

*7 February 2008*

**Westminster Energy Forum - 'Factors Affecting Risk &  
Reward in Future Nuclear Markets'**

***Implications of the Planning Bill for new build***

**John Bowman**

# Overview

- The Planning Bill
  - Key elements
  - Reactions to the proposed regime
- Development consent is only part of the picture
- Changing face of public engagement
- Conclusions

## Sizewell B / Reform

- General concern that nationally significant infrastructure projects are taking too long to obtain consent
- For example, Government and industry keen to avoid Sizewell B scenario
  - Six years to secure Section 36 consent
  - Direct public inquiry costs of £30 million
  - Only 30 of 340 inquiry days devoted to local issues

# Planning Bill

- Planning Bill, November 2007
- Streamlining multiple consent regimes
- Nationally significant infrastructure projects
  - Generating stations (including nuclear)
  - Underground gas storage
  - Pipe-lines
  - Transport infrastructure, including roads, airports, ports and railways
  - Water and waste water infrastructure
  - Hazardous waste facilities

# Planning Bill

- Infrastructure Planning Commission
  - Independent
  - One or more Commissioners to take decision
  - Early consultation with public (front loading)
  - “Hearings” with written submissions, open floor for public as part of process
  - Examination and determination process subject to statutory timeframe of no longer than nine months (six for examination and three for decision)
  - Limit scope of hearing

# Planning Bill

- National Policy Statements (NPS)
  - Primary focus of IPC's considerations
  - Feed into planning hearings
  - Government to publish overarching energy NPS
  - NPS to relate to nuclear development
  - Set out national case (including possible locations)
  - Consultation

## Reactions to the proposed regime

- *“We are risking our security of supply if we continue to allow planning inquiries to drag on.... Consenting has to be streamlined and new power station projects need to be considered in a more efficient way... The Planning Bill is crucial to our members.”*
  - David Porter, Chief Executive of the Association of Electricity Producers
- *“[It is] important that the Government follows-through [with nuclear new build] by implementing measures put forward in the Planning Bill to ensure there are no further delays to the regulatory clearance of new nuclear power stations.”*
  - Nick Sturgeon, Head of Climate Change and Energy, Chemical Industries Association

## Reactions to the proposed regime

- *“This is ... an autocratic Bill, and a Bill that is typical of a Government who have done more to reduce the rights and freedoms of the individual than any previous Government since Oliver Cromwell.”*
  - John Gummer MP, 10 December 2007

# Reactions to the proposed regime

- *Planning White Paper is legally unworkable*, Friends of the Earth Press Release, 23 October 2007
  - SEA on National Policy Statement
  - Limits on issues which IPC can consider when making a decision on major developments
  - Affected parties' right to have views properly heard

# Reactions to the proposed regime

- Matthew Horton QC
  - *"I have concerns about a number of areas where the [Planning] White Paper does not meet the requirements for public involvement or proper scrutiny laid down in law. The Government is leaving itself wide open to legal challenge unless it can address these concerns."*
- Possibility of future legal challenges?

# Reactions to the proposed regime

- Powers to be taken away from local administration and vested in a “quango”
  - Will IPC resources be sufficient?
  - Accountability / independence of IPC?
  - Opposition proposal that Commissioners should be Inspectors (rejected by government)
- NPS to override local policy
  - IPC must have regard to
    - ❖ NPS ...
    - ❖ ... any other matters ... important and relevant to its decision”

# Reactions to the proposed regime

- NPS and Ministerial discretion
  - How will NPS link up nationally?
  - Confusing plethora of policies?
  - Relatively broad criteria relating to what an NPS “may” cover
  - Level of detail left to Secretary of State
  - Bill does not set out NPS consultation process in detail

# Reactions to the proposed regime

- Need to address climate change / environmental concerns
  - To what extent will this affect the ability to develop infrastructure?
  - Requirement for Secretary of State to appraise sustainability of NPS
- Strategic Environmental Assessment
  - Government believes that in some cases SEA of an NPS may not be required by the SEA Directive
  - Possibility of judicial challenges at key policy making stages if requirements to carry out SEA are overlooked?

# Reactions to the proposed regime

- Timing
  - Are new timing goals realistic?
  - Will consultees be able to respond quickly enough?
  - Will “pre-application” drag on?

# Changing face of public engagement

- What issues remain at “local” planning level?
  - Application of NPS to specific location
  - Local issues - traffic, visual amenity, noise, disruption, effect on local community, etc.
  - Planning obligations / conditions / benefits relating to local community issues
- Government aims to remove a number of issues from scope of planning inquiry
  - Licensing
  - Health and safety
  - Justification
  - SSA/SEA

# Development consent is only part of the picture

- Licensing
- Justification
- Strategic Siting Assessment (SSA)
- SEA
- Overarching legal considerations
  - Consultation where required – involving all stakeholders
  - Proper consideration of other concerns (e.g. human rights legislation) going forward
- Still awaiting further information in relation to justification, etc.
- Need to co-ordinate all above and fit within timeline for nuclear new build

# Conclusions

- Final regime not yet determined
- Await outcome of passage of Planning Bill
- Some aspects of surrounding regulatory regime fleshed out but not yet finalised e.g. justification
- Many of the reforms will be tested for first time by very complicated projects
- Important that final regime is designed to include all stakeholders to minimise delays
- Is timetable realistic?
- Will necessary resources be in place?

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