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Your ref: DAM/B/2.4/S36C Application

12 July 2016

Dear Mr Marshall

ELECTRICITY ACT 1989

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

**DAMHEAD CREEK 2 CCGT POWER STATION, HOO PENINSULA, KENT
("the Development")**

THE APPLICATION

1. I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 5 February 2016 ("the variation application") submitted on behalf of ScottishPower (DCL) Limited ("the Applicant"). The variation application is to vary the consent granted by the Secretary of State on 23 October 2015 ("the 2015 varied consent"), which varied the consent granted by the Secretary of State on 28 July 2014 ("the 2014 varied consent"), which varied the consent granted by the Secretary of State on 25 January 2011 ("the original consent") to construct and operate a 1000MW (subsequently amended to 1098MW, and increased to 1200MW (the 2014 varied consent), then to 1800 MW at ISO conditions (the 2015 varied consent)) combined cycle gas turbine generating station, within the administrative area of Medway Council ("the Development"), and a direction under section 90 of the Town and Country Planning Act 1990 ("the section 90 direction") that planning permission for the Development be deemed to be granted.
2. The variation being requested is to allow for the construction and operation of either: (i) a combined cycle gas turbine ("CCGT") generating station up to 1800 MW capacity at ISO conditions, or (ii) a CCGT generating station and an open cycle gas turbine ("OCGT") generating station of less than 300MW, having a total capacity of up to 1800 MW at ISO conditions, alongside minor amendments to the deemed planning

permission, including amendments to take into account revisions to the indicative layout and siting of the Development due to the slight reconfiguration of the power plant, with OCGT units added, and amendments to take into account the approval by Medway Council of various schemes and plans required by existing planning conditions. The varied Development would comprise a CCGT plant of up to 1800MW, or potentially a CCGT and an OCGT peaking plant located on the same site; the peaking plant would have an electrical output capacity of less than 300MW, but the combined electrical output from the CCGT and OCGT would not exceed the 1800 MW capacity.

3. The variation application was published in accordance with the Electricity Generating Stations (Variations of Consents) (England and Wales) Regulations 2013 ("the Variation Regulations") and served on the relevant planning authority.
4. In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 ("the EIA Regulations"), which apply to the variation of a section 36 consent that relates to "EIA development" as defined in those Regulations, by virtue of regulation 7 of the Variation Regulations, an Environmental Information Report dated February 2016 ("the EIR 2016") was submitted with the variation application. The EIR describes the Development and updates the analysis of the environmental effects set out in the Environmental Statement dated June 2009 submitted with the original application, the updated Environmental Information Reports dated February 2014 and May 2015, submitted with the 2014 varied consent and the 2015 varied consent, respectively. In accordance with the EIA Regulations and the Variation Regulations, notice of the EIR 2016 was given along with the previously submitted environmental information supporting the 2015 varied consent, to give people an opportunity to make representations.
5. Medway Council ("the relevant planning authority") reviewed the proposed variation and responded to the Secretary of State's consultation on 6 May 2016 stating that it raises no objection and identifying the 49 conditions ("the Planning Conditions") which the relevant planning authority agrees to be attached to any section 90 direction. The Applicant's proposed variations to the section 90 direction identified 55 conditions. The Secretary of State notes that the discrepancy in number between the relevant planning authority and the Applicant's Planning Conditions, is due to the removal of the previously deleted conditions within the relevant planning authority's amended version of the section 90 direction.
6. The Secretary of State notes that after the variation application was submitted, the Applicant informed the Secretary of State that conditions 45 and 46 (Archaeology) in the deemed planning permission had been discharged and requested that the revised section 90 direction (if granted) reflects the discharge of these conditions. The relevant planning authority provided to the Secretary of State a copy of a letter dated 26 May 2016 addressed to the Applicant, which confirmed that condition 45 and therefore by default, also condition 46, had been discharged. The Secretary of State is therefore content for condition 45 to be amended to reflect the discharge of condition 45 but that agreed geo-archaeological works still need to be implemented, and for condition 46 to be removed from the revised Planning Conditions. The "reasons" for condition 45 and 47 have been varied to clarify that these reasons are "to allow further surveying of the site for archaeological artefacts and the recovery of any important archaeological discovery should any be found in the area referred to during construction of the Development".

