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28 January 2021

Dear Mr Brown

**ELECTRICITY ACT 1989**

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

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

**ENFIELD POWER 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 28 May 2020 (“the Application”) by Uniper UK Limited (“the Applicant”) to vary the consent granted by the Secretary of State on 9 June 1994 as amended on 26 February 1997 (“the original consent”) to construct and operate a combined cycle gas turbine generating station and for 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 is to allow for an increase in the capacity permitted by the consented Development from 360MW to 450MW (“the varied Development”), and to make amendments to the related planning conditions to take into account pre-commencement and construction conditions that have been discharged.
- 1.2 The Application 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 titled ‘Uniper UK LTD Environmental Impact Assessment Report’ dated May 2020 (“the Environmental Impact Report”) 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 submitted with the application for the consented Development.
- 1.4 In accordance with the EIA Regulations and the Variation Regulations, the Environmental Impact Report was advertised and placed in the public domain to give people an opportunity to comment on it.

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

- 2.1 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.
- 2.2 No objections to the varied Development were received by the Secretary of State to the proposed variation from the relevant planning authority or any other person. However, the Secretary of State has given consideration to the representations received from his consultees, including the relevant planning authority, Natural England and the Environment Agency.

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

- 3.1 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.

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

- 4.1 Regulation 6 of the EIA Regulations prohibits the Secretary of State from granting a variation under section 36C of the Electricity Act 1989 that relates to “EIA development” unless an environmental impact assessment (as defined by regulation 7) has been undertaken in respect of the development.
- 4.2 The Secretary of State is satisfied that the Environmental Impact Report submitted by the Applicant in support of the Application 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 impact assessment into consideration: in addition to the Environmental Impact Report, he has considered the comments made by the relevant planning authority, those designated as statutory consultees under regulation 4 of the EIA Regulations and comments by others.
- 4.4 The Secretary of State considers, in view of the proposed variation, that the environmental impacts will not increase in significance beyond that which was assessed for the generating station as originally consented.

## **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 is likely to have a significant effect on a European Site (also known as a Natura 2000 site) either alone or in combination with other plans or projects as defined in the Habitats Regulations. Where a significant effect is likely and is not directly connected with or necessary to the management of that site, an Appropriate Assessment (“AA”) of the implications of the plan or project for the Natura 2000 Site in view of its conservation objectives must be completed. 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 adversely affect the integrity of the Natura 2000 Site (regulations 63(5) and 64). Regulation 63(6) provides that when considering whether the proposed Development will adversely affect the integrity of a Natura 2000 Site, the competent authority can take into account measures proposed to mitigate such impacts. However, they cannot be taken into account when considering the screening test for likely significant effects.
- 5.2 The Development is located in close proximity to the Chingford Reservoirs Site of Special Scientific Interest. The following designated sites are also within 10km of the Development:
- Epping Forest Special Area of Conservation and Site of Special Scientific Interest;
  - Wormley-Hoddesdonpark Woods Special Area of Conservation;
  - Lea Valley Special Protection Area and RAMSAR;
  - Turnford & Cheshunt Pits Site of Special Scientific Interest;
  - Waltham Abbey Site of Special Scientific Interest Roding Valley Meadows Site of Special Scientific Interest
  - Walthamstow Reservoirs Site of Special Scientific Interest
  - Wormley-Hoddesdonpark Woods South Site of Special Scientific Interest and Special Area of Conservation
  - Wormley-Hoddesdonpark Woods North Site of Special Scientific Interest and Special Area of Conservation
  - Northaw Great Wood Site of Special Scientific Interest
  - Walthamstow Marshes Site of Special Scientific Interest
- 5.3 On the basis of the information submitted by the Applicant, the Secretary of State considers that all potential impacts from the Development on the Natura 2000 Sites are not likely to have a significant effect, and as such has concluded that the varied Development is not likely to have a significant effect on these Natura 2000 Sites.
- 5.4 In its response to the consultation, while Natural England advised that the Applicant must carry out any noisy works that might disturb overwintering birds in the Chingford Reservoirs Site of Special Scientific Interest during the summer months. It did not advise that the varied Development would have any negative impacts on any Natura 2000 Site or any of the other sites listed above.

### Conclusion

- 5.5 For the reasons given above, the Secretary of State considers that his duties in relation to potential impacts on Natura 2000 Sites and Species have been properly discharged.

## **6. CONSULTATION RESPONSES**

- 6.1 The Variation Application was published in accordance with the Electricity Generating Stations (Applications for Variation of Consent) (England and Wales) Regulations 2013 and served on the London Borough of Enfield (the relevant planning authority). The Variation Application was also subject to public consultation as well as consultation with statutory advisers such as Natural England and the Environment Agency. The deadline for responses to the consultation was 21 August 2020 for statutory consultees and members of the public, and 4 September 2020 for the relevant planning authority.
- 6.2 No objections or comments on the proposed variation were received from: the relevant planning authority; NATS; Defence Infrastructure Organisation; Historic England; and HSE. The Civil Aviation Authority and the Met Office did not respond to the consultation. No objections were received from any local organisations or residents.

### Natural England

- 6.3 Natural England did not object to the proposed variation but commented that any noisy works that may disturb overwintering birds present in the Chingford Reservoir Site of Special Scientific Interest must take place during the summer months. The Secretary of State has included a new condition, condition 28, to ensure that works that may disturb overwintering birds in the neighbouring Site of Special Scientific Interest will not take place during the months of October – March.

### Environment Agency

- 6.4 The Environment Agency raised no objection to the proposed variation and confirmed that it has received an application to vary the Development's existing Environmental Permit (NP3833RC) and, without prejudice to its final decision on that application, it saw no obvious constraints that would mean that it would not issue a variation to the existing Environmental Permit.

### Highways England

- 6.5 Although Highways England did not object to the proposed variation, it requested further information on staff shifts during construction and operation and further consideration of impacts on the strategic road network. Following discussion with the Applicant, Highways England confirmed that it had no concerns regarding the changes proposed in the Application.

## **7 SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER**

- 7.1 The Application should either include Combined Heat and Power ("CHP"), or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP. The Secretary of State notes that the Application was accompanied by a CHP Assessment which concluded that while there is a large number of heat consumers near the Development and sufficient land to facilitate CHP equipment on the Development site, the nature of the Development's intermittent operation means that it is not currently favourable for it to operate in CHP mode as heat cannot be reliably supplied to consumers. The Applicant's CHP assessment also identified that much of the building stock in the immediate vicinity of the Development is not of a design that lends itself to a district heating network connection. Through engagement with Enfield Borough Council and their publicly owned energy company, Energetik, the Applicant concluded that while the intermittent operation of the site and current plans show that there is no immediate opportunity for heat supply from the Development, the future redevelopment of Brimsdown may provide such an opportunity.

## Conclusion

7.1 The Secretary of State is conscious that all opportunities for the deployment of CHP should be encouraged where possible and considers that revision to the deemed planning permission would be helpful in this respect. The Secretary of State has therefore included a new condition to require ongoing monitoring and exploration of potential users of heat from the Development.

## **8 SECRETARY OF STATE'S CONSIDERATION OF CARBON CAPTURE STORAGE**

8.1 The Applicant submitted a 'Carbon Capture Readiness Assessment' dated May 2020 with the Application. The Secretary of State has consulted the Environment Agency and economists within the Department for Business, Energy and Industrial Strategy about the requirements for Carbon Capture Readiness ("CCR") in relation to the varied Development and the information submitted by the Applicant.

8.2 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.

8.3 The Applicant's CCR report concludes that there is a suitable storage site for carbon capture equipment within the redline boundary of the Development. The Applicant has also concluded that it is technically and economically feasible to retrofit the Development with equipment to capture carbon and to transport the carbon emitted to the storage site. The CCR report also concluded that the calculated plot layout for the carbon capture plant can be accommodated within the redline boundary of the Development following removal of some surplus structures and re-routing of the overhead electricity power lines, and there is a credible route for exporting the captured carbon from the Development to one of the potential storage structures in the southern North Sea.

8.4 The Secretary of State has considered the information provided by the Applicant and the comments of consultees both within and outside the Department for 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 Carbon Capture Readiness Guidance which was produced to explain the implementation of Government's policy on CCR through section 36 of the Electricity Act 1989.

## **9 CONSIDERATION OF OTHER MATERIAL ISSUES**

9.1 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 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 environmental information submitted in support of the Application 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 Applicant has applied for a variation to the existing Environmental Permit issued by the Environment Agency to reflect that the varied Development is able to generate electricity at a higher capacity. The Secretary of State notes that the Environment Agency, without prejudice to its final decision on the application for the variation to the Environmental Permit, has confirmed that it sees no reason as to why a variation would not be granted in due course;
- (e) the legal procedures for considering an application for a variation of the generating station consent and planning conditions have been properly followed;
- (f) in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, the Secretary of State has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is satisfied that there has been due regard to conserving biodiversity and considers that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed;
- (g) 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 Application. The Secretary of State considers that the 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 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...*”; and The Energy White Paper, *Powering our Net Zero Future*, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State’s consideration of the Application.
- (h) On 2 May 2019, the Climate Change Committee recommended that the UK reduce its greenhouse gas emissions to net zero by 2050. This was proposed to deliver on the commitments the UK made by signing the Paris Agreement in 2016. On 26 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction ‘net zero’ target for 2050 which resulted in an amendment to the Climate Change Act 2008 requiring the UK to reduce net carbon emissions by 2050 from 80% to 100% below the 1990 baseline. The Secretary of State considers that granting consent for the variation will contribute to the delivery of secure, reliable and affordable supplies of energy as part of the transition to a low carbon economy, and would be in line with commitments to ‘net zero’ and the need to address climate change.

## **10 EQUALITY ACT 2010**

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

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

10.2 The Secretary of State has paid due regard to these aims when considering the potential impacts of granting or refusing the Application and has concluded that the varied Development will not result in any differential impacts on people sharing any of the protected characteristics.

10.3 The Secretary of State does not, therefore, consider that either the grant or refusal of the 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.

## **11. HUMAN RIGHTS ACT 1998**

11.1 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.

## **12. SECRETARY OF STATE'S DECISION ON THE APPLICATION**

12.1 The Applicant has requested that the consented Development be varied to allow for an increase in the capacity of the consented Development from 360MW to 450MW, and to make amendments to reflect various pre-commencement and construction planning conditions that have now been discharged or are no longer relevant. The Secretary of State notes that there will be no change in the main fuel source of the varied Development and there have been no significant 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 fundamentally different in character or scale 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 are reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.

12.2 The Secretary of State has also had regard to the other matters specified above and has decided to grant a variation to the consented Development pursuant to section 36C of the Electricity Act 1989. The varied consent 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 planning conditions 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.

12.3 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 planning conditions.

### **13. GENERAL GUIDANCE**

13.1 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.

13.2 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