective as possible”. Neither of these exceptions appear to apply and I ask you to additionally note the nature of this organisation (which requires time for internal consultation) and the intervening Easter break.

I also regret that the Departments appear to have accepted the views of BNFL about what information may be provided. BNFL claim that:

“Information should not be placed in the public domain if it would:

*1 Allow or assist competitors to build market share or to benchmark their own operations
2 Allow or assist new competitors to attack the BNFL customer base and erode business profitability*

3 Allow or assist new competitors to enter the market

4 Allow customers or competitors to understand the specific economics and processes of the BNFL MOX fuel fabrication business

5 Breach contractual confidentiality requirements with customers or vendors

In addition, information should not be placed in the public domain that would breach security and safeguards requirements with respect to plutonium quantities, locations and movements.”⁸

In accordance with these criteria, BNFL deny consultees information as follows:

“MOX Business

· Full detail of key business drivers

Revenues

· Sales volumes of MOX to individual utility customers

· Sales prices relating to individual utility customers

Cost base

· Production volumes in specific fabrication and assembly areas of the MOX plant where BNFL has advanced automation and control techniques

· Fixed plant production costs, which would reveal elements of BNFL’s cost structure and manpower requirements

· Variable plant production costs, which would reveal elements of BNFL’s cost structure, particularly its utility and raw material prices, and manpower requirements

· Outputs from the BNFL economic model detailing the potential range of SMP economic performance”⁹

Denying consultees this information conflicts with the legal requirement that genuine consultation assumes the provision of sufficient information to allow a genuine expression of view.

On the limited information available I am authorised *or* I anticipate that my authority will want (delete whichever inapplicable) to make the following comments:

1. We request that the current consultation period be extended by (a) four weeks and (b) such further time as will allow further consultation on such additional information as the Department’s consultants may advise should be released in accordance with 2 below.
2. We request that the Department’s consultants be asked to advise on what further information could be released to enable proper scrutiny of the economic and commercial case for operation by or on behalf of consultees.

⁸ Annex 2 page 5 foot

⁹ Annex 2 page 19

3. We request that the DETR's consultants should be asked to consider whether sufficient orders will be gained to cover the future costs of commissioning, plant operation and decommissioning *and* all unavoidable future costs.
4. We request that the Department's consultants be asked to advise on: (a) what level of NPV (Net Present Value) would constitute "unquestionable economic advantage"; and (b) whether the SMP is likely to attain a sufficient level of profitability to be of "unquestionable economic advantage".
5. We request that the Department's consultants be asked to include sunk costs in further analyses of whether the SMP is likely to (a) cover all costs and (b) be of "unquestionable economic advantage".
6. We request that the Department's consultants be asked to undertake sensitivity analysis which explores the impact of securing only 22.2% (contracts and letters of intent) and 44.9% (contracts, letters of intent and under offer) of the Company's 'Reference Case'.
7. We request that the Department's consultants be asked to undertake sensitivity analysis which explores the impact of variations in MOX fuel prices of plus and minus 40% around a central figure.
8. We request that the Department's consultants be asked to fully assess the merits of using the SMP to produce a plutonium waste form, and that this assessment inform the decision about whether operation of the SMP should be authorised.

Yours etc

END

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