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www.decc.gov.uk

Date: 4 March 2011

Dear Sir

ELECTRICITY ACT 1989 (“the Act”)
TOWN AND COUNTRY PLANNING ACT 1990
PLANNING (HAZARDOUS SUBSTANCES) ACT 1990
ENERGY ACT 1976

APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A 2000MW
COMBINED CYCLE GAS TURBINE GENERATING STATION AND 400MW
OPEN CYCLE GAS TURBINE GENERATING STATION AT WILLINGTON,
SOUTH DERBYSHIRE

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Energy and Climate Change (“the Secretary of State”) to refer to the application dated 8 December 2009 (“the application”) on behalf of RWE Npower Limited (“the Company”) for the consent of the Secretary of State under section 36 of the Act (“section 36 consent”) to construct and operate a 2000MW combined cycle gas turbine generating station and 400MW open cycle gas turbine generating station at Willington, South Derbyshire (“the Development”); a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be deemed to be granted; a direction under section 12(2) of the Planning (Hazardous Substances) Act 1990 that hazardous substances consent be deemed to be granted; and a direction under section 14(1) of the Energy Act 1976 that he has no objection to hydrocarbons and/or gas being used as the fuel for the Development.

1.2 On 29 June 2010 the Company informed the Department that, in its view, the process for obtaining development consent under the Planning Act 2008 from the Infrastructure Planning Commission for a new natural gas pipeline associated with the Development would take longer than it had originally

envisaged. The Company estimated that to comply with the requirements of the new development consents regime would mean the application for the natural gas pipeline would not be made until the fourth quarter of 2011 meaning development consent for the pipeline, if granted, might not be forthcoming until quarter one of 2013. On 24 September 2010 the Company formally requested if section 36 consent was granted that it could be on the basis of a phased development, that is the construction of the open cycle gas turbine generating station, followed by the combined cycle gas turbine generating station once development consent for the natural gas pipeline had been obtained. The Company has explained that the open cycle turbines can be operated on distillate oil and would be used only for periods to meet peak demand or in response to intermittency in renewable generation

1.3 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the 2000 Regulations”) the Company also submitted on 8 December 2009 a document, entitled “Willington C CCGT Environmental Statement December 2009”. The Company supplemented this document with a further document entitled “Willington C CCGT Environmental Statement – Additional Environmental Information (AEI) April 2010”. The documents describe the Development and give an analysis of its environmental effects. The documents are hereafter referred to in this letter as the “Environmental Statement”. The Environmental Statement was advertised and placed in the public domain and an opportunity given to those who wished to comment on it to do so.

1.4 South Derbyshire District Council and Derbyshire County Council (“the relevant planning authorities”) entered into discussions with the Company over terms on which they would be content for the Development to proceed. As a result of these discussions, 57 conditions to be attached to any section 90 direction (“the Planning Conditions”) were agreed in principle between the Company and the relevant planning authorities.

1.5 In view of the conclusion of these discussions the relevant planning authorities have not maintained any objection to the Application providing that the Planning Conditions are imposed should the Secretary of State be minded to grant section 36 consent and issue a section 90 direction in respect of the Development. Although not objecting, Derbyshire County Council recommended that the Secretary of State investigate the opportunity to support a new rail link in South Derbyshire (see paragraph 3.5(a) below).

1.6 The Secretary of State notes that the Company has also given an undertaking to Derbyshire County Council under section 106 of the Town and Country Planning Act 1990 dated 9 December 2010 (“section 106 Undertaking”), to provide for financial contributions towards the following:

- a. the provision of a temporary speed limit during the construction of the Development;
- b. the purchase of a temporary construction traffic signage scheme (as

- approved pursuant to Planning Condition (19);
- c. the provision of a permanent (post construction) speed limit (subject to a successful risk assessment and all other necessary approvals);
- d. the provision of a gateway feature¹ within the limits of the Twyford Road highway; and
- e. the provision of a physical pedestrian refuge and street lighting within the limits of the Twyford Road highway.

