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**ELECTRICITY ACT 1989  
ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS)  
(ENGLAND AND WALES) REGULATIONS 2013 (AS AMENDED)**

**GATEWAY ENERGY CENTRE (“GEC”), THE MANORWAY, STANFORD-LE-HOPE, ESSEX**

**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 24 June 2019 (“the Application”) on behalf of Gateway Energy Centre Limited (“the Applicant”) to vary the consent (“the Section 36 Consent”) of the Secretary of State under section 36 of the Electricity Act 1989 dated 4 August 2011, as previously varied on 18 November 2014 and 3 August 2016 under section 36C of the Act (“section 36 consent”) to construct and operate a 1250 MW combined cycle gas turbine (“CCGT”) generating station at The Manorway, Stanford-Le-Hope, Essex (“the Development”). It also seeks to vary a direction under section 90(2) of the Town and Country Planning Act 1990 (“the Section 90 Direction”) that planning permission for the Development be deemed to be granted.

1.2 The Application is to:

- a) Amend the description of development to retain the permitted generating capacity of 1250MW but to allow, within Development Option (ii), for the incorporation of a Battery Energy Storage System (“BESS”) with a rated electrical output of up to 320MW;
- b) Allow a different and smaller area of land to be safeguarded for future carbon capture equipment should Development Option (ii) be progressed, compared to the larger area of land associated with development option (i);
- c) Further extend the time limit for commencement of the Development to 31 December 2023; and;



d) Better allow for a phased Development of GEC by including a new condition to require a phasing scheme to be submitted and approved to the local planning authority, and by varying other conditions to specify where relevant that certain conditions only apply to a specific phase and not to other phases and that under certain conditions the approval of details may be applied for and granted on a phase-by-phase basis.

1.3 The reasons given for the Application sought are based on influencing factors, including electricity market changes and technology advancements.

1.4 The Development as Varied in 2016 allowed for the construction and operation of a 1250MW CCGT generating station at the site and for two alternative technology options for the power generation units, namely option (i) up to two CCGT units or option (ii) one CCGT unit and one or more open cycle gas turbine ('OCGT') units (with the OCGT unit(s) having a combined output of less than 300MW). The Application seeks to allow for a BESS to also be developed under Development Option (ii) enabling electricity to be generated and stored from these sources during times of low demand and/or during favourable generating conditions and electricity to be discharged during times of peak demand.

1.5 The BESS (as proposed under Development Option (ii)) would have an output of 320MW with a 4-hour discharge capability (1.3 GWh). In order to maintain the total permitted generating capacity of the proposed Development of 1250MW, the 2019 Variation Application also seeks that the CCGT component of Development Option (ii) is amended to 'up to 630MW'. The capacity of the OCGT component of Development Option (ii) is proposed to remain as per the Section 36 Consent of 'less than 300MW'.

1.6 The Development therefore shall be up to 1250 MW capacity and comprise either:

- a) Development Option (i), comprising up to two Combined Cycle Gas Turbine ("CCGT") units (including for each CCGT unit: a gas turbine; a heat recovery steam generator; steam turbine plant; and, associated equipment); or,
- b) Development Option (ii), comprising:
  - a) one CCGT unit with a rated electrical output of up to 630 MW (including: a gas turbine; a heat recovery steam generator; steam turbine plant; and associated equipment);
  - b) one or more Open Cycle Gas Turbine ("OCGT") units with the OCGT units having a combined rated electrical output of less than 300 MW (including for each OCGT unit: a gas turbine; and, associated equipment); and
  - c) (a) the BESS with a rated electrical output of up to 320 MW (including: batteries; associated enclosures; control and protection systems; temperature control systems; and, power conversion systems).
    - (b) air cooled condensers and auxiliary cooling;
    - (c) gas receiving facility;



- (d) one or more electrical switchyards;
- (e) ancillary plant and equipment; and
- (f) the necessary buildings (including administration offices) and civil engineering works; and
- (g) extend the time limit for commencement of the development to 31 December 2023.

