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Our ref: 01.08.10.04/391C
Your ref: KD/CB/2544C

11 November 2010

Dear Sir

ELECTRICITY ACT 1989 (“the Act”)
TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A COMBINED
CYCLE GAS TURBINE GENERATING STATION AT WEST MARSH ROAD,
SPALDING, LINCOLNSHIRE

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the application dated 31 March 2009 (“the application”) on behalf of Spalding Energy Expansion Limited (“the Company”) for both the consent of the Secretary of State under section 36 of the Act (“section 36 consent”) to construct and operate a 900 MW combined cycle gas turbine generating station at West Marsh Road, Spalding, Lincolnshire (“the Development”), and a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be deemed to be granted.

1.2 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the 2000 Regulations”) the Company also submitted on 31 March 2009 a document, entitled “Spalding Energy Expansion Environmental Statement March 2009”. The document describes the Development and gives an analysis of its environmental effects. The document is hereafter referred to in this letter as the “Environmental Statement”. The Environmental Statement was advertised and placed in the public domain and an opportunity given to those who wished to comment on it to do so.

1.3 South Holland District Council and Lincolnshire County Council (“the

relevant planning authorities”) entered into discussions with the Company over terms on which they would be content for the Development to proceed. As a result of these discussions, 48 conditions to be attached to any section 90 direction (“the Planning Conditions”) were agreed between the Company and the relevant planning authorities.

1.4 In view of the conclusion of these discussions the relevant planning authorities have not maintained any objection to the Application providing that the Planning Conditions are imposed should the Secretary of State be minded to grant section 36 consent and issue a section 90 direction in respect of the Development.

1.5 The Secretary of State notes that the Company has also entered into an undertaking with South Holland District Council under section 106 of the Town and Country Planning Act 1990 dated 3 March 2010 (“section 106 Agreement”), to provide for financial contributions towards the following:

- a. cycleway improvements;
- b. air quality monitoring;
- c. land for employment purposes;
- d. community, sports and leisure;
- e. three apprenticeships;
- f. supplying heat to the South Holland Community Hospital and local businesses; and
- g. biodiversity projects.

II. SECRETARY OF STATE'S CONSIDERATION OF THE PLANNING CONDITIONS

2.1 The Secretary of State has considered the Planning Conditions carefully. He agrees that they are suitable for inclusion in any section 90 direction which he may give.

III. SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

3.1 As indicated in paragraph 1.4 above the relevant planning authorities have not maintained an objection to the Application. The Secretary of State is therefore not obliged to cause a public inquiry to be held.

3.2 Paragraph 3(2) of Schedule 8 to the Act, however, requires the Secretary of State to consider all objections that he has received pursuant to the Electricity (Applications for Consent) Regulations 1990 (made under paragraph 3(1) of Schedule 8), (“the Applications Regulations”), together with all other material considerations, in order to determine whether it would nevertheless be appropriate to hold a public inquiry.

3.3 The Secretary of State received three letters of objection under the Applications Regulations, two from individuals and one from the Spalding & District Civic Society. He also received letters of objection which were made after the period allowed for pursuant to the Applications Regulations, and has nonetheless

considered them also. The objections and how the Secretary of State has considered them are as follows:

The proposed Development is contrary to Objective 2 of the South Holland Local Plan 2006 to safeguard and enhance the amenity, wildlife and landscape quality of the district and SG1 which requires that South Holland's essential character and main environmental assets are not damaged.

South Holland District Council has indicated that in order to be in accordance with the Local Plan conditions would be required to be included in any deemed planning permission and these form the Planning Conditions indicated in paragraph 1.3 above. Therefore the Secretary of State is satisfied that the granting of consent for the Development, subject to the inclusion of conditions, would not be contrary to the Local Plan.

