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Date:23 February 2011

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 SEAWAY PARADE, PORT TALBOT

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 4 September 2008 ("the application") on behalf of Abernedd Power Company 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 870 MW combined cycle gas turbine generating station at Seaway Parade, Port Talbot ("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 "Abernedd Power Plant Environmental Statement 27 August 2008". The Company supplemented this document with a further document entitled "Proposed Abernedd Power Station Controlled Waters Risk Assessment, 28th August 2009, Final, Issue No4". The documents describe the Development and give an analysis of its environmental effects. The documents are 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 Neath Port Talbot County Borough Council ("the relevant planning authority") 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, 45 conditions to be attached to any section 90 direction ("the Planning Conditions") were agreed between the Company and the relevant planning authority.

1.4 In view of the conclusion of these discussions the relevant planning authority has 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 agreement with the relevant planning authority under section 106 of the Town and Country Planning Act 1990 dated 31 January 2011 ("section 106 Agreement"), to provide for financial contributions towards the following:

a. the funding of the necessary infrastructure should there be a future demand for heat/steam from the Development;

b. the purchase of a fleet of electric vehicles and associated charging facilities;

c. the costs of charging the electric vehicles;

d. the provision of sports, leisure and education facilities; and

e. the promotion of employment opportunities for the residents of the Neath Port Talbot area.

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 AND CONSIDERATION OF OBJECTIONS

3.1 As indicated in paragraph 1.4 above the relevant planning authority has 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. Sections 3.3 and 3.4 below describe the objections received and sections 3.5 and 3.6 set out the Secretary of State's conclusions as to whether any or all of them raise considerations which in his view make it appropriate to hold a public inquiry.

3.3 The Secretary of State received objections made under the Applications Regulations in the form of twelve individual letters from local residents and the Baglan Bay Action Group together with two petitions organised by the Baglan Bay Action Group containing over 950 signatures of persons objecting to the application made under the Applications Regulations. He also received letters of objection which were made after the period allowed for under the Applications Regulations, and has nonetheless considered them also. The objections and how the Secretary of State has considered them are as follows:

3.4 The terms of the petitions were as follows:

> "We the undersigned agree with the Environment Agency that the former BP Chemical's Site could ideally be decontaminated along with the surrounding area. We believe that the land remediation should be finalised before Abernedd Power Station (870 MW) application is considered for approval."

The other objections, in summary and in no particular order, were that:

(a) the proposed station should provide for district heating otherwise it does not comply with the Neath Port Talbot Unitary Plan and as much energy as it produces will be wasted;

(b) emissions from the proposed station will contribute to further emissions into the atmosphere to the detriment of the health and welfare of the residents of Port Talbot;

(c) there are already too many power stations in the Neath Port Talbot area;

(d) the cumulative visual impact of the power station, when taking into account the adjacent power station, would mean the loss of views across the site to Mumbles Head and Swansea Bay;

(e) alternative sites have not been considered;

(f) the noise from the proposed power station together with existing noise sources will make life for local residents unbearable;

(g) there would be no benefit to the local community by way of additional employment;

(h) the environmental information was deficient and no opportunity given to local residents or organisation to properly consider the impact of the proposed power station on the locality;

(i) the environmental information did not comply with the statutory requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 as the applicant did not produce a new Environmental Impact Assessment to include the additional information provided;

(j) the procedures for considering applications for consent under section 36 of the Electricity Act 1989 and deemed planning permission are too confusing for ordinary members of the public to understand and therefore they cannot fully participate in the public participation required when an application is being considered;

(k) there is no national need for further gas-fired power stations, rather the opposite in order to meet the UK's commitments to reduce emissions of carbon;

(l) there is no need for a further power station at Port Talbot as most of the electricity generated would be transmitted to England; and

(m) miscellaneous comments.