1.7 The Application was published in accordance with the Electricity Generating Stations (Variation of Consent) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on Thurrock Council (“the relevant planning authority”).

1.8 In accordance with the Electricity Works (Environment Impact Assessment) (England and Wales) Regulations 2017 (“the EIA Regulations”) the documents titled “GEC 2019 Environmental Statement - Further Information Document” dated 21 June 2019 was submitted with the Application. The document describes the Development and updates the analysis of the environmental effects set out in the original Environmental Statement dated February 2010, the Environmental Statement Further Information Document dated August 2014, and the Environmental Statement Further Information Document dated 25 February 2016 (the GEC 2019 Environmental Statement - Further Information Document are herein after referred to as “the updated Environmental Statement”).

1.9 In accordance with the EIA Regulations, the updated Environmental Statement was advertised and placed in the public domain to give people an opportunity to comment.

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

2.1 The Secretary of State has considered the revised planning conditions. The Secretary of State agrees they are suitable for inclusion in a Section 90 Direction which the Secretary of State may give. The Secretary of State has considered the proposed BESS as part of the Application. The Secretary of State notes that the BESS would not be a significant part of the total installed generating capacity of the generating station which is currently authorised to be built. The Secretary of State is content that the inclusion of the battery storage units would not result in a development which is fundamentally different in scale or character from that previously consented or result in fundamentally different environmental impacts already considered in the application.



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

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

3.2 No representations about a public inquiry were received by the Secretary of State to the Application from the relevant planning authority or any other person. However, the Secretary of State has given consideration to the representations received from consultees, including the relevant planning authority, Natural England, Highways England, the Essex Fire and Rescue Service, the Environment Agency and Port of London Authority and taken account of their comments in the varied planning conditions.

#### Conclusion

3.3 The Secretary of State considers that all matters raised in the representations have been addressed either in the conditions attached to the Original Consent which will be retained in the varied consent, and in the information submitted by the Applicant to the Secretary of State in support of the Application. The Secretary of State is therefore of the view that there is no further information required to enable him to take a decision on the Application and that it would not, therefore, be appropriate to cause a discretionary public inquiry to be held into the Application.

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

4.1. Regulation 3 of the EIA Regulations as applied by regulation 7 of the Variation Regulations prohibits the Secretary of State from granting a variation of a Section 36 Consent unless he has first taken into consideration the environmental information as defined in the EIA Regulations.

4.2. The Secretary of State is satisfied that the updated Environmental Statement 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. He has examined the updated Environmental Statement, any further environmental information and any additional environmental information, and has made a reasoned conclusion on the significant effects of the Development on the environment.

4.3. 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 either under the conditions attached to the variation to section 36 consent or the



planning conditions or by regulatory authorities including Natural England and the Environment Agency, 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.

4.4. The Secretary of State also has regard, in accordance with section 40 of the Natural 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 Environmental Statement.

## **5. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON DESIGNATED SITES**

### **A) Habitats Regulations Assessment**

5.1 Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State when granting an application such as this must consider whether the proposed Development would be likely to have a significant effect on a European Site (also known as a Natura 2000 Site), as defined in the Habitats Regulations and if so, to undertake an Appropriate Assessment ("AA") of the implications for the Natura 2000 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 Natura 2000 Site (regulations 61(5) and 62)). Regulation 61(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.

5.2 In respect of internationally and nationally designated sites, the Secretary of State notes Natural England advised that the Application site is in close proximity to the Thames Estuary and Marshes Special Protection Area ("SPA") and Thames Estuary and Marshes Ramsar site.

5.3 Natural England also 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 Natura 2000 Site when considering its Habitats Regulations Assessment ("HRA")<sup>1</sup>.

5.4 Natural England do not consider that the changes to existing conditions, in particular to the existing conditions 35-40 (Prevention of Contamination of Watercourses), 50-53 (Landscaping), 54 (Biodiversity Enhancement Measures) or 55

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<sup>1</sup> Regulation 8 of the EIA regulation 8 of the EIA Regulations provides for the coordination of the HRA and the EIA see: <https://www.legislation.gov.uk/ukxi/2017/580/regulation/8/made>



(Air Pollution Monitoring) which relate to phasing, will change the result of their previous advice that the Application is not likely to have a significant effect on a Natura 2000 site.