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

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

III. SECRETARY OF STATE'S DECISION ON THE HOLDING OF A PUBLIC INQUIRY AND CONSIDERATION OF OBJECTIONS AND REPRESENTATIONS RECEIVED

3.1 As indicated in paragraph 1.5 above the relevant planning authorities have not maintained an objection to the Application. The Secretary of State is therefore not obliged to cause a public inquiry to be held.

3.2 Paragraph 3(2) of Schedule 8 to the Act, however, requires the Secretary of State to consider all objections that he has received pursuant to the Electricity (Applications for Consent) Regulations 1990 (made under paragraph 3(1) of Schedule 8), ("the Applications Regulations"), together with all other material considerations, in order to determine whether it would nevertheless be appropriate to hold a public inquiry. Sections 3.3 and 3.4 below describe the objections and representations received and sections 3.5 and 3.6 set out the Secretary of State's conclusions as to whether any or all of them raise considerations which in his view make it appropriate to hold a public inquiry.

3.3 The Secretary of State received objections made under the Applications Regulations in the form of one letter from a local resident and one from a local business and two other representations from businesses. He also received letters of objection and representations which were made after the period allowed for under the Applications Regulations, and has nonetheless considered them also. The objections and representations and how the Secretary of State has considered them are as follows:

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

¹ The gateway feature is a pair of short gates at the entrance to Willington Village erected on the road verges on either side to give the impression that one is passing through a gateway into the Village and are part of the traffic calming measures associated with the reduced speed limit.

- (a) the proposed Development should include a train station which could be used for commuter use after construction had been completed;
- (b) the visual impact of the proposed Development would have a detrimental effect on the nearby Mercia Marina and further landscaping should be undertaken to further shield the marina;
- (c) the assets of E.ON Central Networks which cross or are adjacent to the site of the Development should be protected;
- (d) the assets of Network Rail which are adjacent to the site of the Development should be protected;
- (e) noise levels should be adequately controlled and monitored;
- (f) there would be no benefit to the local community by way of additional employment;
- (g) full details of the handling of contaminated soils should be approved by the relevant specialist bodies;
- (h) hours of delivery should be reduced from the normally accepted hours of between 0700 and 2100;
- (i) there should be a comprehensive landscaping scheme that includes planting along Twyford Road and the Trent and Mersey Canal; and
- (j) the retention, access and use of the playing fields, training centre and changing facilities should be secured by a section 106 agreement.

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

- (a) the Department contacted Network Rail about whether it would be possible to increase the number of passenger train services to Willington and if a passenger train station on the power station site was feasible. Network Rail responded as follows:
 - 1. Possibility of increasing the number of passenger services to Willington:
 - a further stop in the Crewe-Derby services is likely to give rise to an unfeasible increase in rolling stock, tight turn around times at either end, and a decrease in performance for a service that is suffering poor performance already.

- the double red signalling on the Up line means that a train standing in Willington platform ties up the North Staffs Junction meaning that no other services can get onto or off the branch.
2. If a passenger train station on the power station site would be feasible:
- the station would need to be situated between North Staffs and Sheet Stores Junction which will have a negative impact on both performance and capacity, and cause significant problems in regulating services at what are both currently very busy junctions.
 - Network rail rejected the original proposal for a station on the power station site when this was discussed previously due to the negative impact this would have on capacity and performance, as well as being a retrograde step to take the existing station away from the village.

The Secretary of State is aware that the delivery of distillate oil for use in the Development could be made by rail tanker and has therefore considered whether the siding on the site of the Development could be also be used for passenger transport. The Company informed the Department on 14 May 2010 that it had commissioned Network Rail to carry out a feasibility study regarding the delivery of oil to the site. The conclusion of that study was that it would be feasible to re-establish the turn out which had previously served the old coal-fired power station and create a new oil unloading siding. The proposed turn out would be off the Chelleston line, not the main Birmingham – Derby or Derby – Stoke lines which run alongside the site. The Chelleston line starts at Stenson Junction to the east of the site. The Secretary of State has been informed that the additional number of train movements would be 2-3 per 24 hours and could be accommodated without causing disruption to existing rail services. Such an arrangement, while potentially useful for oil delivery, is clearly too infrequent for viable passenger services.