SECRETARY OF STATE'S CONSIDERATION OF THE REVISED PLANNING CONDITIONS

7. The Secretary of State has considered the revised Planning Conditions carefully. The Secretary of State agrees that they are suitable for inclusion in a section 90 direction which the Secretary of State may give.

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

8. Regulation 8 of the Variation Regulations gives the Secretary of State the power 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 her by the relevant planning authority or any other person where those representations are not withdrawn.
9. No objections were received in relation to the proposed variation from the relevant planning authority or any other person. However, the Secretary of State has given consideration to the all representations received, including from the relevant planning authority.

Conclusion

10. The Secretary of State has considered the views of the relevant planning authority and the other consultees and all other material considerations. The Secretary of State takes the view there is no further information required to enable the Secretary of State to take a decision on the variation application and that it would not, therefore, be appropriate to cause a public inquiry to be held into the variation application.

SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

11. Regulation 4(2) of the EIA Regulations (as applied by regulation 7 of the Variation Regulations) prohibits the Secretary of State from granting a variation to a section 36 consent which relates to "EIA development" unless the Secretary of State is satisfied that the Applicant has complied with its obligations under regulation 4(1); the Secretary of State has taken into consideration the environmental information, as defined in the EIA Regulations; and the applicable procedures in the EIA Regulations have been followed.
12. The Secretary of State is satisfied that, the Applicant having complied with its obligations under regulation 4(1) of the EIA Regulations, the EIR 2016 submitted by the Applicant is sufficient to allow her to make a determination on the variation application and that the Applicant has followed the applicable procedures in the EIA Regulations.
13. The Secretary of State has, in accordance with regulation 4 of the EIA Regulations, taken the environmental information into consideration; in addition to the EIR 2016, the Secretary of State has considered the representations made by the relevant planning authority and the other consultees.
14. 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 variation to the section 36 consent or the Planning Conditions, the Secretary of State considers that any remaining adverse environmental effects will not be such that it would be appropriate to refuse the variation to the section 36 consent for the Development or the deemed planning permission.
15. The Secretary of State also has regard, in accordance with section 40 of the Natural Environment and Rural Communities Act 2006, to the purpose of conserving biodiversity, and considers that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the EIR 2016.

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

Habitats Regulations Assessment

16. The Conservation of Habitats and Species Regulations 2010 ("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 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 only be granted if it can be shown that the development will not have an adverse effect on the integrity of the European Site (regulations 61(5) and 62). Regulation 61(6) provides that when considering whether the proposed development will adversely affect the integrity of a European Site, the competent authority can take into account measures proposed to mitigate such impacts.
17. Natural England advised that the site of the varied Development is in close proximity to the Medway Estuary and Marshes Special Protection Area (SPA) and the Thames Estuary and Marshes SPA. The sites are also listed as the Medway Estuary and Marshes and the Thames Estuary and Marshes Ramsar sites. The Environment Agency raised concerns about whether the Applicant had considered all European sites within 15km of the Development site which may be affected by the proposed variation due to air quality impacts. The Applicant subsequently informed the Secretary of State that in addition to Medway Estuary and Marshes SPA and Ramsar site, and Thames Estuary and Marshes SPA and Ramsar site, the following European sites are located within 15km of the Development site: Queendown Warren SAC; North Downs Woodlands SAC and The Swale SPA and Ramsar site. The Applicant provided evidence to support its conclusion that effects of the varied Development can be screened as insignificant in terms of air quality impacts on these sites (NO_x critical levels, acid and nitrogen deposition).
18. Natural England advised that the Secretary of State, as competent authority under the provisions of the Habitats Regulations, should have regard to any potential impacts that a plan or project may have on any European Site when considering its Habitats Regulations Assessment (HRA). Natural England's view was that the proposed varied Development would be unlikely to have a significant effect on any European Site and as such could be screened out from any requirement for further assessment. Following the submission by the Applicant of further evidence in relation to potential air quality impacts to the additional European sites identified, Natural England advised the Secretary of State that it agrees with the Applicant's conclusions that the air quality impacts on Queendown Warren SAC, North Downs Woodlands SAC and The Swale SPA and Ramsar sites are insignificant and can be screened out of any further assessment.
19. Having considered the environmental information, the planning conditions already imposed and the advice from Natural England, the Secretary of State is satisfied that the varied Development is not likely to have a significant effect on any European Site, either alone or in-combination. The Secretary of State therefore considers that no Appropriate Assessment pursuant to regulation 61 of the Habitats Regulations is necessary.

