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Your ref: STC/S36/BEIS/002

23 June 2022

Dear Ms Matthews,

**ELECTRICITY ACT 1989**

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

**STAYTHORPE POWER STATION, STAYTHORPE, NEWARK, NOTTINGHAMSHIRE, NG23 5PS**

**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 2021 (“the Application”) on behalf of RWE Generation UK plc (“the Applicant”) to vary the consent granted by the Secretary of State under section 36 of the Electricity Act 1989 on 26 May 1993 (“the Section 36 Consent”) to construct and operate a 1,500MW combined cycle gas turbine (“CCGT”) generating station in Staythorpe, Newark, Nottinghamshire, NG23 5PS (“the Development”). The Section 36 consent was varied on 2 May 1995 to allow for different options for plant configuration, and again on 2 May 2007 to increase the station’s output from 1,500MW to about 1,649MW.

1.2 The Application is to:

- vary the Section 36 Consent and the Section 90 Direction in order to allow an increase in the permitted electrical output of the operational generating station from “about 1,649MW capacity” to “up to 1,850MW capacity” (“the Varied Development”) as facilitated by an upgrade to the existing gas turbines and associated systems; and
- to remove redundant construction related conditions which are part of the deemed planning permission granted under Section 90 (2ZA) of the Town and Country Planning

Act 1990 to ensure that the deemed planning permission is relevant to the continued operation of the generating station.

- 1.3 The Application notes that Staythorpe Power Station has been subject to modest improvements which were driven by maintenance, commercial and environmental requirements. The primary aim of these improvements was to increase efficiency, flexibility and reliability, but they also resulted in small increases in capacity. The improvements consisted of internal works and upgrades to the station. The character (configuration, layout, appearance etc) of the station remained the same as that authorised by the existing consent.
- 1.4 The Secretary of State notes that no consultees offered any comments on the Application that indicated any contrary views on these matters to those set out by the Applicant.

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

- 2.1 The guidance issued in 2013, 'Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales' ("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".*

- 2.2 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.
- 2.3 The Secretary of State notes that the Applicant concluded there would be no significant additional impacts arising from the Varied Development when compared to those arising from the currently operational Development.
- 2.4 The Secretary of State considers that the Varied Development would not be fundamentally different in character or scale from the Consented Development, is in keeping with the guidance note for the section 36 variation procedure and it is appropriate for this Variation Application to be considered under the section 36 variation procedure.
- 2.5 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 Nottinghamshire County Council and Newark and Sherwood District Council ("the relevant planning authorities").
- 2.6 The Variation Application was subject to public consultation between 29 July 2021 and 3 September 2021.

### **3 SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION**

- 3.1 The Secretary of State notes a screening opinion was issued to the Applicant on 24 May 2021 under regulation 10 of The Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations (“the 2017 Regulations”) which set out that: *“the proposed development does not require a statutory EIA as it is unlikely to have significant effects on the environment due to [its] nature, location, and size.”* There was no need, therefore, for the Applicant to provide information to support the Application in a form which reflected the requirements of the 2017 Regulations.
- 3.2 The Applicant provided a Supporting Statement (document ID ENV/683/2021, June 2021) as part of the information submitted with the Application. The Supporting Statement sets out overviews of the legislative and local and national planning policy issues related to the Application; the existing Staythorpe Power Station and the surrounding area; details of the EIA screening assessment and accompanying air quality impact assessment; the consultation that had been undertaken in developing the Application; and relevant carbon capture and combined heat and power documents.
- 3.3 The Secretary of State considers that the information submitted by the Applicant is sufficient for him to determine whether any potential impacts of the Development are acceptable.
- 3.4 The Secretary of State has considered the information submitted by the Applicant along with submissions made by consultees and takes the view that there are no matters that would require him to refuse the Application.

