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Dear Mr Bullock

**ELECTRICITY ACT 1989**

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended)**

**THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)(ENGLAND AND WALES) REGULATIONS 2013**

**KING'S LYNN COMBINED CYCLE GAS TURBINE GENERATING STATION**

**1. THE APPLICATION**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to refer to the application dated 6 April 2018 ("the Application") on behalf of EP UK Investments Limited ("the Applicant") to vary the consent granted by the Secretary of State on 5 February 2009 to construct and operate a 1020MW Combined Cycle Gas Turbine generating station and a direction under section 90(2) of the Town and Country Planning Act 1990 ("Planning Conditions") that planning permission for the development be deemed to be granted ("the consented development"). The variation being requested ("varied development") is to:

- increase the capacity permitted by the consented development from 1020MW to 1700MW;
- allow a 30-50MW black start facility to be used only for the purpose of restoring operation of the varied development in the event of loss of external power supply to the varied development;
- allow for the construction of either:

- i. up to two combined cycle gas turbine (“CCGT”) unit(s) comprising up to two gas turbines, up to two heat recovery steam generators, up to two steam turbine and associated equipment; or
  - ii. one CCGT unit comprising one gas turbine, one steam turbine, a heat recovery steam generator and air-cooled condensers; and an open cycle gas turbine (“OCGT”) plant of up to 299MW capacity and associated equipment;
- make amendments to the related deemed planning permission, including amendments to take into account revisions to the indicative layout and siting of the varied development and to take into account comments received from consultees including the relevant planning authority.
- 1.2 The application for varied development was published in accordance with the Electricity Generating Stations (Variation of Consents) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on the relevant planning authority.
- 1.3 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 (“the EIA Regulations”) which apply to the variation of a section 36 consent, an Environmental Impact Assessment Report dated April 2018 was submitted with the Application. The document describes the varied development and updates the analysis of the environmental effects set out in the Environmental Statement dated April 2008 submitted with the application for the consented development. In accordance with the EIA Regulations and the Variation Regulations, the Environmental Impact Report was advertised and placed in the public domain, along with the previously submitted environmental information, to give people an opportunity to comment on it.
- 1.4 The Borough Council of King’s Lynn and West Norfolk (“the relevant planning authority”) entered into discussions with the Applicant over the terms on which it would be content for the varied development to proceed. As a result of these discussions, varied and additional conditions (“the Planning Conditions”) were agreed in principle between the Applicant and the relevant planning authority.
- 1.5 In view of the successful conclusion of those discussions, the relevant planning authority has not maintained any objection to the Application providing that the Planning Conditions are appropriately imposed by the Secretary of State should he be minded to make the variation to the consented development.

## **2. SECRETARY OF STATE’S CONSIDERATION OF THE REVISED PLANNING CONDITIONS**

- 2.1 The Secretary of State has considered the revised Planning Conditions carefully. He agrees that they are suitable for inclusion in any direction under s90(2ZA) of the Town and Country Planning Act 1990 which he may give subject to any modifications noted below and minor drafting amendments.

## **3. SECRETARY OF STATE’S DECISION ON THE HOLDING OF A PUBLIC INQUIRY**

- 3.1 Regulation 8 of the Variation Regulations gives the Secretary of State discretion to hold a public inquiry into a variation application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to him by a relevant planning authority or any other person where those representations are not withdrawn.

- 3.2 Objections to the proposed variation were raised by a County Councillor and Clenchwharton Parish Council. The Secretary of State's consideration of these objections is provided below in section 8.
- 3.3 Representations registering a number of concerns were submitted by a Borough Councillor, Norfolk County Council, West Norfolk Council, West Winch Parish Council, St Margarets with St Nicholas Ward Forum, Anglian Water Limited, Norfolk Fire and Rescue Service and three members of the public.
- 3.4 No objections were received by the Secretary of State to the proposed variation from the relevant planning authority, Natural England and the Environment Agency.
- 3.5 In addition to the responses above, a number of organisations did not respond to the consultation or responded to the Secretary of State to indicate they had no comments on the proposed variation.

### Conclusion

- 3.6 The Secretary of State has carefully considered the views of the relevant planning authority, statutory advisers, local representations and all other material considerations. He takes the view that there is no further information required to enable him to take a decision on the Application and that it would not, therefore, be appropriate to cause a public inquiry to be held into the Application.

