

Aphrodite Smagadi  
Secretary to the Aarhus Convention  
Compliance Committee  
United Nations  
Palais des Nations  
Room 348  
CH-1211 Geneva

Your Ref:ACCC/C/2012/77  
Our Ref: GRE001200053 NPS

19 August 2013

By e-mail

Dear Ms Aphrodite

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom in connection with costs inflicted in case of refusal to grant judicial review (ACCC/C.2012/77)**

Thank you for your letter of 9<sup>th</sup> July 2013 and for the opportunity to submit further information to the Aarhus Convention Compliance Committee. I am replying on behalf of Greenpeace Ltd. for whom I act.

In this letter I refer to documents already submitted to the Committee, including the witness statement of John Sauven submitted at the meeting, and to the documents attached to this letter.

**Was it possible to seek review through the administrative channels before Greenpeace sought judicial review?**

Part 2 of the Planning Act of 2008 covers the definition of National Policy Statements ("NPS"). An NPS is a statement of planning policy designated by the Secretary of State.

Public consultations on the draft NPS for new nuclear power closed in January 2011 as set out in the witness statement of John Sauven.

The Fukushima disaster occurred on 11 March 2011 – that is, after the closure of public consultations but before the designation of the nuclear NPS.

On 14<sup>th</sup> March 2011 the Secretary of State issued a statement on the nuclear situation in Japan [Annex 1]. He said that he had called upon the Chief Nuclear Inspector, Dr Mike Weightman, for a thorough report on the situation in Japan and the lessons that could be learned.

On 17 March, Mr Huhne indicated that Dr Weightman's interim report was due by mid-May of 2011 and a final report within 6 months. He also stated that the government would consider the nuclear NPS in light of the emerging nuclear crisis in Japan before proceedings with the ratification process. [Annex 2]

The ONR called for evidence and Greenpeace responded by letter dated 14<sup>th</sup> April 2011 [Annex 3].

On 18<sup>th</sup> May 2011, Dr Weightman published an interim report. Greenpeace made further submissions by letter and attachments dated 15<sup>th</sup> June 2011 [Annex 4].

The nuclear NPS was debated on in parliament on 18 July 2011.

Greenpeace wrote to MPs before the parliamentary debate and the letter included the following in relation to the nuclear NPS:

Re. National Policy Statements on new nuclear power

On Monday 18<sup>th</sup> July, MPs will be asked to approve the government's plans for new nuclear power. These plans have not been revised since the nuclear disaster at Fukushima. The reactors themselves at Fukushima have not yet been brought fully under control and so the full explanation – and lessons learned - from the failure of the safety-critical features at the reactor cannot be established. Nor can the any such lessons be properly incorporated into the evaluation of safety of potential UK reactors. Clearly and incident on this scale in UK would lead to huge environmental and health impacts. **MPs should not agree to a new generation of reactors in Britain before we have had chance to learn the lessons from this disaster.**

The nuclear NPS was formally designated on 19<sup>th</sup> July 2011.

The Planning Act 2008 provides that challenges to NPSs can only be brought by way of judicial review. Any challenge must be brought within **six weeks** following the later of either the date of designation of the NPS or the publication of the NPS (*section 13(1)(b), PA 2008, Annex 5*)

The Planning Act also provides for the review of an NPS which has been designated. However, section 6 of the PA requires a "review" to take place where there is:

- A "significant change in any circumstances on the basis of which any of the policy set out in the statement was decided;
- The change was not anticipated at that time and,

- If the change had been anticipated, any of the policy in the NPS would have been materially different.

In this case, due to the timing, the change in circumstances [the Fukushima accident] had happened *before* the designation of the nuclear NPS, although after the public consultation on the draft NPS had closed. A review was not, therefore, legally required. In its claim, however, GP argued that in reaching the decision to designate the nuclear NPS, the secretary of State unlawfully refused or failed to take into account the Fukushima disaster (Claim paragraph 55); alternatively, that the Secretary of State had unlawfully failed to review the NPS *before* it was designated (Claim paragraph 56).


These arguments were set out in the letter before claim and its attachment sent to the Secretary of State on 16<sup>th</sup> August 2011 [Annex 6].

It was therefore not possible to seek a review of the nuclear NPS through administrative channels other than by the letter before claim without exceeding the statutory time limit for judicial review.

Greenpeace's position was that there should be no designation of a nuclear NPS before the final report of Dr Weightman and a full consideration of the Fukushima crisis.

I hope that this information is helpful. Please do not hesitate to contact me if there is anything further you require.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Harrison', followed by a long, sweeping horizontal line that ends in a small hook.

Kate Harrison

**Harrison Grant**