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

- 4.1 The Secretary of State is prohibited from granting a variation to a section 36 consent unless it can be demonstrated that any proposed change will not adversely affect the integrity of any Special Areas of Conservation (“SACs”) and Special Protection Areas (“SPAs”) that form part of the National Site Network designated under the Conservation of Habitats and Species Regulations 2017 or there are imperative reasons of overriding public interest.
- 4.2 The Screening Request submitted to the Secretary of State by the Applicant on 13 May 2021 with a request for a screening opinion to be issued by the Secretary of State, which was issued on 24 May 2021, noted that there are no sites which form part of the National Site Network within 10 km of the Staythorpe Power Station.
- 4.3 The Screening Request concluded that the Varied Development is predicted to alter the flue gas emission from those of the existing Staythorpe Power Station by increasing the rate of emissions and the volumetric flow. As a consequence, the plume rise, and the dispersion of the emitted pollutants would increase. The air quality assessment shows that, for most locations, the beneficial effects of an increased plume rise would marginally outweigh the negative effects of the increased emission rates. Therefore, the likely effects of the Varied Development would not materially differ from those of the existing Staythorpe Power Station. The Screening Report concludes that the proposed increase in capacity would not result in any significant impacts on human health and ecological sites due to emission to air, either alone or in-combination with other sources. The Screening Report concludes that the proposed increase in capacity will not have a likely significant effect on the environment. The Screening Request also states that the Section 36 variation will have no impact on other consents, and the Environment Agency have confirmed that the power station will continue to operate in line with the parameters of its current Environmental Permit.

- 4.4 The Secretary of State determined in the Screening Opinion that the current Application is not EIA development, and subsequently, there is no need for an Environmental Impact Assessment or Environmental Statement to be submitted. Natural England had no comments to make on the application and did not raise any concerns about the impacts of the Application on protected sites.
- 4.5 On the basis of the information provided and in the absence of any views to the contrary from consultees, the Secretary of State considers that the Varied Development will not have any likely significant effects on any sites designated as part of the National Site Network or other protected sites either alone or in-combination with other plans or projects.

## 5 ISSUES RAISED DURING CONSULTATION

- 5.1 One representation regarding the Application was received from a local resident. The representation questioned the impact of the extra emissions from the Varied Development on the Willow Holt Nature Reserve. It also raised concerns about the extra noise impacts which could occur to nearby properties as a result of the increased capacity and raised concerns about pollution and noise caused by additional traffic on the A46. The Applicant responded to this representation and, in summary, stated:
- **Willow Holt Nature Reserve** - the Nottingham Wildlife Trust Nature Reserve Willow Holt at Farndon is not a statutory designated site and as such was not explicitly reported upon in the Applicant's assessment. However, the Applicant states that *"were the ecological impacts for that site included in the assessment, there would be no material difference to its conclusion"* and notes that a nearby local nature reserve, Farndon Ponds, was included in the assessment which concluded that the proposed capacity increase will not result in any significant ecological impacts. The Applicant also calculated results for the Willow Holt Nature Reserve and *"confidently concluded that (similarly to 'Farndon Pond') the proposed capacity increase will not result in any significant ecological impacts at 'Nottingham Wildlife Trust Nature Reserve Willow Holt at Farndon'"*
  - **Noise Impacts** – RWE replied by stating that they appreciate that noise is an issue of concern to local residents and that they always strive to ensure that the power station is operated to minimise impacts as far as reasonably practicable. They noted that the power station is subject to noise limits which are specified in the existing S36 consent, and that annual noise monitoring is undertaken at the station. RWE also stated that the power station will continue to operate in compliance with the existing consented noise limits.
  - **Pollution** – RWE replied to the issue of pollution by stating *"We note the comment raised in relation to the A46 Newark Bypass Scheme. The scheme aims to improve capacity to address traffic congestion on the A46 around Newark-on-Trent. The potential environmental impacts of the operation of the scheme on local 'pollution' can be positive or negative, depending on the effects of changes in vehicular flows on local roads, both during construction and on operation of the scheme. The A46 Bypass scheme is still at an early stage of development and, at this point in time, details about the scale and nature of the proposed scheme are insufficient to undertake a cumulative effects assessment."*
- 5.2 The submissions made to the Secretary of State in response to consultation on the Application were made by Natural England, Nottinghamshire County Council, Newark and Sherwood District Council, and Averham, Kelham and Staythorpe Parish Council.