## **4. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

- 4.1 Regulation 7 of the EIA Regulations prohibits the Secretary of State from granting a variation to a 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 Impact Assessment Report submitted by the Applicant is sufficient to allow him to make a determination on the Application and that the Applicant has followed the applicable procedures in the EIA Regulations.
- 4.3 The Secretary of State has, in accordance with regulation 7 of the EIA Regulations, taken the environmental information into consideration: in addition to the Environmental Impact Assessment Report, he has considered the comments made by the relevant planning authority, by those designated as statutory advisers under regulation 4 of the EIA Regulations and by others.
- 4.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Applicant has agreed to take or will be required to take under the conditions attached to the varied consent or the Planning Conditions, the Secretary of State considers that the significance of the environmental effects will not differ from that predicted for the consented development such that it would be appropriate to refuse the variation to the consented development or the deemed planning permission.

## **5. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON A EUROPEAN SITE**

5.1 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") require the Secretary of State to consider whether the varied development would be likely to have a significant effect on a European Site as defined in the Habitats Regulations and, if so, to undertake an Appropriate Assessment ("AA") of the implications for the European Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may be granted only if it can be shown that the varied development will not have an adverse effect on the integrity of the European Site (regulations 63(5) and 64). Regulation 63(6) provides that when considering whether the varied development will adversely affect the integrity of a European Site, the competent authority can take into account measures proposed to mitigate such impacts. This process is commonly referred to as a Habitats Regulations Assessment ("HRA").

5.2 The Secretary of State has completed his HRA. In doing so he has considered the following European Sites, which lie in close proximity to the Development:

- The Wash and North Norfolk Coast Special Area of Conservation and The Wash Special Protection Area and Ramsar ("the Wash sites"); and
- Roydon Common and Dersingham Bog Special Area of Conservation and Ramsar ("the Roydon Common and Dersingham Bog sites").

5.3 On the basis of the information submitted by the Applicant, the Secretary of State has concluded that a likely significant effect on the above listed sites cannot be excluded for the Development alone and in-combination. This is due to the effect of increased levels of nutrient nitrogen deposition and, by extension, acid deposition from operational air emissions.

5.4 To assess these effects further, the Secretary of State undertook an Appropriate Assessment which concluded that the Development, alone and in-combination with other plans or projects, will not have an adverse effect on the above sites. In the case of The Wash sites this conclusion was reached due to total nitrogen deposition levels remaining well below a 'critical load' above which adverse effects may arise. In the case of the Roydon Common and Dersingham Bog sites, the conclusion is reached because the total nitrogen dose expected due to the varied development falls well below the dose expected to result in a detectable effect on protected habitat at existing background deposition rates. In-combination effects can be ruled out as no other projects and plans have been identified that would contribute additional atmospheric nitrogen over the same timescale.

5.5 The conclusion of no adverse effect is consistent with Natural England's advice.

## **6. SECRETARY OF STATE'S DECISION ON CARBON CAPTURE READINESS ("CCR")**

6.1 The Secretary of State considered in relation to the determination of the consented development that "the Company has adequately demonstrated that the varied development will be technically and economically able to retrofit carbon capture plant and equipment as and when carbon capture becomes technically and economically viable."

6.2 The Secretary of State has considered whether the proposed variation to the consented development would have any impact on his previous conclusions in relation to CCR for the consented development. He notes that the Applicant submitted a 'Carbon Capture Readiness Assessment' dated April 2018 with the Application. He has consulted the

Environment Agency and the Department for Business, Energy and Industrial Strategy Economists about the requirements for CCR in relation to the proposed variation and the information submitted by the Applicant.