- (b) Planning Conditions (42)-(44) require that a scheme of landscaping be submitted to South Derbyshire District Council for approval. It is envisaged that the landscaping scheme will include provision for planting to take place along Twyford Road and the northern boundary of the site of the Development. Taking into account the removal of the existing five natural draught cooling towers there will be an overall improvement as regards visual impact.
- (c) Planning Condition (53) requires the approval, before construction begins, of a method statement on how E.ON's assets are to be protected.

- (d) Planning Condition (54) requires the approval, before construction begins, of a method statement on how Network Rail's assets are to be protected.
- (e) Planning Conditions (13) and (14) cover construction noise and Planning Conditions (21)-(24) cover operational noise. It will be for South Derbyshire District Council to ensure that the Company complies with the Planning Conditions.
- (f) The Environmental Statement indicates that over 1900 jobs will be generated during the construction of the Development and that includes over 940 new jobs in the local area and over 960 in the wider East Midlands region. The Secretary of State is aware that combined cycle gas turbine power stations are not labour intensive and the number of people on site at any one time during operation would not exceed 60 operatives. This figure however would increase during periods of outages, maintenance etc. The Secretary of State is of the view that there will be a benefit to the local community particularly if account is also taken of the requirement for accommodation and other services associated with a major construction project.
- (g) Planning Conditions (37)-(41) require that contamination has to be dealt with in accordance with a scheme to be approved by South Derbyshire District Council. The approved scheme will have to include all the measures identified as phases I to III in the Council's Contamination Guidance.
- (h) Planning Condition (17) sets the timing of heavy commercial vehicles entering and leaving the site of the Development. The Secretary of State notes that the timing on such movements are between 0700-1900, Monday to Friday and 0800-1600 on Saturday. He also notes that Planning Condition (19) requires agreement of proposals to control and manage construction traffic and for such traffic to adhere to approved routes so as to cause the least disturbance to local residents as practicable.
- (i) See paragraph 3.5(b) above.
- (j) On the section 106 agreement, see paragraph 1.6 above. As regards those matters raised in relation to sports facilities which it would not be appropriate to include in such an agreement, or in planning conditions, the Company has stated that the existing community facilities on the south side of the Site, ie south of Twyford Road, which include the Willington Sports and Social Club and the use of the former power station training room by the local Scout Group, would be retained. The Company has also offered the use of the changing facilities of a training centre/multi-purpose building to enhance the use of the playing fields to the south of Twyford Road, as a "goodwill gesture".

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

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

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

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

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

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

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

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

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

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

5.3 The Secretary of State has been informed that there are no European Sites within the vicinity of the application site. He has been informed by Natural England that the Development should have no adverse impact on a European Site. However there are European and Nationally protected transient species, eg birds, bats and badgers, and Planning Conditions (46) and (47) allow for mitigation measures to be put in place to prevent any significant impact on these species. In addition Planning Conditions (44) and (45) allow for habitat creation and management to encourage biodiversity. Natural England support these measures. The Secretary of State does not therefore believe that the Development is likely to have a significant effect on a European Site or its constituent components and finds no reason for refusing section 36 consent on these grounds.

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

6.1 The Secretary of State is of the view that gas-fired power stations play a vital role in providing reliable electricity supplies; they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in the energy mix as the UK makes the transition to a low carbon economy, and they must be constructed in line with climate change goals. Moreover, the Government looks to measures other than decisions on applications for development consent to limit greenhouse gas emissions from electricity generating stations, as has been made clear in the Annual Energy Statement 2010² and the revised draft Overarching National Policy Statement on Energy Infrastructure (EN-1) published under the Planning Act 2008 on 18th October 2010.³

6.2 More specifically, the purpose of the Department's guidance on consents policy with regard to carbon capture readiness (CCR), which was published in November 2009 in a document entitled "Carbon Capture Readiness (CCR) - A guidance note for Section 36 Electricity Act consent applications" (URN09D/810)⁴ (the "CCR Guidance") is to allow the UK to benefit from the security and diversity of supply contributed by CCGT plant without being "locked-in" to dependency on higher carbon forms of generation in the longer

² Available at <http://www.decc.gov.uk/assets/decc/what%20we%20do/uk%20energy%20supply/237-annual-energy-statement-2010.pdf>.