3.5 The Secretary of State has carefully considered the petitions and the objections made and comments on them as follows:

Petitions

The Secretary of State notes that:

(a) the site of the Development (the "Development site") is part of a larger site (the "BP site"), the whole of which was until recently owned and/or occupied by BP Chemicals Limited and/or its subsidiaries ("BP");

(b) there is reason to suppose that the BP site, as a whole or in material parts (including the Development site), is or may be subject to various forms of contamination;

(c) there is significant concern locally about how to deal with the decontamination of the BP site and surrounding area in a manner so as not to release contaminants into the environment;

(d) there is a strong local preference for dealing with the decontamination of the BP site as a whole;

(e) the scope for devising a single legal framework for securing decontamination of the whole of the BP site is now limited, in as much as:

(i) the Company has no control over any part of the BP site other than the Development site;

(ii) the decontamination obligations contained in the agreement entered into by the RPA, BP, St Modwen Properties PLC and St Modwen Developments Limited ("St Modwen") on 20th November 2009 pursuant to section 106 of the Town and Country Planning Act 1990 (the "BP site section 106 Agreement"), which provides for the carrying out of various remediation works to the BP site, do not apply to those parts of the site which, like the Development Site, are not owned or controlled by St Modwen.

The Secretary of State does not consider that there is any need to hold a public inquiry in order to investigate questions related to the contamination of the BP site any further, since it is not the function of a planning inquiry to investigate the details of any such contamination, and the general legal and factual position is already sufficiently clear, as indicated above. Moreover, he has seen no evidence that the approach to the contamination of the Development site indicated below is likely to be unsatisfactory as long as the relevant conditions are adhered to.

The Secretary of State considers that it is desirable that the BP site is decontaminated, and that whatever remediation works are undertaken on any part of that site are co-ordinated as far as practicable so as to prevent or reduce any adverse impacts. Given the current ownership of the various parts of the BP site and the pre-existing BP site section 106 Agreement, such co-ordination cannot readily be achieved through a single set of planning conditions or obligations. However, this does not, in the Secretary of State's view, constitute a reason to refuse consent for the Development, as he has seen no evidence nor been advised by the Environment Agency Wales or the relevant planning authority that it will not be possible for the Development site and the rest of the BP site to be decontaminated separately in a way which will avoid either any increase in the risks associated with the decontamination work on the BP site as a whole or any reduction in its effectiveness once complete. Moreover, he does not consider that there is any need for remediation work on the Development site, or any other part of the BP site, to be carried out before section 36 consent is granted in this case. He considers that any legitimate concerns relating to the decontamination of the Development site can be adequately addressed by including conditions requiring the requisite remediation work to be carried out before construction of the generating station begins.

Accordingly, following discussions with the Environment Agency Wales and the relevant planning authority, the Secretary of State has concluded that Planning Conditions (31) – (38) should form part of any section 90 direction given in this case, and that they constitute an appropriate means of addressing all material decontamination issues for the purposes of his decision on the application.

Objections

(a) the possible use of waste heat from the Development is considered further in section VII below;

(b) the Environment Agency Wales is responsible for setting out the limits for emissions to the atmosphere when considering the Company's application under the Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007 No. 3538) for an authorisation to operate the Development ("the EPR application"). The Environment Agency Wales has informed the Secretary of State that while an EPR application has still to be submitted its preliminary view – given on the basis of the information contained in the Environmental Statement and without prejudice to any decision it may take on the EPR application once it is made – is that there is no reason to suppose that such an authorisation could not be given. In practice, it is to be expected that the EPR application will only be successful if it demonstrates that the Development will incorporate BAT (best available techniques for reducing emissions as defined in and prescribed under the relevant EU Directives). In addition to the need to obtain an EPR authorisation the Development would have to demonstrate that atmospheric emissions would not cause a problem to Air Quality Objectives. In this respect the relevant planning authority employed consultants to assess the impact atmospheric emissions from Development would have on local air quality. The consultants used the scenario of 100% of NO_x emissions at 25ppm being emitted as NO_2 and concentrated at Water Street as representing the "worst case". The consultants concluded that neither the annual mean air quality standard nor the 99.79th percentile air quality objective for the NO_2 ambient concentrations at Water Street was likely to be exceeded. Also the Health Board concurred with its specialist advisors, the Health Protection Agency, that it is unlikely that there will be an adverse impact on public health from the emissions from the Development.

(c) the Secretary of State has been informed that there is no limit in principle to the number of power stations that can be built in any particular area and that any application should be treated on its own planning and environmental impacts.

(d) the Secretary of State has been informed that the proposed power station is to be sited adjacent to an existing combined cycle gas turbine power station. He has also been informed that the site used to host a BP

Chemicals works and the area is designated in the Neath Port Talbot Unitary Development Plan as being for industrial use. While he accepts that views of Mumbles Head and Swansea Bay may be impaired when viewed from elevated locations he is of the opinion that after appropriate architectural treatment, colour and cladding, the impact would be reduced to an acceptable level.

(e) the Environmental Statement includes details of the alternative sites considered and the reasons why they were discounted; given, in particular, that the proposed Development (taking into account the relevant planning conditions and obligations) is not unacceptable in planning terms or likely to give rise to significant adverse effects, neither the Company nor the Secretary of State is required to give further consideration to possible alternative sites.

(f) the Environmental Statement includes an assessment of noise associated with the proposed Development. The assessment considers the impact of the proposed Development together with those of existing sources and no material adverse impacts have been identified. In order to ensure that local residents are not inconvenienced he notes that Planning Conditions (19) – (23) set maximum levels for noise at the nearest noise sensitive locations.

(g) the proposed Development would provide significant job opportunities during its construction. It is accepted that once operational there is a 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.

(h) the Secretary of State does not accept that the environmental information was deficient or that adequate opportunity was not given to those who wished to comment to do so. As indicated in paragraph 1.2 the Environmental Statement was advertised and the Secretary of State has been informed that the notices were contained in the Western Mail and London Gazette (1 and 8 September 2008); and in the Western Mail, the South Wales Evening Post and the London Gazette (26 November and 3 December 2009).

(i) the Regulations for considering applications made under section 36 of the Electricity Act 1989 are the Electricity Works (Environmental Impact Assessment)(England and Wales) Regulations 2000 (S.I. 2000 No. 1927) as amended by the Electricity Works (Environmental Impact Assessment)(England and Wales)(Amendment) Regulations 2007 (S.I.2007 No. 1977). The Amendment Regulations do not include a requirement to produce a new Environmental Impact Assessment but do require for any additional environmental information provided by the

applicant to be advertised and an opportunity given for those who wish to make representations to do so. As indicated in paragraph 1.2 above, further information was provided, advertised and an opportunity given for representations to be made. The Secretary of State does not accept that the environmental information did not comply with statutory requirements.

(j) the Secretary of State does not accept that the procedures under section 36 of the Electricity Act 1989 are too confusing for "ordinary members of the public" to understand. Even if it were the case that they might experience difficulties in locating or interpreting some of the detailed statutory provisions relating to section 36 applications, the Department has issued "user-friendly" guidance as to how the process on determining an application made under section 36 works. This guidance is available at http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/consents_planning/guidance/guidance.aspx. In addition the Department's Energy Development Consents Team is available to explain procedural matters to anyone who requests assistance. Moreover, it is clear from the response of the public to this application and many others which the Department has handled under section 36 that the public are perfectly capable of expressing their views to the Department on proposals for generating stations in response to statutory notices in order for their concerns to be considered by the Secretary of State.

(k) the question of the national need for gas fired power stations is considered further in paragraph 6.1 below.

(l) Great Britain has an integrated system for electricity generation and distribution which means that electricity generated in one part of the Country can be consumed in another part as demand arises. While it is preferable to generate the electricity near to the point of demand it should be noted that 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 and in this instance, the Secretary of State is satisfied that the site at Port Talbot is acceptable in terms of planning and impact on the environment (after any necessary mitigation) to sustain a power station.