5.5 Natural England has advised that based on the information available, the Application is not necessary for the management of a Natura 2000 site and is unlikely to have a significant effect on any European site, and, can therefore be screened out of any assessment. Natural England has recommended that the following information be referred to when justifying the Secretary of State's conclusions regarding the likelihood of significant effects:

*“The information provided within the Air Quality chapter of the Environmental Statement Further Information Document demonstrates that, even under ‘worst case’ scenario 2C-2 (one CCGT unit and five OCGT units all operating continuously), the process contributions to the average atmospheric contributions of NOX at each of the internationally and nationally designated sites would be either insignificant or only marginally greater than those from the consented CCGT option. The process contributions to the atmospheric deposition of nitrogen at these sites under the ‘worst case’ scenario 2C-2 would not be significant. Similarly, the process contributions to the atmospheric deposition of acidity at these sites under the ‘worst case’ scenario 2C-2 would also be insignificant.*

*Therefore any effects upon the internationally and nationally designated sites resulting from the Gateway Energy Centre as envisioned by the proposed consent variations would not be significantly different from those resulting from the Gateway Energy Centre as currently consented.”*

5.6 Having considered the Environmental Statement provided by the Applicant, the planning conditions already imposed and the advice of Natural England, the Secretary of State is satisfied that the Application is not have a likely significant effect on any Natura 2000 site, either alone or in combination with other plans and projects. The Secretary of State therefore considers that no Appropriate Assessment, pursuant to Regulation 63 of the Habitats Regulations, is necessary and finds no reason for refusing the Application on the grounds of adverse effects on the integrity of a Natura 2000 Site.

#### B) Effects on other protected Sites

5.7 The Wildlife and Countryside Act 1981 (as amended) is the primary legislation relating to the designation and protection of Sites of Specific Scientific Interest (“SSSIs”). Natural England advised that at a national level the Application site is in close proximity to Mucking Flats and Marshes SSSI and South Thames Estuary and Marshes SSSI. Also in close proximity are Vange and Fobbing Marshes SSSI, Holehaven Creek SSSI and Canvey Wick SSSI.



5.8 Natural England also noted that no changes are proposed to the two ecological projects (or the triggers that initiate these projects), included in the agreement entered into on 7 July 2011 between the Applicant and the relevant planning authority pursuant to section 106 of the Town and Country Planning Act 1990 (“the section 106 agreement”) covering regeneration of acid grassland at Thundersley Great Common SSSI and increasing the population of least lettuce at Vange and Fobbing Marshes SSSI.

5.9 The Secretary of State also notes that Natural England raised no objections and requested no new conditions in respect of the SSSIs. The Secretary of State is satisfied with Natural England’s advice that the Varied Development being carried out in strict accordance with the details of the Application, as submitted, will not damage or destroy the interest features for which these sites have been notified. The Secretary of State also agrees with Natural England and therefore advises that the SSSIs do not represent a constraint in determining the Application.

5.10 On the basis of the information provided, the Secretary of State considers that the Varied Development will not have any environmental impacts above those assessed in the original application, including no likely significant effects on any Natura 2000 Site either alone or in-combination with other plans or projects.

## **6. ISSUES RAISED DURING CONSULTATION**

6.1 There were no objections to the Application. Responses to the consultation are available on the Applicant’s project website at:

<https://www.intergen.com/our-technologies/development-projects/gateway-energy-centre/>

### Natural England

6.2 The Secretary of State has noted from Natural England’s response that they have not assessed the Application and associated documents for impacts on protected species. The Secretary of State has considered the issue and is satisfied that Condition 54 (covering biodiversity enhancement measures) provides a route to secure and enhance the welfare of any protected species on the site.

6.3 The Secretary of State notes that several local wildlife groups including Essex Wildlife Trust and Thurrock Wildlife Society were notified and consulted on the Application by the Applicant but did not make any representations to the Secretary of State. The Secretary of State is therefore satisfied that the impact on local sites has been considered.