³ Available at <https://www.energynpsconsultation.decc.gov.uk/docs/RevisedDraftOverarchingNationalPolicyStatementorEnergy%28EN-1%29.pdf>:

see in particular sections 2, 3.3 and 3.6. While the revised draft NPSs remain subject to consultation and Parliamentary scrutiny, and the Government does not intend to designate (i.e. finalise) them without Parliamentary approval, they remain a relevant statement of current policy intentions.

⁴ Available at http://www.decc.gov.uk/en/content/cms/consultations/ccr_consultati/ccr_consultati.aspx

term, by ensuring that generating stations which are subject to CCR policy are not constructed in a way, or in locations, which it is clear would make it unfeasible, either technically or economically, to retrofit carbon capture and storage technology to them at a later date.

6.3 The guidance states the following:

“CCR Requirements

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

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

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

6.4 The Company submitted a report on 8 December 2009 entitled “Wellington C Proposed CCGT and OCGT Dual Fuel Gas/Oil Fired Power Station Carbon Capture Readiness Assessment Document November 2009” and the Secretary of State’s decision on CCR is based on that document (“the CCR Report”), excluding the open cycle gas turbine generating station to be constructed under phase 1 (see paragraph 1.2 above).

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

Sufficient space

6.5.1 The CCR Report shows that the Company has allocated 22 hectares (53 acres) of land for the carbon capture plant and equipment. The Environment Agency has confirmed that this is sufficient for a gas fired generating station of the size and type envisaged.

Technical feasibility

6.5.2 The Environment Agency has advised the Secretary of State that the Company has opted for a fully integrated carbon capture plant retrofit which is in accordance with the CCR Guidance and in particular statements over the justification of standalone carbon capture plant contained in paragraph 28 of the CCR Guidance. The Environment Agency has however indicated that the Company has not ruled out other alternative options in future but that there is sufficient information to conclude that there are no significant foreseeable technical barriers to CCR retrofit for the option for CCR contained in the CCR Report. In assessing the technical and economic feasibility of CCS retrofit at a future date when applying for section 36 consent, an applicant is not seeking regulatory approval for specific CCS arrangements; and in granting consent partly on the basis of such an assessment, the Secretary of State is not giving such approval. However, given that other options may be technically feasible and the integrated carbon capture plant retrofit has potentially greater fuel efficiency, the Secretary of State is of the view that he should include a condition in the section 36 consent to ensure that the design adopted when the power station is constructed does not rule out the possibility of adopting an integrated carbon capture plant at a later date. The condition will achieve this by requiring the Development to be designed with the capability to extract steam from the electrical generating cycle. The Environment Agency has confirmed that in its view such a condition is satisfactory for carbon capture purposes.

Storage

6.5.3 The Company has identified the Hewitt Bunter Gas Field in the Southern North Sea as a suitable storage area for captured CO₂. Hewitt Bunter is considered as potentially suitable for CO₂ storage in the DTI's 2006 study of UK storage capacity⁵. The Company indicates that the proposed Development would produce 5.7MMte/yr CO₂ and assumes a 20 year operational life resulting in a total storage capacity of 114MMte CO₂. The Secretary of State is of the view that the life of the proposed Development will be greater than 20 years and is more likely to be 30-35 years, which is more in keeping with the life spans indicated by other gas fired power station developers. He therefore is of the view that the storage