- 6.3 As part of their application for consented development, which the Secretary of State considers equally relevant to this variation application, applicants are required to demonstrate:
- that sufficient space is available on or near to 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<sub>2</sub> from the proposed generating station;
  - the technical feasibility of transporting the captured CO<sub>2</sub> to the proposed storage area; and
  - the likelihood that it will be economically feasible within the generating station's lifetime, to link it to a full Carbon Capture and Storage chain, covering retrofitting of capture equipment, transport and storage.
- 6.4 The Secretary of State notes that the Environment Agency stated in their consultation response that they saw no foreseeable barriers to carbon capture with regard to space or technical feasibility.
- 6.5 The Applicant has indicated that it proposes to utilise spare capacity at the Leman and Indefatigable Gas Fields ("fields") for the CO<sub>2</sub> produced and captured during the operation of the varied development and that it would transport any CO<sub>2</sub> to the fields by way of the pipeline. In determining the consented development, the Secretary of State considered that these approaches were acceptable and no information has subsequently been made available to him to cause him to consider the matter differently in relation to the current application.
- 6.6 The decision on the original section 36 application identified land for carbon capture and export, and a condition was included to ensure that the necessary space remains available at the site to allow for the future installation of a carbon capture plant. In relation to the variation application, the Secretary of State notes the estimates in the Applicant's Assessment using the sensitivity testing assuming a load factor of 60% for estimating the carbon price at which CCS becomes economically feasible are within the range of the Department of Business, Energy and Industrial Strategy scenarios.
- 6.7 The Secretary of State notes that one of the options applied for allows for the construction of an OCGT plant of up to 299MW. He further notes that the application includes a black start generating facility of 35-50MW which the Applicant has confirmed would be comprised of an OCGT unit(s). Under The Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013, the Secretary of State would be required to carry out a carbon capture readiness assessment of the OCGT element of the varied development if the combined capacity of the OCGT in the varied development were above 300MW.
- 6.8 However, the Secretary of State notes that the Applicant has confirmed that while the black start facility would consist of an OCGT unit(s), its use would be limited to enabling the initial

start-up of the CCGT or main OCGT units in the varied development. It would not export electricity to the national electricity network or increase the capacity of the plant. It would not operate once these units have been restarted and it would not be possible for the varied development to generate above 299MW from any OCGT unit(s) including the black start facility at any given time. The Secretary of State therefore agrees that the OCGT units do not require a carbon capture readiness assessment. The Secretary of State has included a new condition, condition 3 in the varied section 36 consent, to ensure that use of the black start facility is limited to emergency conditions and to the initial start-up of the gas turbines that make up the varied development.

#### Conclusion on CCR

6.9 The Secretary of State has considered the information provided by the Applicant and the comments of consultees both within and outside the Department of Business, Energy and Industrial Strategy. He notes that the consultees accept the proposals put forward by the Applicant and concludes, therefore, that the Application conforms to the methodology in the CCR report and that there are no technical or economic obstacles to the grant of the requested variation on this matter. The Secretary of State has varied the consent to include conditions relating to CCR which are modelled on those contained in Annex G of the CCR Guidance.

#### **7. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER ("CHP")**

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

7.2 The Secretary of State notes that as part of the consented development, consideration was given to the opportunity for CHP but that it was concluded that as no suitable customer was located within a reasonable proximity to the site, CHP was therefore not technically or economically feasible. The Applicant's updated Environmental Report states that this position has not changed.

#### Conclusion on CHP

7.3 The Secretary of State notes that the Applicant carried out an assessment of the CHP possibilities as part of its application for the consented development and reviewed this in making its application for the varied development. The Secretary of State is content with the Applicant's conclusion that, at the present time, there are no viable options for CHP. The Applicant has confirmed that it will ensure that the varied development is designed and built to allow for the future implementation of CHP, and that it has committed to ongoing engagement with interested parties and monitoring of potential recipients located within its CHP Search Area. The Secretary of State has therefore included a new condition, condition 54, to ensure the review of the possibility for CHP, in consultation with relevant industries as appropriate.

## 8. SECRETARY OF STATE'S CONSIDERATION OF THE ISSUES RAISED DURING CONSULTATION

8.1 Representations were received from a number of interested parties. The points raised in these representations and the Secretary of State's consideration of the issues raised are summarised below. The full responses to the consultation can be accessed on the Applicant's project website at:

- <https://www.kingslynnbccgt.co.uk/consultee-responses/>

### King's Lynn and West Norfolk Council

8.2 The relevant planning authority raised no objection to the proposed variation subject to:

- (i) completion of either a new section 106 agreement or a Deed of Variation to the existing section 106 agreement in order to secure payment for landscaping;
- (ii) the inclusion of a condition requiring the approval and implementation of an employment, skills and training plan;
- (iii) the inclusion of a condition to establish a Local Liaison Committee to provide an interface between the Applicant and the local community during the construction and operation of the project;
- (iv) the inclusion of a condition requiring a full tree survey to BS:5837, arboricultural implications assessment and method statement;
- (v) the inclusion of a condition requiring a further survey of baseline noise to be re-monitored before construction to ensure the data on which the environmental information has been based is representative of the actual noise climate present at that time;
- (vi) the inclusion of a condition requiring a further land contamination investigation and risk assessment; and
- (vii) a financial contribution towards air quality monitoring.