- 5.3 The Secretary of State notes that Natural England had no comments to make on the Application.
- 5.4 Nottinghamshire County Council raised no objections to the Application. The Council had previously responded to the Applicant's request for a screening opinion by stating that the proposed variation to the Consented Development did not constitute EIA Development under the terms of the 2017 Regulations.
- 5.5 Newark and Sherwood District Council stated that it had no objections to the Application but raised the following points:
- **Noise and Vibration** – The Council recognised that the Staythorpe Power Station is already subject to noise limits in the Environmental Permit and noted that RWE do not plan to increase the noise limits as part of the variation application.
  - **Air Quality** – The Council noted that an air quality impact assessment has been undertaken to consider the likely effects on air quality arising from the proposed application and that the assessment indicated there would be no significant impact on air quality as a result of the increase in generating capacity.
- 5.6 Averham, Kelham and Staythorpe Parish Council submitted a response which noted concerns raised by residents about possible noise impacts as a result of the increased generating capacity but stated that it was positive that there were no proposals to increase the noise and emissions levels stipulated in the existing planning conditions. The Parish Council asked if it would be possible for it to be sent copies of the noise measurements which have been taken since 2007, and asked for reassurance from Newark and Sherwood District Council as to how RWE will be held to noise and emission levels in the future.
- 5.7 The Applicant responded to the consultation responses received by Newark and Sherwood District Council and from Averham, Kelham and Staythorpe Parish Council. The Applicant noted that Newark and Sherwood District Council raised no objections to the Application and stated:
- It did not expect utilisation of the additional capacity to have any impact on noise levels;
  - That although the Varied Consent would allow the power station to operate at a capacity of up to 1,850MW, the Applicant did not expect it to operate at this capacity all of the time;
  - The power station has a high efficiency and is likely to displace less efficient generation from the market, thereby contributing to minimising carbon emissions from the electricity system;
  - Noise limits were put in place by the original consent, then amended by planning permission in 2007 to bring the condition in line with current standards and practices. It is not proposed that these limits would be increased;
  - Noise monitoring is undertaken annually and submitted to Newark and Sherwood District Council. The most recent survey showed that the power station was operating in compliance with the existing noise limits. The Applicant included a copy of the latest noise report, containing results from 2011-2021; and
  - It noted that during regular reporting of emissions to the Environment Agency, no issues regarding noise levels had been raised.
- 5.8 The Environment Agency confirmed that it had no objection to the Section 36 Variation. The Environment Agency commented separately on the Carbon Capture Readiness issues related to the Application (see paragraph 6.2 below) and confirmed that an update to the

environmental permit was not necessary to accommodate the increase in generating capacity.

## 6 SECRETARY OF STATE'S CONSIDERATION OF OTHER MATERIAL ISSUES

### Secretary of State's Consideration of Carbon Capture Readiness ("CCR")

- 6.1 In order to assist the Secretary of State in his consideration of whether the Varied Development had the potential to be carbon capture ready, the Applicant submitted a 'Carbon Capture Readiness Assessment/Information' document ("CCR Assessment") with the Application. The CCR Assessment concluded that:
- sufficient space is available on or near the site to accommodate carbon capture equipment in the future;
  - it would be technically feasible to retrofit the Applicant's chosen technology and to transport the captured CO<sub>2</sub>, and that a suitable geological storage offshore exists for the storage of captured CO<sub>2</sub> (the Applicant proposes the West Sole gas field); and
  - regarding the economic assessment, the Applicant considers that there are no known barriers to demonstrating economic feasibility.
- 6.2 The Secretary of State asked the Environment Agency to assess the technical viability of retrofitting carbon capture equipment to the Varied Development. In its response, the Environment Agency stated they could *"conclude there are no foreseeable barriers to the CCP plant running flexibly at 90% capture efficiency."*
- 6.3 The Secretary of State asked BEIS financial analysts to assess the economic viability of retrofitting carbon capture equipment to the Varied Development. The analysts modelled a range of scenarios and concluded *"it is unlikely that the developer will see the required carbon market price for it to be economical to retrofit CCUS [Carbon Capture Utilisation and Storage] on the proposed development. We therefore fail the economic feasibility assessment."*
- 6.4 In conclusion, the Secretary of State notes that the Environment Agency agree with the Applicant's assessment of the technical viability of retrofitting carbon capture equipment. Whereas the BEIS financial analysts disagreed with the Applicant's assessment on financial viability.
- 6.5 The Secretary of State notes the requirements of the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 (the "CCR Regulations") that an order may not be made until the Secretary of State has determined whether the CCR conditions set out in regulation 2 of the CCR Regulations are met. Having considered those conditions and noting the views of the Environment Agency and BEIS financial analysts, he is satisfied that the CCR conditions have been fully considered but are not met. The Secretary of State is of the view, however, that this fact in itself does not prevent him from granting consent provided that the conditions have been considered in accordance with regulation 6 of the CCR Regulations and notes that future policy instruments may emerge which could assist with the economic viability of installing carbon capture equipment.
- 6.6 The Secretary of State has also considered the Carbon Capture Readiness Guidance Note issued by the Department of Energy and Climate Change in 2009<sup>1</sup> but is of the view that this

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43609/Carbon\\_capture\\_readiness\\_-\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf)

does not apply to this Application. The Secretary of State is able to grant a consent for a variation of the section 36 consent despite the CCR conditions not having been met and in this case, the Secretary of State considers that the requested variation should not be refused on the basis of this issue. The Secretary of State notes the condition within the Varied Consent which requires the Applicant to monitor on a regular basis the possibility of retrofitting carbon capture equipment becoming a viable option during the lifetime of the Development.