(m) these objections related to matters considered above and the conduct of the relevant planning authority and devaluation of property values. It is for the Local Government Ombudsman to decide whether or not he looks into the conduct of the relevant planning authority and the devaluation of property values (as distinct from matters which may be thought likely by local people to give rise to such devaluation, such as loss of visual amenity from adjacent residential properties) is not a material consideration for the purposes of the Secretary of State's decision.

3.6 The Secretary of State does not consider that the representations which he has received on any of the above matters indicate that any matter relevant to his decision on the application needs probing further; in particular he does not consider that it is necessary or appropriate to cause a public inquiry to be held into the application, as the information before him is sufficient to make the necessary judgments on all matters relevant to the question of whether to grant consent in this case.

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 authority, 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 Wales, 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.

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

5.1 The Conservation of Habitats and Species Regulations 2010 ("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 approximately 2km from the Crymlyn Bay Special Area of Conservation and that there are four other European Sites within a radius of 15km. The Countryside Council for Wales ("CCW") has informed the Department that provided the Development incorporates the highest standards of BAT (best available techniques for the purposes of controlling emissions) their advice is that the proposal is not likely to have a significant effect on a European Site. The Secretary of State notes that the Company will have to demonstrate that the Development is in accordance with BAT in order to obtain the requisite environmental permit from the Environment Agency Wales in order to operate. 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 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 (see further, the Annual Energy Statement 2010[1] and the revised draft Overarching National Policy Statement on Energy Infrastructure (EN-1) published under the Planning Act 2008 on 18th October 2010.[2])

6.2 More specifically, the purpose of the Department's guidance on consents policy with regard to carbon capture readiness (CCR), which was published in November 2009 in a document entitled "Carbon Capture Readiness (CCR) - A guidance note for Section 36 Electricity Act consent applications"

[1] Available at http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/237-annual-energy-statement-2010.pdf.

[2] Available at https://www.energynpsconsultation.decc.gov.uk/docs/RevisedDraftOverarchingNationalPolicyStatementforEnergy%28EN-1%29.pdf:
see in particular sections 2, 3.3 and 3.6. While the revised draft NPSs remain subject to consultation and Parliamentary scrutiny, and the Government does not intend to designate (i.e. finalise) them without Parliamentary approval, they remain a relevant statement of current policy intentions.

(URN09D/810)[3] ("the CCR Guidance") is to allow the UK to benefit from the security and diversity of supply contributed by CCGT plant without being "locked-in" to dependency on higher carbon forms of generation in the longer term, by ensuring that generating stations which are subject to CCR policy are not constructed in a way, or in locations, which it is clear would make it unfeasible, either technically or economically, to retrofit carbon capture and storage technology to them at a later date.

6.3 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 CO_2 from the proposed power station;
- The technical feasibility of transporting the captured CO_2 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."

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

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

6.5 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

6.5.1 The CCR Report shows that the Company has allocated 3.75 hectares (9.2 acres) of land for the carbon capture plant and equipment. The Environment Agency has confirmed that this is sufficient for a gas fired generating station of the size envisaged.

Technical feasibility

6.5.2 The Environment Agency has advised the Secretary of State 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

6.5.3 The Company has identified the South Morecambe Gas Field in the East Irish Sea Basin as a suitable storage area for captured CO_2. South Morecambe is one of those considered as potentially suitable for CO_2 storage in the DTI's 2006 study of UK storage capacity[4]. The Company indicates that the proposed Development would produce 2.4MMte/yr CO_2 and assumes a 20 year operational life resulting in a total storage capacity of 50MMte/yr CO_2. The Secretary of State is of the view that the life of the proposed Development will be greater than 20 years and is more likely to be 30-35 years, which is more in keeping with the life spans indicated by other gas fired power station developers. He therefore is of the view that

[4] Available at http://www.berr.gov.uk/files/file35684.pdf

the storage area chosen should be able to accommodate 84MMte/yr CO_2. The potential storage capacity for the South Morecambe storage area as set out in the 2006 study indicates it has the capacity to accommodate 736 million tonnes of CO_2. The Secretary of State has been informed that the South Morecambe Gas Field has also been identified as the potential storage area for captured CO_2 from the Carrington II gas fired power station which was granted consent under section 36 of the Electricity Act 1989 on 1 April 2010. The storage requirement of Carrington II is 55 million tonnes of CO_2. The Secretary of State is therefore satisfied that the South Morecambe Gas Field has more than enough storage capacity for both Carrington II and the Development.