8.3 The Secretary of State notes that:

- (i) the Applicant has agreed a financial contribution with the relevant planning authority to fund landscaping. This financial contribution has been secured by a section 106 agreement;
- (ii) the Applicant has agreed to a new condition, condition 47 in the varied deemed planning permission, to ensure that employment, skills and training opportunities for local residents are maximised;
- (iii) the Applicant has agreed to a new condition, condition 48, requiring a local liaison committee to be established to keep local residents informed of the construction of the Development and to ensure a mechanism for dealing with complaints when the Development is operational;
- (iv) the Applicant has agreed to new conditions, condition 49 - 50, to ensure that existing trees on the Development site are properly surveyed and consideration is made for the retention of any trees in accordance with the National Planning Policy Framework;
- (v) the Applicant has included condition 18 and has amended condition 19 in relation to baseline noise monitoring and operational noise, to ensure that the noise data on which the Environmental Information Assessment has been based is representative of the actual noise climate;

- (vi) the Applicant has amended condition 30 to address the concerns raised regarding the need for a further land contamination investigation and risk assessment; and
- (i) the Applicant has agreed a financial contribution with the relevant planning authority to fund an air quality monitoring scheme. This financial contribution has been secured by a section 106 agreement.

### **Archaeology**

8.4 Norfolk County Council raised no objection to the varied development subject to the inclusion of a requirement for a new archaeological written scheme of investigation. The Applicant has raised no objection to the inclusion of this requirement and has amended conditions 28 – 29 of the draft varied consent.

### **Conclusion**

8.5 The Secretary of State agrees with Norfolk County Council and has varied archaeological conditions 28 – 29 in the consent accordingly.

### **Flooding and Foul and Surface Water Drainage**

8.6 Norfolk County Council requested clarification on flood storage and attenuation volumes and treatment of stored water within the proposed road networks or for the incorporation of a surface water drainage condition.

8.7 Anglian Water responded to the consultation to request a requirement for the Applicant to prepare an appropriate foul and surface water drainage strategy in consultation with Anglian Water, and requested an amendment in condition 22 and 23, requiring the preparation of a scheme outlining the means of foul and surface water disposal, to include a reference to Anglian Water as well as the Environment Agency.

8.8 Clenchwharton Parish Council raised concerns about the varied development being located in a Zone 3 flood risk area and requested to see the surface water and aqueous process discharge into The Wash.

### **Conclusion**

8.9 As the layout of the development has not been finalised, the Applicant had not been able to prepare a detailed surface water drainage strategy. However, the Applicant has amended conditions 22 and 23 to take into account the representations made in respect of foul and surface water drainage and following discussions with Anglian Water. The Applicant has also included a new condition, condition 43, to provide clarity on the Applicant's approved Flood Risk Assessment, which takes into consideration the risk of flooding to the proposed varied development as well as potential for flooding from the varied development. The Secretary of State notes that the Environment Agency did not raise any concerns relating to flooding in respect of the varied development. The Secretary of State is therefore satisfied that the measures in the Flood Risk Assessment and the revised planning conditions provides suitable protection in respect of flooding, water supply and waste water requirements of the varied development.

### **Transport**

8.10 Norfolk County Council requested the Applicant review the assumptions used in relation to car share and use of mini-buses by construction workers, to conduct additional traffic counts in order to provide an updated sensitivity test of the predicted impacts from the varied



development and asked the Applicant to confirm whether it has control over the land required for the forward visibility from a potential access point from High Road, which currently also serves King's Lynn 'A' Power Station.

- 8.11 A County Councillor raised concerns about damage to road surfaces and potential negative impacts on the local road network during the construction phase.