### Highways England

6.4 The Secretary of State noted that Highways England is concerned with proposals that have the potential to impact on the safe and efficient operation of the strategic road network (“SRN”), specifically in this case the A13 and the M25.

6.5 The Secretary of State also notes that Highways England provided a no objection response and expressed support to keep Conditions 14, 16, 18, 21, 23 and 24 as outlined in the Section 36 Consent variation document. The Secretary of State has considered the issue and is also satisfied that the above Conditions protect the efficient operation of the SRN.

### Essex Fire and Rescue Service

6.6 The Secretary of State has noted the response from the Essex County Fire & Rescue Service and would like to draw the Applicant’s attention to the recommendations included in the letter Ref. CAS-652082, dated 1 August 2019 with regards to access for Fire Service purposes, the installation of water supplies for fire-fighting and the installation of sprinkler systems.

### Port of London Authority

6.7 The Secretary of State has noted the response from the Port of London Authority who confirm no objection to the proposals subject to there being no amendment to Condition 15, which requires an investigation into the use of the river for the transport of materials and plant associated with the construction and decommissioning of the development.

6.8 The Secretary of State confirms that Condition 15 is included with amendments in the section 90 direction. However, he is satisfied that the amendments are not relevant to the concerns raised by the Port of London Authority and therefore he is satisfied that the Port of London Authority’s concerns have been addressed.

### Relevant Planning Authority

6.9 Thurrock Council’s planning committee raised no objections to any of the proposed conditions in the deemed planning permission. In respect of the proposed addition of the BESS, they considered it would not affect the proposed total capacity of the generating station and in general the proposed changes add clarity and better accommodate phasing the development.

### Environment Agency

6.10 The EA’s response covered the issues of flood risk, flood risk activity permitting, contaminated land, environmental permitting, waste management and discharges to water. In response to the updated Flood Risk Assessment, the EA agreed that condition no. 41 could be varied as informed by the updated Environmental Assessment.





## **7. SUITABILITY OF THE SECTION 36 VARIATION PROCEDURE FOR PERMITTING THE PROPOSED VARIATION**

7.1 The 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' guidance issued in 2013 ("the guidance note") states:

"Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant. Similar changes to an existing plant could be appropriate subject matter for a variation application only if they did not involve physical extension of the generating station, relocation of generating plant, or the installation of new equipment that would amount to the construction of a new generating station."

7.2 The Section 36 variation procedure does not allow a change in an existing consent that would result in a development that would be fundamentally different in character or scale from what has been originally granted. Any such changes would be the subject of a fresh application for consent.

7.3 The Applicant has stated that it will retain the permitted generating capacity of 1250MW. The Secretary of State notes that the Application will not result in any additional environmental impacts from those assessed for the Consented Development and these have been assessed in a Supplementary Environmental Statement concluding there are no significant additional environmental impacts arising from the proposed changes, with mitigation measures being proposed where considered appropriate and necessary. In addition, the Secretary of State notes that neither Natural England nor the Environment Agency have raised any objections to the Variation Application.

7.4 The Secretary of State therefore considers that the Application would not be fundamentally different in character or scale from the Consented Development and is in keeping with the guidance note for the Section 36 variation procedure, it is appropriate for this Variation Application to be considered under the Section 36 variation procedure.

### **Conclusion**

7.5 For the reasons set out above, the Secretary of State considers that all matters raised in the representations received from the relevant planning authority or any other respondent are addressed either in the conditions attached to the original consent which are not being varied, the additional environmental information or in the information supplied by the Applicant in support of the Application.



## **8. SECRETARY OF STATE'S CONSIDERATION OF BATTERY ENERGY STORAGE SYSTEM ("BESS")**

8.1 The Secretary of State notes that the Applicant has requested that the Section 36C consent as varied should be further varied to allow for the additional construction and operation of a BESS as referred to in paragraph 1.3 above. He notes that the Applicant's rationale for installing the co-located BESS alongside the CCGT unit and OCGT unit(s) is to complement and provide essential support to the electricity system by storing and discharging energy, delivering significant benefits in ensuring security of supply, decarbonising, and containing cost.