⁵ Available at <http://www.berr.gov.uk/files/file35684.pdf>

area chosen should be able to accommodate 200MMte CO₂. The Secretary of State has been informed that the DTI study identifies the Hewett Bunter Gas Field as being two distinct fields, ie the Hewett L Bunter and the Hewett U Bunter. The potential storage capacity for the Hewitt L Bunter storage area as set out in the 2006 study indicates it has the capacity to accommodate 237 million tonnes of CO₂. The Secretary of State has been informed that the Hewitt L Bunter Gas Field has also been identified as the potential storage area for captured CO₂ from the Damhead Creek II gas fired power station which was granted consent under section 36 of the Electricity Act 1989 on 25 January 2011. The estimated storage requirement of Damhead Creek II is 84 million tonnes of CO₂. The combined amount of captured CO₂, 284 million tonnes would therefore exceed the capacity of the Hewett L Bunter Gas Field. However when taking into account the capacity of the Hewett U Bunter Gas Field the combined capacity for the Hewett Bunter Gas Field would be 359 million tonnes. The Secretary of State has been informed that the Bunter reservoirs were formed in the Triassic Age and therefore do not appear to be significantly compartmentalised, unlike reservoirs formed in the Permian Age. The Secretary of State is therefore of the view that the Hewett L Bunter and Hewett U Bunter can be considered as one storage field for CCR purposes and is satisfied that the Hewett Bunter Gas Field has more than enough storage capacity for both Damhead Creek II and the Development.

Transportation

6.5.4 The Department's Energy Consents Unit has commented that the onshore part of the pipeline would be approximately 200 km east from the site of the proposed Development to Bacton on the Norfolk coastline, from where it would be forwarded by either offshore pipeline or ship to the Hewett Bunter Gas Field. The route corridor envisaged would allow for the CO₂ pipeline to follow the route corridors of existing natural gas pipelines to Bacton. The route corridor envisaged would not impact on any national designated landscape such as a National Park or Area of Outstanding Natural Beauty or go through areas of high population. In order to avoid the possibility of impacting on areas, such as bird reserves, on the shore line near Bacton the use of Horizontal Directional Drill or micro-tunnelling would be undertaken. Subject to the pipeline being installed in accordance with an appropriate environmental management programme, it is considered that installation is not likely to have a significant impact on habitats or birds.

6.5.5 The Energy Consents Unit concludes that the corridor indicated by the yellow line on Figure 7 of the CCR Report would, subject to the view expressed in the previous paragraph, be a feasible route for the onshore pipeline.

6.5.6 The CCR Report indicates that transportation to the storage area could be by either pipeline or ship. Chapter 6 of the CCR Report gives details of the evaluations undertaken and does not identify any technical or economic reason why it could not take place. The Energy Consents Unit has no reason to doubt the conclusions of the technical note and concludes that either transportation by pipeline or by ship is a viable means of transporting CO₂ to the storage area.

Economic Feasibility

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

Phased construction

6.5.8 As noted in paragraph 1.2 above, the Company has asked to be allowed the option of constructing and commissioning the Development in two phases: first the open cycle plant, which can be fuelled by oil which does not require a pipe-line for it to be delivered to the site, and later the CCGT plant, which cannot be commissioned until a new pipe-line to the gas National Transmission System has been granted development consent under the Planning Act 2008 and constructed. While the whole Development would satisfy the technical and economic feasibility criteria for CCR, it is clear to the Secretary of State that the 400 MW of open cycle plant, if constructed on its own (e.g. if consent for the gas pipe-line were to be refused) would not satisfy the criteria. However, if only three of the four open cycle gas turbines are installed in the first phase of construction, their combined generating capacity will be less than 300 MW, so that if it were to be considered simply as a stand-alone open cycle plant, rather than as part of the full Development, it would not be subject to the CCR policy and the unfeasibility of retrofitting CCS to it alone would not be an issue.

Conclusion on CCR

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

demonstrated that the proposed Development, to the extent that CCR policy so requires, will be able to retrofit carbon capture plant and equipment as and when carbon capture and storage becomes both technically and economically viable. He will include conditions modelled on those contained in Annex G of the CCR Guidance in any Section 36 consent he may grant. The Department has updated the list of CO₂ storage areas to reflect the combination of the Hewett L Bunter and Hewett U Bunter Gas Fields as one storage area and the intention of the proposed Development's use of the Hewett Bunter Gas Field storage area for the captured CO₂.

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

7.1 The Application is covered by the Departmental published guidance⁶ for all combustion power station proposals, requiring developers to demonstrate opportunities for combined heat and power ("CHP") have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements.