The cumulative impact with the neighbouring power station would make it difficult to resist any further industrial development in the area and therefore destroy the countryside setting of the two settlements of Spalding and Pinchbeck

Any planning application is considered on its own merits and it does not follow that granting consent for the proposed Development would necessarily dictate that other proposed industrial developments in the area would be approved. It should be noted that the site of the proposed Development is part of the former British Sugar factory which had a number of silos up to 55 high, and adjoins industrial premises to the south as well as the existing power station to the north.

Gas fired power stations do not provide enough employment to offset the negative impacts

The proposed Development would provide significant job opportunities during its construction. It is accepted that once operational there is low manpower requirement. However the other socio-economic benefits offered by the proposed Development by virtue of the Section 106 Agreement (referred to in paragraph 1.5 above), together with other benefits arising from the development, are considered sufficient to outweigh this objection.

Consent should not be granted unless the proposed Development is combined heat and power

The Company has offered to enter into an agreement with the Lincolnshire Primary Care Trust to provide heat to the South Holland Community Hospital with heat at no cost to the Trust. It is also possible that waste heat from the Development will be used by others. The Secretary of State considers that this issue can be addressed by way of condition and by reference to the Section 106 Agreement. Full details are contained in section VII below.

Siting the proposed Development away from main demand centres of London and the South East will result in it being less efficient due to transmission losses

All power stations lose a small proportion of output via transmission losses. The location of the Development is not considered to be a significant constraint to the efficient supply of electricity to sources of demand.

Should be fitted with Selective Catalytic Reduction (SCR) to reduce emissions of nitrogen oxides

The EC Large Combustion Plants Directive 2001/80/EC (“LCPD”) places limits on emissions into the atmosphere from large combustion plants, ie those over 50 MW. The limits are controlled by the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007 No. 3538). The LCPD sets a limit for power stations fuelled by natural gas at 50 mg/Nm³. The Environment Agency has not indicated that the emissions of NO_x postulated by the Company would be such that SCR plant would be required to be fitted to the Development.

Natural gas is a primary fuel and should not be used for generating electricity as it is a waste of a natural resource

The Secretary of State is of the view that gas-fired power stations play a vital role in providing reliable electricity supplies; they can be operated flexibly in responses to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in the energy mix as the UK makes the transition to a low carbon economy, and they must be constructed in line with climate change goals.

No new power stations should be given consent unless they are equipped to capture and store carbon

The Company is required to demonstrate that the Development is Carbon Capture Ready before consent under section 36 of the Electricity Act 1989 can be granted. The Secretary of State is satisfied that the Company has done so. Full details are contained in section VI below.

An additional power station at Spalding will increase the risk of flooding of the area

The Secretary of State is aware that the site of the proposed Development lies within a flood plain and the Environment Agency originally stated that consent should not be granted until a Flood Risk Assessment (“FRA”) was provided which complied with the requirements of Planning Policy Statement 25: Development and Flood Risk. The Company provided further explanation in the form of a letter dated 19 August 2009 and accompanying report entitled “Flood Warning and Evacuation Plan” to the Environment Agency. The Environment Agency confirmed in a letter dated 15 September 2009 that the requirements of the FRA had been met. The additional information was disseminated by way of a letter dated 9 February 2010 which requested that comments be made to the Secretary of State not later than 19 March 2010. The objection was submitted after this date.

InterGen has tried to buy the local Council's planning support by offering "cash incentives"

As indicated in paragraph 1.5 above the Company has entered into a Section 106 Agreement with South Holland District Council for the benefit of the community as a whole. The terms of such agreements are a matter for the local authorities and developers concerned. The Secretary of State has no reason to suppose that there was anything improper about the local authority's conduct in this case or that the relationship between the agreement and the Development was not as envisaged in relevant Government guidance on s.106 Agreements.