Effects on other protected Sites

20. The Secretary of State notes that Natural England advised that the site of the varied Development is in close proximity to the Medway Estuary and Marshes and South Thames Estuary and Marshes Sites of Special Scientific Interest (SSSIs). The

Secretary of State is satisfied with Natural England's advice that, providing the varied Development is carried out in accordance with the details of the variation application the varied Development will not damage or destroy the interest features for which the SSSIs were notified.

SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED DURING CONSULTATION

21. The Secretary of State notes that the Civil Aviation Authority, Kent County Council, Historic England, NATS Safeguarding and the Ministry of Defence did not respond to the consultation regarding the variation application. The Secretary of State notes that no objection to the variation application was received from the consultees who responded to the consultation: The Health and Safety Executive; Highways England; The Met Office; the relevant planning authority; Natural England; and the Environment Agency. The Secretary of State notes that the relevant planning authority, Natural England and the Environment Agency provided detailed responses and these are considered below.

Relevant planning authority

22. The Secretary of State notes that the relevant planning authority stated that it had no objection to the variation application subject to:
- (a) Any consent issued in respect of the proposed variation which results in a new deemed planning consent securing the provision within the existing legal agreement, as set out in i), iii), iv) and v) below, as completed in relation to application MC/09/0961 under Section 106 of the Town and Country Planning Act 1990 (as amended):
 - i. The retention of the financial contribution towards reducing the material impact on the Four Elms Roundabout during the construction period.
 - ii. To use reasonable endeavours to utilise the land identified for Carbon Capture Storage for intervening temporary employment purposes ensuring that the Carbon Capture Storage land does not become sterilised between the date of the permission and the installation of any Carbon Capture Storage facility.
 - iii. To ensure that, during the construction phases of the proposed development, the developer and their contractors shall use reasonable endeavours to meet the council's workforce training commitment and to use reasonable endeavours to provide employment opportunities for local apprentices, potentially secured through a requirement to provide and subsequently implement a Construction Training and Employment Method Statement.
 - iv. To submit to the Local Planning Authority a Route Management Plan and an Abnormal loads management strategy and comply with the same during the construction period of the development; and
 - (b) the revised Planning Conditions.

Natural England

23. Natural England's advice to the Secretary of State regarding possible effects of the proposed variation on European Sites and nationally protected sites is considered above. Natural England also informed the Secretary of State that planning permission was granted in 2013 to change the use of the original Wildlife Creation Area associated with the Development and this permission is subject to a number of conditions. In addition, the revised Wildlife Creation Area is subject to a Natural Environment and Rural Communities (NERC) Act Licence to safeguard the area against future development. Natural England advised the Secretary of State that subject to both of these provisions being unaffected by variation application and the mitigation measures for protected species with the original application being implemented in full for the variation application, it had no comments to make in relation to protected species.

24. The Applicant advised the Secretary of State on 14 April 2016 that the conditions of both the planning permission for the revised mitigation area that replaced the former Wildlife Creation Area, and the Natural Environment and Rural Communities (NERC) Act Licence are being implemented in full, and the mitigation measures provided for protected species are unaffected by the variation application.
25. Having considered the advice provided by Natural England, the Secretary of State is of the view that additional conditions are not required in the revised Planning Conditions.

Environment Agency

26. The Environment Agency provided a consultation response to the Secretary of State on 21 March 2016 and identified areas where further clarification was sought from the Applicant in relation to the air quality assessment undertaken. The Applicant responded to the Environment Agency on 13 April 2016 providing the information requested. The Secretary of State notes that the Environment Agency responded to the Applicant's letter on 27 April 2016 stating that *"we do not wish to make further response at the current time. We will instead address any remaining air quality issues/questions as part of the EPR Permit determination process"*.
27. Having considered the advice provided by the Environment Agency and the subsequent information provided by the Applicant, the Secretary of State is of the view that additional conditions are not required in the revised Planning Conditions.