8.2 Although not defined within the Electricity Act 1989, Ofgem and the UK Government's position is that storage is to be treated as a type of generation. In "*Upgrading Our Energy System - Smart Systems and Flexibility Plan July 2017*"<sup>2</sup>, the UK Government confirmed this position and also committed to amend the Electricity Act 1989 to define electricity storage as a subset of generation, when Parliamentary time allows.

8.3. The Secretary of State considers that, in the case of the variation application, the capacity of the proposed BESS that would be permitted by any variation of consent is appropriate in comparison to the total installed generating capacity of the generating station which is currently authorised to be built. It is noted that no overall increase in generating capacity is sought and, even if the full 320MW storage capacity was taken, gas generation from the CCGT and OCGT units could still account for 930MW of the total generating station's capacity.

8.4. The Secretary of State considers that a BESS would complement the electricity system through its ability to store electricity generated and by discharging it to the Grid. The Secretary of State is satisfied that the addition of the proposed BESS and its shared physical location alongside the CCGT and OCGT units would not result in the development being fundamentally different in character or scale in comparison with the gas generation previously consented or result in fundamentally different environmental impacts. As such, the Secretary of State considers the proposed change is suitable for consideration under the variation procedure and is satisfied that in the scenario that a BESS is developed first and separately from gas-fired generation, this would serve to facilitate the subsequent delivery of gas-fired generation at the site, given significant expenditure on shared infrastructure would have already been incurred in delivering the BESS. A BESS alongside CCGT/OCGT unit(s) would also improve the range of services able to be offered to National Grid and the economics of the overall project.

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/633442/upgrading-our-energy-system-july-2017.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633442/upgrading-our-energy-system-july-2017.pdf)



8.5. The Secretary of State is satisfied therefore that the varied Development will not differ from the generating station to which the current consent referred to the extent that this could be considered a new project. The Secretary of State also considers that any difference in construction, operation or likely environmental effects would not be such as to require authorisation by a new consent.

## **9. SECRETARY OF STATE'S CONSIDERATION OF CARBON CAPTURE READINESS ("CCR")**

9.1 The Secretary of State considered in relation to determination of the original application for section 36 consent for the Development that "the Applicant has adequately 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 becomes technically and economically viable". The Secretary of State is content that included in the section 36 consent conditions relating to CCR which were modelled on those contained in Annex G of the CCR Guidance.

9.2 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 Application proposes that an alternative and smaller area of land be safeguarded for carbon capture equipment under development option (ii), compared to the original area of land associated with Development Option (i). This is due to the reduced capacity of the CCGT component of the Proposed Development in Development Option (ii). This means that once the Applicant notifies the Secretary of State and Thurrock Borough Council which one of the Development Options has been selected, as required by condition 4(1A), an appropriate area of land for carbon capture equipment for the selected Development Option is safeguarded.

9.3 The Secretary of States notes that the Environment Agency has confirmed that sufficient space is available to house the necessary carbon capture and storage infrastructure and that there are no significant foreseeable barriers to the CCP technical retrofit for either option (i) the 1250MWe power station; or option (ii) the 630 MWe power station.

9.4 The decisions on the original Section 36 application and previous variation 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 is content that the Applicant's previous CCR assessments presented reasonable scenarios under which the fitting of CCS equipment would be economically feasible.

### **Conclusion**

9.5 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. The Secretary of State notes that the consultees accept the proposals put forward by the Applicant and concludes, therefore, that the section 36C variation application conforms to the methodology in the Revised Carbon Capture Feasibility Study and that there are no technical or economic obstacles to the grant of the requested variation in relation to CCR.

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

10.1 The Secretary of State notes that the deemed planning permission direction already includes requirements for combined heat and power ("CHP"). The Secretary of State considers that the CHP conditions (Conditions 58 and 59) remain appropriate and should be retained in the varied section 36C consent.