#### Secretary of State's Consideration of Combined Heat and Power

- 6.7 The Secretary of State notes that the Applicant submitted a 'Supporting Combined Heat and Power (CHP) Assessment/Information' document as part of the current Application. The Assessment concluded that there were no viable CHP opportunities available to the Varied Development.
- 6.8 However, the CHP Assessment also set out that, in the event feasible CHP opportunities were identified, there is sufficient space on site for the future installation of CHP equipment. The Secretary of State is satisfied that the Applicant's conclusion on CHP precludes any immediate requirement for the necessary infrastructure to be put in place at the existing, operational facility (by way of retrofitting). However, in order to ensure ongoing monitoring and assessment of CHP opportunities, the Secretary of State has included a new condition, condition 4(18), in the varied section 90 deemed planning permission to ensure ongoing review of the potential for CHP deployment with Newark and Sherwood District Council. The Secretary of State consulted with the Applicant and the relevant local authorities on the wording of the CHP condition, a summary of the consultation responses is provided below.

#### Responses to CHP Condition Consultation

- 6.9 The Secretary of State consulted on whether to include a condition in the Varied Consent which requires the Applicant to review the feasibility of installing Combined Heat and Power (CHP) at the power station site. The following responses were received:
- The Applicant – highlighted that the intermittent nature of Staythorpe Power Station, and the limited remaining operational period, meant that the power station would not be able to provide a reliable and long-term source of heat to customers and considered that a CHP condition was not necessary. However, the Applicant also stated that it did not oppose the principle of CHP, should technically and economically feasible opportunities arise. The Applicant suggested minor amendments which have been incorporated into the wording of the condition;
  - Nottinghamshire County Council – considered it very important that the opportunity for CHP potential is investigated and noted the efficiency improvements which could be achieved by installing CHP equipment. The Council suggested that the review should be required in a shorter time than the four years proposed, and suggested setting out a timetable for subsequent reviews;
  - Newark And Sherwood County Council – suggested that installation of CHP equipment could result in increases to noise levels and that consideration of noise levels should be included in the condition. The Secretary of State notes that the proposed condition would only require the Applicant to report on the feasibility of CHP, and if CHP equipment were to be installed at the power station, this would require the Applicant to obtain the relevant consents and any additional environmental effects caused by the installation (including noise) would be considered during the application process.

6.10 The Secretary of State considered the consultation responses and notes that the intermittent operation of the Staythorpe Power Station means that it is unlikely that installation of CHP equipment would become feasible in the near future. However, unlike other recently consented power stations (where CHP reporting conditions was not required), the Staythorpe Power Station consent does not include a condition which limits its operating hours. As such, the Secretary of State considers that reviewing the feasibility of CHP equipment 4 years after the date of the consent being granted is appropriate (by which time the operation of the power station may have changed), to ensure ongoing monitoring and assessment of CHP opportunities which may arise.

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

7.1 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 him by a relevant planning authority or any other person, where those representations are not withdrawn, and all other material considerations.

7.2 Representations made in respect of the Application were received by the Secretary of State from one local resident Nottinghamshire County Council, Newark and Sherwood District Council, Averham, Kelham and Staythorpe Parish Council, Natural England and the Environment Agency. The Secretary of State notes that the representation made by a local resident raised an objection to the Application being granted. However, the Secretary of State was satisfied with the response to the objection provided by the Applicant. The Secretary of State notes that no other representations raised any matters which are material to his decision on whether to hold a public inquiry into the Application. There were no representations received by the Secretary of State save for those submitted by the parties named above.

### Conclusion

7.3 The Secretary of State has carefully considered the views of the relevant planning authorities and statutory advisers and all other material considerations. He notes that there were no requests for a public inquiry to be held and that no substantive comments were submitted to him in respect of any matters arising from 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 be appropriate to cause a discretionary public inquiry to be held into the Application.

## **8 OTHER MATTERS**

8.1 The Secretary of State has 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.

8.2 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 and are important and material matters in considering applications to vary section 36 consents.