### Conclusion

- 8.12 The Secretary of State notes that condition 15 and 16 of the varied consent requires the Applicant to produce a Construction Staff Travel Plan ("CSTP") and a Construction Traffic Management Plan ("CTMP") setting out measures including those required to reduce the number of vehicles on the local road network, address any abnormal wear and tear to the highway and to consider car parking demand within the site. The Applicant is required to seek approval of the CSTP from the relevant planning authority in consultation with Norfolk County Council as the Highways Authority. The Secretary of State also notes that the Applicant conducted updated traffic counts in June 2018 in order to provide a sensitivity test of the impacts from the proposed varied development, and the result of the sensitivity test using the updated traffic counts resulted in lower impacts on the local highway network.
- 8.13 The Applicant has confirmed that if the access point from High Road were to be used, it would seek an agreement for an easement over the land and undertake works required for forward visibility. Furthermore, this matter would be secured through condition 17 of the varied consent which requires the Applicant to produce and submit a Construction Traffic Access Route Plan to the relevant planning authority for approval, in consultation with Norfolk County Council as the Highways Authority. The Secretary of State is therefore satisfied that the varied development will not result in any impacts on traffic or local road networks that are greater than those assessed for the consented development.

### Landscape and Visual Impacts

- 8.14 In addition to the relevant planning authority's comments on landscaping and tree surveys (see paragraph 8.2 above), a County Councillor raised concerns regarding potential negative visual impacts of the proposed 80 – 90 metre stack on the landscape and historic environment of South Quay and the Medieval Quarter of Lynn. Clenchwharton Parish Council also raised concerns over the cumulative visual impact of the varied development in the locality and on nearby public rights of way.

### Conclusion

- 8.15 In its Landscape and Visual Impact Assessment, the Applicant considered the visibility of the site from King's Lynn, South Quay and nearby public rights of way. The Assessment concluded that visibility from King's Lynn would be reduced by the existing built form and vegetation, and that the impact on views from South Quay would be minor as the varied development would be screened by intervening vegetation and Palm Paper Generating Station. The Assessment also concluded that the proposed stack would appear similar in height and location to the Palm Paper Generating Station's stack. The Applicant concluded that the visual impact of the vertical elements of the proposed varied development from nearby public rights of way would be seen within an existing cluster of the existing industrial buildings and electrical infrastructure. The Secretary of State considers that the visual impact of the proposed variation is comparable with the impacts assessed for the consented development.
- 8.16 The Secretary of State notes that the final plant configuration has yet to be determined and will be subject to detailed design work at a later stage, and that the varied consent includes

condition 7, which requires the Applicant to seek approval of the final configuration of the varied development from the relevant planning authority.

### **Designated Nature Conservation Sites and Protected Species**

8.17 A County Councillor and Clenchwharton Parish Council raised concerns regarding the impact of the varied development on designated nature conservation sites and protected species present in and around the proposed varied development.

#### **Conclusion**

8.18 The Secretary of State notes that Natural England did not have any outstanding concerns or objections in respect of the varied development and impacts on protected flora and fauna, including the following designated sites: Roydon Common and Dersingham Bog Special Area of Conservation and Ramsar, The Wash and North Norfolk Coast Special Area of Conservation, The Wash Special Protection Area, The Wash Ramsar, and the River Nar Site of Special Scientific Interest. The Secretary of State is also satisfied that conditions 36 - 42 in the varied consent ensure protection of designated sites and protected species. Furthermore, to assess the effect of the varied consent on European sites, the Secretary of State has undertaken an Appropriate Assessment, which has concluded that no European sites will be adversely affected by the varied development alone and in-combination with other plans and projects.

### **Emergency Diesel Generators**

8.19 The Applicant has requested a variation to the consent to allow for a black start facility supported by diesel generators. Clenchwharton Parish Council raised concerns over the fact that the black start facility would be diesel fuel powered.

#### **Conclusion**

8.20 The Secretary of State notes that the black start facility will consist of an OCGT unit(s) and will be supported by emergency diesel generators. The diesel generators will provide initial startup power to support operation of the black start facility in the event of a loss of external power supply. The operation of the black start facility will be only to enable the initial start-up of the CCGT and any OCGT gas turbines, and operation of the black start facility would not continue once those turbines have been re-started. The use of the diesel generators and the black start facility would therefore be infrequent and limited to a short duration.

### **Noise**

8.21 Concerns were raised in relation to noise from the construction of the varied development including night time working, and it was suggested that the noise impact assessment was limited in relation to the extent of the area it considered.