## **11. EQUALITY ACT 2010**

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

(a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited by or under the Act;

(b) the advancement of equality of opportunity between people who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships ; pregnancy and maternity; religion and belief; and race.) and persons who do not share it; and

(c) the fostering of good relations between persons who share a relevant protected characteristic and those who do not share it.

11.2 The Secretary of State has considered the potential impacts of granting or refusing the Section 36C 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 persons sharing any of the protected characteristics, and sees no evidence which suggests that such differential impacts are likely in the present case.

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

## **12. HUMAN RIGHTS ACT 1998**

12.1 The Secretary of State has also considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the development. He considers that the grant of the varied consent would not violate any human rights as enacted into UK law by the Human Rights Act 1998.



### **13. NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006**

13.1 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, 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.

13.2 The Secretary of State is satisfied that there has been due regard to conserving biodiversity and consider that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by means of the Supplementary Environmental Information Report.

### **14. OTHER MATTERS**

14.1 The Applicant has requested a further extension of time until 31 December 2023 for the development to commence. The Applicant has indicated that further time is required given Capacity Market timings and the complex nature of the project that is being proposed. Although previous extensions have already been granted, the Secretary of State accepts that there are sufficient reasons to grant such an extension and that this is appropriate within the ambit of the section 36C request.

14.2 The Secretary of State has also considered the ongoing need for the development. The Secretary of State notes the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)* both set out that for the UK to meet its energy and climate change objectives there is a continuing need for new electricity generating plants of the type proposed by the Applicant given the contribution it will make to securing energy supply.

14.3 On 27 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 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline). The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Secretary of State considers, therefore, that the ongoing need for the Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.

14.4 The Secretary of State also notes that currently storage is not defined within the legislative framework, which has meant that it has not been clear in how storage technologies should be classified. However, as indicated in paragraph 7.6 above, Ofgem and the Government's position is that storage is to be treated as a type of generation and the Government has committed to amend the Act to define electricity storage as a subset of generation, when Parliamentary time allows. The Government



and Ofgem's 'A Small Flexible Energy System – A call for evidence November 2016'<sup>3</sup> sets out the benefits of electricity storage within GB's energy system (while seeking views on how to address barriers to its deployment). The National Infrastructure Commission's report on 'Smart Power'<sup>4</sup> published in March 2016 also noted that, "not only can storage help reduce the impact on peak demand and provide demand for power stations at other times of day, it also has the potential to ease constraints on our grids" and recommended that "the UK should become a world leader in energy storage systems". The Secretary of State is satisfied that the inclusion of the proposed Battery Energy Storage System would be consistent with Government's aims for storage.

#### Flood Risk Assessment

14.5 The Secretary of State notes that the Environment Agency is satisfied with the wording and amendments made to the updated flood risk assessment R1620002349-18\_D document titled "Gateway Energy Centre 2019 Updated Flood Risk Assessment" dated June 2019. The Secretary of State is satisfied that the amendments to Condition 41 are appropriate.

#### Environmental Permit

14.6 The Secretary of State is aware that the varied Development would require an Environmental Permit from the Environment Agency before it could operate. The Secretary of State notes that the Environment Agency has indicated that, on the basis of the information available to it, it does not foresee any barriers to a permit being issued for the operation of the Development.

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

15.1 The Secretary of State, having regard to the matters specified above, has decided to make a further 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.

15.2 The Secretary of State also considers the planning conditions, as revised, form a sufficient basis on which the varied Development might proceed. The Secretary of State has therefore decided to make a direction under section 90(2ZA) TCPA to vary the Section 90 Direction on the basis of the conditions specified in the annex to that direction.

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<sup>3</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/576367/Smart\\_Flexibility\\_Energy\\_-\\_Call\\_for\\_Evidence1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576367/Smart_Flexibility_Energy_-_Call_for_Evidence1.pdf)

<sup>4</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/505218/IC\\_Energy\\_Report\\_web.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505218/IC_Energy_Report_web.pdf)



Department for  
Business, Energy  
& Industrial Strategy

15.3 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.

## **16. GENERAL GUIDANCE**

16.1 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. 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).

16.2 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 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**