- 8.3 The Secretary of State notes that consultation on the review of the energy National Policy Statements commenced on 6 September 2021 and closed on 29 November 2021. Although the consultation responses are still being considered, and the National Policy Statements are in draft form and have not been designated, the Secretary of State considers the to be relevant and important matters in considering applications for variations of section 36 consents. As such, he has had regard to the draft energy National Policy Statements in deciding the Application but does not consider that there is anything contained within the drafts of the relevant National Policy Statement documents that would lead us to reach a different decision on the Application. Indeed, paragraph 3.3.35 of the draft Overarching National Policy Statement for Energy (EN-1) states that *“electricity generated from unabated natural gas will continue to be needed during the transition to net zero while we develop and deploy the low carbon alternatives that can replicate its role in the electricity system. This will ensure that the system remains reliable and affordable”*.
- 8.4 In addition, paragraph 3.3.36 in the draft EN-1 sets out that *“Although the expectation is that low carbon alternatives will be able to replicate the role of natural gas in the electricity system over time, some natural gas-fired generation without CCS, running very infrequently, may still be needed for affordable reliability even in 2050 but this can still be net zero consistent if the emissions from their use are balanced by negative emissions from GHG Removal technologies.”*
- 8.5 Further, paragraph 1.1.1 of the draft National Policy Statement for Natural Gas Energy Generating Infrastructure (EN-2) sets out that *“Electricity generated from unabated natural gas will continue to be needed during the transition to a net zero economy in 2050, and potentially beyond, while we develop and deploy the low carbon alternatives that can replicate its role in the electricity system, ensuring that the system is reliable and affordable”*.
- 8.6 Finally, paragraph 21 of Chapter 2 of the Net Zero Strategy which was published on 19 October 2021, sets out that *“[B]y 2035, all our electricity will need to come from low carbon sources, subject to security of supply, moving to a fully decarbonised power system whilst meeting a 40-60% increase in demand. Expected residual emissions will be limited to CCUS plants, unabated gas, and energy from waste. This means increased investment in the grid network, electricity storage solutions and flexible grid management, to ensure decarbonisation without risking security of supply.”*
- 8.7 In conclusion, the Secretary of State considers that the ongoing need for the Varied Development is established and that granting the requested variation would not be incompatible with the amended Climate Change Act 2008 nor the draft revisions to the National Policy Statements and the published Net Zero Strategy. The Secretary of State notes that the 2022 British Energy Security Strategy recognises that gas continues to be important for our energy system, it will be an important transition fuel, and that the flexibility of gas generating stations has underpinned our world-leading rollout of offshore wind. Overall, the Secretary of State considers that it is beneficial to allow this plant to generate additional capacity through an improvement in its efficiency.

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

- 9.1 The Secretary of State has considered the revised planning conditions. The Secretary of State agrees they are suitable for inclusion in any varied Section 90 Direction which the

Secretary of State may give. As indicated at paragraph 6.8 above, the Secretary of State has also included a new condition regarding the future feasibility of Combined Heat and Power that was subject to consultation with the Applicant and the local planning authority.

## **10 EQUALITY ACT 2010**

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

- the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited by or under the Act;
- 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
- the fostering of good relations between persons who share a relevant protected characteristic and those who do not share it.

10.2 The Secretary of State has considered the potential impacts of granting or refusing the 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.

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

## **11 HUMAN RIGHTS ACT 1998**

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

## **12 NATURAL ENVIRONMENT AND RURAL COMMUNITIES ACT 2006**

12.1 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 a variation to a section 36 Consent.

12.2 The Secretary of State is satisfied there has been due regard to conserving biodiversity and considers that the matters specified in paragraph 1(2) of Schedule 9 to the Electricity Act 1989 have been adequately addressed by the information that the Applicant submitted to him with the Application.

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

13.1 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.

- 13.2 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.
- 13.3 The Secretary of State notes that no physical construction is required as part of these Variation proposals and that there will be no change to the main fuel source. He also notes that there have been no significant changes in the environmental and other impacts identified in relation to the Varied Development. The Secretary of State's conclusions on CCR and CHP are set out above. The Secretary of State is therefore of the view that the Varied Development does not result in a development that is fundamentally different in character or scale to that originally consented. The Secretary of State is of the view that the Varied Development is appropriate and necessary and is satisfied that the changes are of a kind that is reasonable to authorise by means of the variation procedure in section 36C of the Electricity Act 1989.
- 13.4 I accordingly enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and a varied direction under section 90(2ZA) of the Town and Country Planning Act 1990.

#### **14 GENERAL GUIDANCE**

- 14.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such an application must be made as soon as possible. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).
- 14.2 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 sections 36 and 36C of, and Schedule 8 to, the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely



**Head of Energy Infrastructure Planning Delivery**