#### **Conclusion**

8.22 The Secretary of State notes that the relevant planning authority, which will be responsible for the regulation of construction noise, did not raise any concerns regarding the Applicant's noise impact assessment or highlight any potential negative noise impacts from the varied development. The Secretary of State also notes that construction activities are controlled by conditions 11, 12 and 13 of the varied consent and that construction work will mainly take place during normal daytime working hours.

## **Air Quality**

8.23 A County Councillor, Clenchwarton Parish Council and several members of the public raised concerns about air quality, the impact of emissions from the varied development on human health and the impact of emissions from the varied development on protected flora and fauna.

## **Conclusion**

8.24 Before the varied development can operate, the Applicant will be required to submit an application to the Environment Agency to vary the existing Environmental Permit which will control emissions from the proposed varied development. In addition, the Applicant has agreed a financial agreement towards an air quality monitoring scheme to provide the relevant planning authority with information to fulfil its local air quality management duties under the Environmental Protection Act 1990, and that this financial agreement has been secured by a section 106 agreement. The Secretary of State notes that neither the relevant planning authority, the Environment Agency or Natural England maintained any concerns over the Applicant's air quality assessment or raised any objections to the Applicant's conclusion that emissions from the varied development would not result in any potential negative impacts on air quality, human health or any designated sites or protected species.

## **Cumulative Impacts**

8.25 Clenchwarton Parish Council raised concerns over the lack of a cumulative impact assessment including Sutton Bridge Power Station, Palm Paper Generating Station and the King's Lynn 'A' Power Station upgrade.

## **Conclusion**

8.26 When applying for a variation to an existing section 36 consent, an applicant is required to consider the impacts arising from any changes introduced by a proposed variation to the consented scheme. If there are predictions of greater impacts from the proposed variation, this would call into question the cumulative assessments undertaken for the consented development. The Secretary of State is of the view that in the absence of any increased impacts from the varied development, there is no need for further assessment of cumulative impacts. Nevertheless, the Applicant undertook a cumulative assessment of the varied development which included Sutton Bridge Power Station in its baseline and considered the impacts of Palm Paper Generating Station and the King's Lynn 'A' Power Station upgrade. The Secretary of State notes that the assessment concluded that the proposed variation would not give rise to significant impacts greater than those assessed for the consented development.

## **Dust**

8.27 A County Councillor raised concerns over the mitigation proposed for dust generation from any earthworks and suggested that this should be considered in the Human Health Risk Impact Assessment.

## **Conclusion**

8.28 The Secretary of State notes that condition 9 in the varied consent requires the Applicant to produce and submit for approval with the relevant planning authority a Construction Environmental Management Plan including details of how dust would be controlled and mitigated both inside and outside the varied development site. The Secretary of State also

notes that the Applicant will follow the approach set out in the Institute of Air Quality Management's 'Guidance on the assessment of dust from demolition and construction'.

### **Increase in Capacity**

8.29 A County Councillor raised concerns about the increase of the capacity from 1,020MW to 1,700MW. The Secretary of State's consideration of, and his conclusions on, the visual and landscape impacts of the varied development has been considered in paragraphs 8.14 – 8.16, the impact of the varied development on air quality in paragraph 8.23 – 24 above and the impact of the increase in the footprint of the generating station in paragraph 11.1 below. Because the varied development does not lead to impacts greater than those considered for the consented development, the Secretary of State is of the view that it is in keeping with the guidance titled 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' issued in 2013 ("the Guidance Note"), which states:

*"Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant."*

### **Other Issues Raised**

8.30 In addition to the representations on the issues covered above, the Secretary of State also received the following representations:

- The Norfolk Fire and Rescue Service, St Margarets and St Nicholas Ward Forum and a member of the public raised concerns regarding battery storage. The Secretary of State can confirm that the Applicant removed the proposal for battery storage from its application for the variation before its submission to the Secretary of State.
- A County Councillor raised concern over the duration of the construction phase which was a 30 month period assessed for the consented development in comparison with the 40 month period assessed for the varied development. The Applicant has confirmed that the 40 month period includes periods for detailed design work and procurement that were not included in the construction timetable for the consented development. The Secretary of State is satisfied that the period for physical construction for the varied development would be similar to the construction phase for the consented development.
- Two members of the public responded to suggest ways in which the Applicant could engage with the local community to provide community benefits. The Secretary of State has noted these suggestions but does not consider that they are material to his consideration of whether the variation application should be granted.
- West Winch Parish Council commented that consents for power stations normally contain a decommissioning planning condition to ensure the removal of the Development and associated structures, and questioned whether if, the variation application was granted, there would be any contingency plans in place to deal with decommissioning in the case that the Applicant went into liquidation. The Secretary of State can confirm that planning conditions on decommissioning are not included in consents for onshore gas-fired power stations. The Secretary of State is also not

aware of any reason to believe that the Applicant would be subject to any insolvency proceedings in the future.

### Consideration of Other Material Issues

8.31 The Secretary of State considers the following issues material to the merits of the Application:

- (a) the Applicant has provided adequate environmental information for the Secretary of State to judge the impacts of the proposed varied development;
- (b) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the EIR and the Secretary of State has judged that the likely key environmental impacts are acceptable;
- (c) the views of the relevant planning authority, statutory consultees under the Habitats Regulations, and all other relevant matters have been carefully considered;
- (d) the Secretary of State is aware that the varied development would require a variation to the existing Environmental Permit issued by the Environment Agency before it could operate. He notes that the Applicant intends to apply for the variation at a later date, and that the Environment Agency did not raise any objections to the Applicant's approach;
- (e) the legal procedures for considering an application for a variation of the generating station consent and Planning Conditions have been properly followed; and
- (f) the Secretary of State has also considered policies on the need for and development of new electricity generating infrastructure, as set out in the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)* in determining this Section 36C variation application. The Secretary of State considers that the variation application is consistent with the policies set out in the National Policy Statements (EN-1 and EN-2). In particular, the Secretary of State considers that the variation application is consistent with the policies set out in the National Policy Statement (EN-1) which state: "*Developing our infrastructure.....will help us maintain and improve our security and access to competitive suppliers, particularly for electricity generation...*".

## **9 EQUALITY ACT 2010**

9.1 The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:

- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
- (c) the fostering of good relations between people who share a protected characteristic and those who do not.

9.2 The Secretary of State has considered the potential impacts of granting or refusing the Variation Application in the context of the general equality duty and has concluded that it is

not likely to result in any significant differential impacts on people sharing any of the protected characteristics.

- 9.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the Variation Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

## **10 HUMAN RIGHTS ACT 1998**

- 10.1 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the varied development. The Secretary of State considers that the grant of varied development would not violate any human rights as given effect in UK law by the Human Rights Act 1998.

## **11 SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION**

- 11.1 The Secretary of State notes that the Applicant has requested that the consented development be varied to allow for additional land for CCR and to increase the footprint of the generating station to allow for certain necessary facilities (control block, demineralised water tank, etc) which did not make up part of the consented development. The Applicant will now need to provide these facilities so that the development can function as a standalone generating station. In addition, the variation to the consented development will allow for the installation of more efficient technology capable of generating more power. However, there will be no change in the main fuel source of the varied development and there have been no major changes in the environmental and other impacts identified in relation to the varied development. The Secretary of State is therefore of the view that the varied development does not result in a development that is different in character or inconsistent to that originally consented. The Secretary of State is of the view that the varied development is appropriate and necessary, and is satisfied that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.
- 11.2 The Secretary of State has also had regard to the other matters specified in sections 6, 7 and 8 above and has decided to grant a variation to the consented development pursuant to section 36C of the Electricity Act 1989. The varied development is annexed to this variation decision and is subject to the conditions set out in the varied consent. The Secretary of State also considers the planning conditions as varied, form a sufficient basis on which the varied development might proceed, and has, therefore decided to issue a section 90(2ZA) direction that the conditions to the deemed planning permission be varied as specified in the annex to that direction. The reasons for the variation to particular conditions are as explained in the annex to this letter.
- 11.3 Accordingly I enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and under section 90(2ZA) of the Town and Country Planning Act 1990 varying the deemed planning permission.

## **12. GENERAL GUIDANCE**

- 12.1 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 an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, 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 WC2A 2LL.

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

Yours sincerely

*Gareth Leigh*

**Gareth Leigh**

Head of Energy Infrastructure Planning