7.2 After consideration of the information provided by the Company and the comments received from the Department's Distributed Heat and Energy Team, the Secretary of State accepts that there are no significant existing or future domestic, industrial or commercial users of heat which would justify the Development being subject to a requirement to be CHP. In the circumstances the Secretary of State is not imposing conditions requiring the Company to install the necessary pipework to the boundary of the site of the Development should any significant heat demand materialise in the future. He notes that the design of the Development will be such as to allow for the off-take of steam for CCS purposes (see paragraph 6.5.2 above) and that such steam could also be use for CHP purposes should the demand arise.

Conclusion on CHP

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

VIII SECRETARY OF STATE'S DECISION ON THE APPLICATION

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

⁶ Guidance on background information to accompany notifications under section 14(1) of the Energy Act 1976 and applications under section 36 of the Electricity Act 1989: December 2006 - <http://www.berr.gov.uk/files/file35728.pdf>

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

- i) adequate environmental information has been provided for him to judge its impact;
- ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed Development;
- iii) the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Environmental Statement and he has judged that the likely environmental impacts are acceptable;
- iv) the fact that legal procedures for considering a generating station application have been properly followed;
- v) the views of the relevant planning authorities, the views of others under the Applications Regulations, the views of statutory consultees under the 2000 Regulations and 2010 Regulations, the environmental information and all other relevant matters have been considered;
- vi) the Company has demonstrated that the Development is carbon capture ready; and
- vii) that, to the extent that it is necessary or desirable to address any of the objections received to the application in his decision, none of them is such as to justify refusal of consent or a section 90 direction, given the section 106 Agreement, the imposition of the Planning Conditions and the matters referred to in section 3.5 above; and
- viii) that there is a continuing need for new electricity generating infrastructure (including, for the reasons given above, CCGT plant, provided that it is constructed so as to be “carbon capture ready”), given that some 22GW⁷ of existing electricity generating capacity is scheduled to close by 2020. In the Secretary of State’s view, in order to maintain security of electricity supply (even taking into account possible significant progress in reducing demand through energy efficiency measures) it will be necessary to more than replace this lost capacity, and progress towards meeting the targets of 80%

⁷ 22GW is about a quarter of the UK’s current electricity generating capacity of 85GW. Closure figures from DECC & DEFRA

<http://www.decc.gov.uk/en/content/cms/what-we-do/uk-supply/energy-mix/nuclear/issues/power-stations/power-stations.aspx>

reduction in greenhouse gas emissions set out in the Climate Change Act 2008 is likely to involve substantial increases in demand for electricity as sectors such as domestic heating, industry and transport are “decarbonised”. Moreover, the expected increasing reliance of GB electricity supply on intermittent sources of generation makes the open cycle plant which will form part of the Development a potentially very useful resource at moments when, for example, wind power or other forms of renewable generation becomes unexpectedly unavailable, or there are unplanned outages of other generating plant, or there is an unexpected peak in demand for electricity. This, and the considerations noted in paragraphs 1.2 and 6.5.8 above militate in favour of agreeing to the Company’s request to permit phased construction and commissioning of the Development, with the open cycle plant being built first.

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

8.3 The Secretary of State believes that the confirmation from the Health and Safety Executive forms a sufficient basis on which the Development might proceed as regards hazardous substances matters, and therefore he has decided to issue a section 12(2) direction that hazardous substances consent be deemed to be granted subject to a condition that the Development shall be in accordance with the particulars submitted with the Application.

8.4 The Secretary of State believes that the Planning Conditions will ensure that the Development proceeds in a form and manner that is acceptable in planning policy terms, and therefore he has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

8.5 The Secretary of State, having regards to current energy policy and subject to the requirements of CCR policy, has decided to issue a direction under section 14(1) of the Energy Act 1976 that he does not to object to the use of hydrocarbons and/or natural gas as the fuel in the Development

8.5 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989; a direction under section 90(2) of the Town and Country Planning Act 1990; a direction under section 12(2) of the Planning (Hazardous Substances) Act 1990; and a direction under section 14(1) of the Energy Act 1976.

IX GENERAL GUIDANCE

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

9.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and Schedule 8 of the Electricity Act 1989, section 90 of the Town and Country Planning Act 1990, section 12(2) of the Planning (Hazardous Substances) Act 1990 and section 14 of the Energy Act 1976..

Yours faithfully

Giles Scott
Head
Development Consents and Planning Reform