InterGen only pays "lip service" to the noise and pollution from the existing station and a second station will only increase this noise and pollution

The Environmental Statement includes an assessment of noise and emissions associated with the proposed Development. The assessment considers the impact of the proposed Development together with those of the existing power station and no material adverse impacts have been identified. The proposed Development will require an authorisation from the Environment Agency under the Pollution Prevention and Control regime and the proposed Development will be designed to include the mitigation measures to minimise noise and emissions as set out in Volume 2, Section 9 and 10 of the Environmental Statement.

In consideration of the objections made on the ground that noise from the existing station was excessive the Department consulted South Holland District Council for details of any such complaints. South Holland District Council responded by saying that a complaint was made on 2 September 2010 from a resident of Shearers Drive alleging nuisance from the existing power station. The resident followed up the complaint on 7 October and an officer of the Council went out approximately one hour after the complaint was received and reported back that all he could hear was the noise of military jets which at that time had been circling overhead. South Holland District Council have concluded that they do not believe there is any substance to the complaint and certainly no evidence that backs it up. In addition the Council has stated that complaints were made at the time of the consultation period when the application for the proposed Development was being considered, but again no evidence was obtained that backed up those complaints.

The Secretary of State therefore concludes, on the comments received from South Holland District Council, that there is no evidence of noise nuisance from the existing station.

The existing overhead electricity lines are an eyesore and should be removed and placed underground

The existing overhead electricity lines are the responsibility of National Grid. The Secretary of State has no power to attach conditions to a proposed development which impact on the responsibilities of a third party.

Any connection from the power station to the electricity distribution system should be via underground cables so as not to increase the visual impact of the existing overhead electricity lines

The Secretary of State has been informed by the Company that the existing overhead electricity lines are technically capable of exporting up to 1,800MW of capacity and that the output from the proposed Development could be accommodated within that limit. The Company has also stated that only minor modifications to the existing overhead lines would be required to allow for the connection from the proposed Development. The Company aim to use the existing overhead electricity lines to export the output of the proposed Development. However in order to do so, the Regulator, Ofgem, would have to agree to increase the amount of power which can be transported over one set of overhead lines from 1,320MW to 1,800MW. The Secretary of State has been informed that the Chair of the National Electricity Transmission System Security and Quality of Supply Standard Review Group issued an open letter proposing the limit be raised and that the expectation is for Ofgem to opine by December 2010 or January 2011. Should Ofgem's opinion be to refuse then an application would have to be made for consent to construct additional overhead electricity lines to export the output from the proposed Development to the distribution network. This application, if required, would be made by National Grid and an opportunity given to those who wish to object to the proposal to do so.

The existing power station should be upgraded rather than building a new one

The Company has informed the Secretary of State that the existing station is a 860 MW output Combined Cycle Gas Turbine plant. The technology involved includes GE 9FA+e gas turbines; NEM heat recovery steam generators and a HITACHI Steam Turbine in a 2+1 configuration. The proposed Development is for a nominal increase of 900MW, this would effectively be the same configuration as the existing station (2+1) and allow for increased efficiency due to turbine design. The largest CCGT units the Department is aware of currently on the market are; 1 – the Siemens Frame H at approximately 600MW, this unit is too large to fit within the existing buildings, and 2 - the GE Frame H at approximately 500MW, but this is not technically feasible at this location as its increase in capacity stems from a unique system of cooling which requires copious amounts of water which is not available at Spalding. 22GW of existing electricity generating capacity is scheduled to close by 2020, and in the Secretary of State's view, in order to maintain security of electricity supply (even taking into account possible significant progress in reducing demand through energy efficiency measures) it will be necessary to more than replace this lost capacity, and because progress towards meeting the targets of 80% reduction in greenhouse gas emissions set out in the Climate Change Act 2008 is likely to involve substantial increases in demand for electricity as sectors such as domestic heating, industry and transport are "decarbonised". The Secretary of State therefore considers that there is an urgent need for new electricity generating infrastructure (including gas-fired plant that is constructed so as to be "carbon capture ready"). It is difficult to see how repowering the existing station would result in any significant contribution to the additional capacity required. In addition the existing station became operational in 2004 and has a life of at least 25 years and therefore there is

no need, and it would not be sustainable, for InterGen to consider re-powering it for some years to come.

The proposed Development should be sited on the same site as the existing station

The Department has informed the Secretary of State that it does not believe it would be physically possible to utilise the site of the existing station for the proposed Development. The existing station site is bounded to the north by a sewage treatment works, the east by West Marsh Road, the west by the Vernatts Drain and the south by the National Grid 400kV electricity sub-station. The main plant dimensions and area for the proposed Development and the area for carbon capture readiness purposes are as follows:

Plant	Width (m)	Length (m)	Height (m)	Area (m ²)
Turbine hall	45	120	37	4,550
HRSG	20	40	40	1,600
Condensers	80	80	36	6,400
Workshop/warehouse	60	27	20	8,750
Water tanks	24 (dia)	n/a	21	5,000
Sub-station	200	115	12	27,000
Carbon capture plant				36,000

The Department is of the view that Figure 4.3 of the Environmental Statement makes it evident that area required for the proposed Development is not available on the site of the existing power station.

The lighting of the proposed power station will only add to the significant amount of light pollution emitted by the current power station

The Secretary of State has been informed that the lighting of the stacks of the existing power station results from the requirements of the Air Navigation Order 2005. The Company has informed the Secretary of State that the existing power station was constructed with high level lighting, ie around the top of the buildings, but that lighting has now been lowered and is not as obtrusive. For the proposed Development the Secretary of State notes that Planning Condition (10) limits the use of obtrusive lighting as specified in the Institution of Lighting Engineers Guidance.

Other representations received

3.4 The Secretary of State received representations from others who, although not objecting, requested that encouragement should be given to cyclists in the area and heat should be supplied to the South Holland Community Hospital. The Secretary of State notes that the Section 106 Agreement provides for a contribution of £230,000 over three years for the improvement or upgrading of cycleways and footpaths. Planning Condition (13) requires the Company to agree a Green Travel Plan to

reduce the number of single person car journeys during the construction of the Development. The Secretary of State is also aware that the Company has agreed to provide the necessary infrastructure to supply heat to the South Holland Community Hospital if it is required (see Section VII below).

3.5 The Secretary of State has carefully considered the views of the relevant planning authorities, consultees and others, the matters set out above and all other material considerations. He takes the view there is nothing further that needs probing and that it would not be appropriate to cause a public inquiry to be held into the Application.

IV. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

4.1 The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 ("the 2000 Regulations") prohibit the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.

4.2 The Secretary of State is satisfied that the Environmental Statement is sufficient to allow him to make a determination on the Application and that the Company has followed the applicable procedures in the 2000 Regulations.

4.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement, he has considered the comments made by the relevant planning authorities, those designated as statutory consultees under regulation 2 of the 2000 Regulations and others.

4.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be required to take either under the conditions attached to the section 36 consent or the Planning Conditions or by regulatory authorities including the Environment Agency, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development or the deemed planning permission.

IV. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE

5.1 The Conservation of Habitats and Species Regulations 2010 as amended ("the 2010 Regulations") require the Secretary of State to consider whether the Development would be likely to have a significant effect on a European Site, as defined in the 2010 Regulations.

5.2 In the event of such an effect, he must undertake an appropriate assessment of the implications for the European Site in view of its conservation objectives. The section 36 consent may only be granted if it has been ascertained that the Development will not adversely affect the

integrity of such a site unless there are no feasible alternatives and imperative reasons for overriding public interest apply.

5.3 The Secretary of State notes that the site of the Development is located approximately 15 kilometres from the Wash Special Area of Conservation. Natural England originally voiced concern that the abstraction of water from the River Wellend could affect freshwater flows in the Wash. In light of using air cooled condensers and the agreement to supply the Development's water needs through mains supplies, Natural England subsequently informed the Secretary of State that it no longer had any concerns about water abstraction requirements. The Secretary of State does not therefore believe that the Development is likely to have a significant effect on a European Site or its constituent components and finds no reason for refusing section 36 consent on these grounds.

VI. SECRETARY OF STATE'S DECISION ON CARBON CAPTURE READINESS

6.1 Guidance on consents policy with regard to carbon capture readiness (CCR) was published in November 2009 in a document entitled "Carbon Capture Readiness (CCR) - A guidance note for Section 36 Electricity Act consent applications" (URN09D/810)¹. The guidance states the following:

"CCR Requirements

7. As part of their application for Section 36 consent applicants will be required to demonstrate:

- That sufficient space is available on or near the site to accommodate carbon capture equipment in the future;
- The technical feasibility of retrofitting their chosen carbon capture technology;
- That a suitable area of deep geological storage offshore exists for the storage of captured CO₂ from the proposed power station;
- The technical feasibility of transporting the captured CO₂ to the proposed storage area; and
- The likelihood that it will be economically feasible within the power station's lifetime, to link it to a full CCS [carbon capture and storage] chain, covering retrofitting of capture equipment, transport and storage.

Applicants must make clear in their CCR assessments which CCS retrofit, transport and storage technology options are considered the most suitable for their proposed development."

¹ Available at http://www.decc.gov.uk/en/content/cms/consultations/ccr_consultati/ccr_consultati.aspx

6.2 The Company submitted a CCR report in March 2009 and in response to the publication of the final CCR Guidance in November 2009 provided further information. A consolidated report was submitted in January 2010 and the Secretary of State's decision on CCR is based on that document ("the CCR Report").

6.3 For the purposes of deciding the points referred to in the first two bullets above the Secretary of State has taken the appropriate advice from the Environment Agency.

Sufficient space

6.3.1 The CCR Report shows that the Company had originally allocated 3.6 hectares (approx. 9 acres) of land for the carbon capture plant and equipment. The Environment Agency informed the Secretary of State that this amount of land would not be sufficient to accommodate the CCS plant and equipment when taking into account the CCR Guidance as to the amount of land expected to be required as set out in Table 1 of the CCR Guidance. The CCR Guidance indicates that some 7.4 hectares (approx 18 acres) would be required for a proposal the size of the Development. The Company disputed the amount of land required and gave their reasoned arguments why the land allocation in the CCR Guidance was excessive. In view of this argument, and concerns raised by other developers in relation to the Guidance, the Secretary of State invited Imperial College, London to review the space requirements contained in the CCR Guidance and report back as to whether or not that space allocation remained valid. The purpose of the study was as follows:

"To assess whether the table of 'Approximate minimum land footprint for some types of CO₂ capture plant' provided as guide to the Environment Agency assessment of Carbon Capture Ready in DECC's CCR Guide for Applications under Sect.36 of the EA 1989 is still valid. If it is no longer valid to then propose an alternative table of data and appropriate sensitivity / confidence in the final table."

6.3.2 Imperial College undertook the study which included consultation with contractors who are currently designing systems for carbon capture plant and equipment and relevant consultants and power station developers.

6.3.3 Imperial College published their report to the Secretary of State in June 2010. The conclusion reached is as follows:

"In the case of post-combustion capture retrofit to CCGT plants, it appears that current Guidance uses the footprint for a 785 MWe (pre-retrofit) power station as the base case for a 500 MWe plant, without adjustment for the change in size of the plant output. Of course, the capture plant size will not scale directly with the size of the plant, but it is likely that the Guidance overestimates the size of capture plant required, by at least 36 %.

There appears further scope to reduce up to a total reduction of 50 % considering technology advances and via layout optimisation (e.g. assuming one capture train for one GT); however, such a reduction can only be justified on the basis of a detailed engineering design which is not currently a requirement for consent under Section 36.

It is critical to note that location-specific issues (e.g., the quality and availability of cooling water) will cause significant differences in the size of CCS plant available.”

6.3.4 The Secretary of State accepts that this is a valid approach to the assessment of CCS space requirements particularly as carbon capture plant and equipment continues to develop. He will issue an addendum to the CCR Guidance as soon as is reasonably practicable to bring this in to effect.

6.3.5 The Secretary of State notes from paragraph 2.7.13 of the CCR Report that the Company has the benefit of an unconditional call option to acquire, for a pre-agreed price land to be set aside for CCS. This right arises pursuant to an option agreement dated 22 December 2008. The initial option period expired on 13 March 2010, however the Company informed the Secretary of State on 21 May 2010 that it had extended the option and it is now due for renewal on 13 March 2011. The Company will renew the option for a further 12 month period to ensure that it retains the right to acquire the land required for CCS in line with the requirements of the draft conditions set out in Annex G of the CCR Guidance. The Company also informed the Secretary of State on 21 May 2010 that the land available for CCR is now some 4.3 hectares (approx 11 acres) which the Secretary of State is of the opinion is sufficient taking into account the revised land requirement recommended by Imperial College to allow for the installation of carbon capture plant and equipment if and when this is required.

Technical feasibility

6.3.6 The Environment Agency has advised the SoS that there is sufficient information to conclude that there are no significant foreseeable technical barriers to CCR retrofit for the option for CCR contained in the CCR Report. The Environment Agency did however question whether the Company's preferred option B, ie the use of auxiliary boilers, is the best use of fuel. In assessing the technical and economic feasibility of CCS retrofit at a future date when applying for section 36 consent, an applicant is not seeking regulatory approval for specific CCS arrangements; and in granting consent partly on the basis of such an assessment, the Secretary of State is not giving such approval. However, given that both options are technically feasible and option A has potentially greater fuel efficiency, the Secretary of State is of the view that he should include a condition in the section 36 consent to ensure that the design adopted when the power station is constructed does not rule out the possibility of adopting Option A at a later date. The condition will achieve this by requiring the Development to be designed with the capability to extract steam from the electrical generating cycle. The Environment Agency has confirmed that in its view such a condition is satisfactory for carbon capture purposes.

Storage

6.3.7 The Company has identified the West Sole Field in the Southern North Sea as a suitable storage area for captured CO₂. West Sole is one of those considered as potentially suitable for CO₂ storage in the DTI's 2006 study of UK storage capacity². The potential storage capacity for the West Sole storage area as set out in the 2006 study indicates it has the capacity to accommodate the 78 million tonnes of CO₂ expected during the 35 year operational life of the proposed Development.

Transportation

6.3.8 The Department's Energy Consents Unit has commented that the onshore part of the pipeline would extend approximately 80 km north from the Site of the proposed Development to the Thredlethorpe gas terminal and then into the North Sea. The proposed route would follow the route of the existing National Transmission System and would predominately cross agricultural land. There is a short section at Theedlethopre where the pipeline may have to cross a European Designated Site, however subject to the pipeline being installed outside the overwintering bird feeding season and by using non-open cut means such as Horizontal Directional Drill or thrust boring, it is considered that installation should have no significant impact on either the European Designated Site or birds.

6.3.9 The Energy Consents Unit concludes that the corridor indicated by the blue line on Appendix G of the CCR Report would subject to the view expressed in the previous paragraph, be a feasible route for the onshore pipeline.

Economic Feasibility

6.3.10 The Department's Economics Unit has advised that the methodology in the CCR Report used to calculate the average Traded Carbon Price over the lifetime of the proposed Development using DECC carbon valuations, and comparing these to the scenarios and sensitivities identified in the CCR Report is appropriate. All the scenarios presented fall within the DECC high average carbon valuation and some within the central average carbon valuation. Based on this and considering the Company's methodology and sources of information used to produce the economic assessment, the Economics Unit has advised that the economic assessment is in accordance with the requirements of the CCR Guidance insofar as it demonstrates that the fitting of carbon capture plant would be potentially viable over the lifetime of the Development.

Conclusion on CCR

6.4 The Secretary of State has considered the CCR Guidance carefully, together with the comments above, and the CCR Report prepared and submitted by the Company. He is of the view that the Company has demonstrated that the proposed

² Available at <http://www.berr.gov.uk/files/file35684.pdf>

Development will be able to retrofit carbon capture plant and equipment as and when carbon capture and storage becomes both technically and economically viable. He will include conditions modelled on those contained in Annex G of the CCR Guidance in any Section 36 consent he may grant. The Department has updated the list of CO₂ storage areas to reflect the intention of the proposed Development's use of the West Sole storage area for the captured CO₂.

VII. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER

7.1 The Application is covered by the Departmental published guidance³ for all combustion power station proposals, requiring developers to demonstrate opportunities for CHP have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements.

7.2 The Secretary of State notes the Company's CHP Assessment Report and its conclusion that the most likely potential users of heat would be the South Holland Community Hospital and future horticultural developments in the surrounding area.

7.3 After consideration of the information provided by the Company and the comments received from the Department's Distributed Heat and Energy Team, the Secretary of State accepts that there are no significant existing domestic, industrial or commercial users of heat which would justify the Development being subject to a requirement to be CHP. However he is aware that there is potential to supply heat to the South Holland Community Hospital and future horticultural developments if the demand arises. He is aware that the Section 106 Agreement includes for a payment of up to £1,500,000 to provide the necessary infrastructure to supply these possible recipients with heat and that the Company has indicated that the proposed Development will be designed so as to allow for the extraction of heat if necessary. In order not to lose the opportunity to exploit these potential heat demands, the Secretary of State has decided to include conditions in any section 90 direction he may direct to be deemed to be granted requiring the Company to install the necessary pipework to the boundary of the site of the Development should the heat demand materialise (Planning Conditions (47) & (48)).

Conclusion

7.4 The Secretary of State is of the view that the Company has seriously explored the possibility of CHP and agrees there is no existing heat load within a reasonable distance of the application site to justify amending the proposal to be CHP. He does however note that there is the potential to supply heat to neighbouring recipients and that the Section 106 Agreement and the inclusion of the Planning Conditions will allow for this to take place.

³ Guidance on background information to accompany notifications under section 14(1) of the Energy Act 1976 and applications under section 36 of the Electricity Act 1989: December 2006 - <http://www.berr.gov.uk/files/file35728.pdf>

VIII SECRETARY OF STATE'S DECISION ON THE APPLICATION

8.1 The Secretary of State considers the following issues material to the merits of the section 36 consent application:

- i) adequate environmental information has been provided for him to judge its impact;
- ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed Development;
- iii) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and he has judged that the likely environmental impacts are acceptable;
- iv) the fact that legal procedures for considering a generating station application have been properly followed;
- v) the views of the relevant planning authority, the views of others under the Applications Regulations, the views of statutory consultees under the 2000 Regulations and 2010 Regulations, the environmental information and all other relevant matters have been considered; and
- vii) the Company has demonstrated that the Development is CCR.

8.2 The Secretary of State, having regard to the matters specified in paragraph 8.1 above, has decided to grant consent for the Development pursuant to section 36 subject to: (i) a condition that the Development shall be in accordance with the particulars submitted with the Application; (ii) a condition as to time within which the Development must commence; and (iii) conditions to ensure the Development remains CCR until such time as it is fully fitted with carbon capture plant and equipment or is decommissioned or has obtained the Secretary of State's written consent not to be so.

8.3 The Secretary of State believes that the Planning Conditions form a sufficient basis on which the Development might proceed, and therefore he has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

8.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990.

IX GENERAL GUIDANCE

9.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review.

Such application must be made as soon as possible and in any event not later than three months after the date of the decision. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

9.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours faithfully

Jim Campbell
Director
Energy Developments Unit