SECRETARY OF STATE'S CONSIDERATION OF THE REQUEST TO VARY THE EXISTING CONSENT TO ALLOW FOR CONSTRUCTION AND OPERATION OF A GAS FIRED POWER STATION USING EITHER (I) CCGT OR (II) CCGT AND OCGT

28. The Secretary of State notes that the Applicant has requested that the existing consent be varied to allow for the construction and operation of a gas fired power station using either: (i) a CCGT generating station up to 1800 MW capacity at ISO conditions, or (ii) a CCGT generating station and an OCGT generating station of less than 300MW, having a total capacity of up to 1800 MW at ISO conditions.
29. The Secretary of State is satisfied that including these options in relation to the gas turbine technology is an appropriate variation. Whichever mix of technologies is taken forward, the Secretary of State considers that the varied Development will not differ significantly from the generating station to which the original consent referred. The Secretary of State considers that any difference in construction, operation or likely environmental effects would not be such as to require authorisation by a new consent. In addition, giving this flexibility as to gas turbine technology in this case helps to fulfil the need for nationally significant gas infrastructure as set out in the Overarching National Policy Statement for Energy EN-1. The Secretary of State has included a new condition in the varied consent, as condition 56, to notify the Secretary of State and relevant planning authority which one of the gas turbine technology options has been selected at least 6 weeks prior to commencement of the Development and to provide details of the capacity of each gas turbine technology to be used.

SECRETARY OF STATE'S CONSIDERATION OF CARBON CAPTURE READINESS ("CCR")

30. The Secretary of State considered in relation to the determination of the original consent, the 2014 varied consent and the 2015 varied consent that "the Company has adequately demonstrated that the proposed Development will be technically and economically able to retrofit carbon capture plant and equipment as and when carbon capture becomes technically and economically viable". Conditions relating to CCR

which were modelled on those contained in Annex G of Carbon Capture Readiness (CCR): a guidance note for section 36 Electricity Act 1989 consent applications¹ ("CCR Guidance") were included in the section 36 consent.

31. The Secretary of State has considered whether the proposed variation to the section 36 consent would have any impact on the previous conclusions in relation to CCR for the Development. The Secretary of State notes that the Applicant submitted a "Carbon Capture Ready (CCR) Report" with the variation application (Appendix B of the EIR 2016) to demonstrate that it would remain technically feasible to retrofit Carbon Capture technology in the future to the proposed Development. The Secretary of State notes that the Applicant also submitted an "Assessment of the CCR Compliance of the Proposed Damhead Creek 2 1500 MW CCGT + 300 MW OCGT Scheme" with the variation application (Appendix C of the EIR 2016). The Secretary of State has consulted the Environment Agency and officials in the Department of Energy and Climate Change in relation to the proposed variation and the information submitted by the Applicant.
32. The Secretary of State notes that the Environment Agency in the consultation response dated 21 March 2016 has confirmed that based on the information provided, the land and space set aside for the Development continues to be sufficient for CO₂ capture readiness and that there are no foreseeable barriers to the technical feasibility of carbon capture retrofit.
33. The Secretary of State notes that the Applicant has not provided any technical feasibility studies for the OCGT plant. The application states that the peaking plant will be up to 300 MWe (most likely make up will be circa 250 MWe) of OCGT. The Secretary of State notes that the "Carbon Capture Ready (CCR) Report" submitted with the variation application (Appendix B of the EIR 2016) states that "The proposed electrical output capacity of the open cycle peaking plant does not meet the 300MW capacity requirements of CCR and therefore an analysis of future retrofitting of CCS to the peaking plant is not required under the current guidance". The Secretary of State agrees with this. However, to provide clarity on the capacity of the proposed OCGT element of the Development, the Applicant agreed to the Secretary of State's proposed amendment to paragraph 2 in the s.36 consent (as varied) to state that "The Development shall be either (i) a CCGT generating station up to 1800 MW capacity at ISO conditions, or (ii) a CCGT generating station and an OCGT generating station of less than 300MW, having a total capacity of up to 1800 MW at ISO conditions".
34. The Applicant has indicated that it still proposes to use spare capacity at the Hewett L Bunter gas field for the CO₂ emissions produced and captured during the operation of the Development. In determining the original application for section 36 consent, the Secretary of State considered that these approaches were acceptable and no information has subsequently been received which causes the Secretary of State to consider the matter differently in relation to the current variation application.
35. The Applicant has indicated that it still proposes to transport the CO₂ captured from the Development to the storage site via pipeline as transport via road or rail is not considered to be feasible or realistic given the volumes of CO₂ being transported. However, the Applicant has reviewed the plan for CO₂ transport from the Development to the storage site beneath the North Sea, in the Hewett L Bunter gas field and has identified several routes, including an onshore route which avoids internationally and nationally designated ecological sites, from the Development to transition either