Transportation

6.5.4 The Department's Development Consents Unit has commented that the onshore part of the pipeline would extend approximately 300 metres south west from the Site of the proposed Development to the sea shore. This short route has the possibility of impacting on areas of lichen/bryophyte heath and on ground nesting birds, such as lapwing. However subject to the pipeline being installed outside the bird breeding season and by installing the pipeline in accordance with an agreed environmental management programme, it is considered that installation is not likely to have a significant impact on habitats or birds.

6.5.5 The Development Consents Unit concludes that the corridor indicated by the red line on Annex III of the CCR Report would, subject to the view expressed in the previous paragraph, be a feasible route for the onshore pipeline.

6.5.6 The CCR Report indicates that transportation to the storage area would be by ship. Annex VII of the CCR Report is a technical note entitled "SHIPPING OF CO2 FROM ABERNEDD POWER STATION TO SOUTH MORECAMBE BAY" (A.P MOLLER – Maersk A/S December 17th 2009). This technical note details how shipping of CO_2 could take place and does not identify any technical or economic reason why it could not take place. The Development Consents Unit has no reason to doubt the conclusions of the technical note and concludes that shipping is a viable means of transporting CO_2 to the storage area.

Economic Feasibility

6.5.7 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

6.6 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 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 CO_2 storage areas to reflect the intention of the proposed Development's use of the South Morecambe Gas Field storage area for the captured CO_2.

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

7.1 The Application is covered by the Departmental published guidance[5] 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 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 the section 106 Agreement contains clauses which will require the installation of the infrastructure to provide heat to the boundary of the site of the Development and for the Company to continue to explore the feasibility and viability of supplying heat to potential users in the vicinity of the Development. In the circumstances the Secretary of State is not imposing conditions requiring the Company to install the necessary pipework to the boundary of the site of the Development should the heat demand materialise as they would be a duplication of what is already included in the section 106 Agreement. He notes that the design of the Development will be such as to allow for the off-take of steam for CCS purposes (see paragraph 6.5.2 above) and that such steam could also be used for CHP purposes should the demand arise.

[5] 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

Conclusion

7.3 The Secretary of State is of the view that the Company has seriously explored the possibility of CHP and agrees from the evidence presented that there is no existing heat load within a reasonable distance of the application site to justify amending the proposal to be CHP. He does not believe the Application should be refused on the ground that it is not CHP.

VIII SECRETARY OF STATE'S DECISION ON THE APPLICATION

8.1 The Secretary of State has carefully considered the views of the relevant planning authority, consultees and others, the matters set out above and all other material considerations. In particular, 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;

vi) the Company has demonstrated that the Development is carbon capture ready;

vii) that, to the extent that it is necessary or desirable to address any of the objections received to the application in his decision, none of them is such as to justify refusal of consent or a section 90 direction, given the section 106 Agreement, the imposition of the Planning Conditions and the matters referred to in section 3.5 above; and

viii) that there is a continuing need for new electricity generating infrastructure (including, for the reasons given above, CCGT plant,

provided that it is constructed so as to be "carbon capture ready"), given that some 22GW[6] 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 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".

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 carbon capture ready 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).

[6] 22GW is about a quarter of the UK's current electricity generating capacity of 85GW. Closure figures from DECC & DEFRA http://www.decc.gov.uk/en/content/cms/what-we-do/uk-supply/energy-mix/nuclear/issues/power-stations/power-stations.aspx

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

Giles Scott
Head
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