¹ Carbon Capture Readiness (CCR): A guidance note for section 36 Electricity Act 1989 consent applications states that the "capacity threshold for CCR is based on the capacity of the new power station as a whole, rather than on the individual capacity of each of the units which make up the power station. However, where an application for a variety of generating unit types is received (for example combined cycle and open cycle gas turbines), the threshold is applied to the new units of the same type on the site

beneath the Thames Estuary or to run beneath the river Medway prior to entering the North Sea and turning North towards the final storage site, which would be assessed at the time CCS is mandated. The Secretary of State considers the Applicant has adequately demonstrated the technical feasibility of transporting the captured CO₂ to the proposed storage area.

36. The decision on the original section 36 application considered that the economic assessment produced by the Applicant was in accordance with the requirements of the CCR Guidance, insofar as it demonstrated that the fitting of carbon capture equipment would be potentially viable over the lifetime of the proposed Development. In relation to the variation application, the Secretary of State notes the Applicant's assessment has presented reasonable scenarios under which the fitting of CCS equipment would be economically feasible.

Conclusion

37. The Secretary of State has considered the information provided by the Applicant and the comments of consultees both within and outside the Department of Energy and Climate Change. The Secretary of State notes that the Environment Agency has not identified any foreseeable barriers to carbon capture with regards to space and to the technical feasibility of carbon capture retrofit, and concludes therefore, that there are no technical or economic obstacles to the grant of the requested variation in relation to CCR.

SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER ("CHP")

38. The Secretary of State notes that the Applicant submitted a "CHP- Ready Report" with the variation application (Appendix E of the EIR 2016), which evaluates the feasibility of supplying the heat that is generated during the electrical generation process to nearby heat customers based on the CCGT with the OCGT peaking plant scheme option. The Secretary of State notes that the "CHP- Ready Report" explains that the CHP potential of the CCGT-only scheme was assessed as part of that 2015 variation application.
39. The Applicant's "CHP-Ready Report" identifies that the current heat demand is too low and does not occur in sufficient density to support a CHP scheme and enable a heat network to be technically or economically viable. In relation to future demand, the Applicant has not identified any viable future heat loads that could be served by a local heat network from the Development based on current proposals for developments. However, the Secretary of State notes that the deemed planning permission already includes requirements for combined heat and power ("CHP") and considers that the CHP condition 52 should be retained in the revised conditions in case future viable opportunities for the use of heat are identified prior to commissioning of the varied Development.

EQUALITY ACT 2010

40. 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.

41. 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.
42. 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.

OTHER MATTERS

43. 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 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).
44. The Secretary of State is aware that the varied Development would require an Environmental Permit from the Environment Agency before it could operate. However, the Secretary of State notes that the Applicant is seeking to vary the existing permit granted in respect of existing Damhead Creek gas fired power station to provide suitable coverage for the varied Development. The Secretary of State further notes that the Environment Agency has not identified any barriers to a new permit being issued.

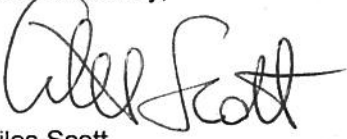
SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

45. The Secretary of State, having regard to the matters specified above, has decided to make a variation to the section 36 consent for the Development pursuant to section 36C of the Electricity Act 1989. The section 36 consent as varied is annexed to the variation decision and subject to the conditions set out in the varied consent.
46. The Secretary of State also believes the planning conditions as revised form a sufficient basis on which the varied Development might proceed and therefore has decided to issue a direction under section 90(2ZA) of the Town and Country Planning Act 1990 to vary the deemed planning permission on the basis of the conditions specified in the annex to that direction. The reasons for the variation to any particular conditions are explained in the annex.
47. I accordingly enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and a direction under section 90(2ZA) of the Town and Country Planning Act 1990 varying the deemed planning permission.

GENERAL GUIDANCE

48. The validity of the Secretary of State's decision may be challenged by making an application to the High Court for permission to seek a judicial review. Parties seeking further information as to how to proceed, including time limits, should seek independent legal advice from a solicitor, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6055).
49. 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 36C of the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Giles Scott". The signature is written in a cursive style with a long horizontal stroke extending from the end of the name.

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities