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11 September 2014

Dear Sirs

PLANNING ACT 2008

**APPLICATION FOR THE NORTH KILLINGHOLME (GENERATING STATION)
ORDER**

1 I am directed by the Secretary of State for Energy and Climate Change (the “Secretary of State”) to advise you that consideration has been given to:

- a) the report dated 11 June 2014 of the Examining Authority, a panel of three Members led by Kelvin MacDonald and assisted by Martin Broderick and Alan Novitzky (“the ExA”), which conducted an examination into the application (the “Application”) dated 25 March 2013 by your client, C.GEN Killingholme Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the North Killingholme Power Project (“the Development”); and,
- b) representations received by the Secretary of State after the close of the examination and not withdrawn in respect of the Application.

2 The examination of the Application began on 12 September 2013 and was completed on 11 March 2014. The examination was conducted on the basis of written evidence submitted to the ExA and discussed at an open-floor hearing held in North Killingholme on 20 November 2013 and Issue-specific hearings held in North Killingholme on 20 November 2013 and 4 February 2014, 21 to 22 November 2013 and 11 to 13 February 2014, 26 November 2013 and 6 February 2014, 27 November 2013 and 5 February 2014, 28 November 2013, 29 November 2013, 29 November 2013 and 12 February 2014.

3 The Order, if made, would grant development consent for the construction and operation of a thermal generating station that would operate either as a Combined Cycle Gas Turbine (CCGT) plant or as an Integrated Gasification Combined Cycle (IGCC) plant, with a total electrical output of up to 470MWe at North Killingholme, Lincolnshire. The generating station would only be able to burn other types of fuel such as coal and biomass if the full Carbon Capture Storage chain is in place. A separate Environmental Permit, controlling emissions from the plant, will also be required from the Environment Agency before the generating station can be operated.

4 Enclosed at Annex A to this letter is a copy of the ExA's report ("the Report"), as amended by the Errata Sheet. The ExA's findings and conclusions are set out in chapters 4, 5 and 6 of the Report, and the ExA's summary of conclusions and recommendations is at chapter 8.

Summary of the ExA's Recommendation

5 The ExA recommended that the Order be made, on the basis of the provisions set out in the recommended Order and deemed Marine Licence, which is included as an appendix to the Report. The ExA also recommended that the Secretary of State should grant consent for compulsory acquisition in relation to a number of plots of land, but withhold consent for the request for powers for compulsory acquisition in respect of certain other plots, including certain plots owned by statutory undertakers and all plots of land requested for the purposes of the grid and gas connectors.

Summary of the Secretary of State's Decision

6 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. The Order also grants compulsory acquisition powers in respect of some of the requested plots of land, but not those requested for the purposes of the grid and gas connectors. This letter is a statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations"). It also constitutes consent in relation to the grant of powers to acquire certain land over which Centrica Storage Limited has relevant rights and relevant apparatus for the purposes of section 138 of the 2008 Act. A certificate granted under section 127 of the 2008 Act in respect of the compulsory acquisition of certain land and interests of Centrica Storage Limited accompanies this Order.

Secretary of State's consideration

7 The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the Examination Report ('ER').

8 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of their conclusions and recommendations.

Need and Relevant Policy for the Proposed Development

9 After having regard to the comments of the ExA set out in Chapter 4 of the Report, and in particular the conclusion in paragraph 4.86 the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-2 (NPS for Fossil Fuel Electricity Generating Infrastructure), which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant.

10 In chapter 5 the ExA also considered relevant and important policies in respect of the United Kingdom's European and international obligations as set out in the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") which transpose Council Directive 92/43/EC on the conservation of habitats and species and of wild flora and fauna ("the Habitats Directive") into UK law as far as the 12 nautical mile limit of territorial waters and beyond respectively. The Habitats Directive provides for the designation of sites for the protection of habitats and species of European importance and the Council Directive 2009/147/EC on the Conservation of Wild Birds ("the Birds Directive") for sites for the protection of rare and vulnerable birds and for regularly occurring migratory species, called Special Protection Areas ("SPAs") – those sites designated in the United Kingdom are collectively referred to in this letter as "European sites". The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention") provides for listing of wetlands of international importance – Ramsar sites. The UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites and in this context, the Secretary of State has taken policies into account in assessing potential adverse impacts.

11 Subject to the qualifications explained in the paragraphs below about drafting modifications to the Order, the Secretary of State agrees with the ExA's conclusions on the matters discussed in chapter 5 of the Report.

Environmental Report including Habitats Regulation Assessment

European Sites and Protected Species Impacts: Humber Estuary Special Area of Conservation (SAC), Humber Estuary Special Protection Area (SPA) and Humber Estuary Ramsar site

12. The Secretary of State agrees with the ExA's conclusion in relation to identified habitats and species that a likely significant effect arising from the proposed Development when considered alone cannot be excluded in relation to all European Sites. The Secretary of State therefore agrees with the ExA that an appropriate assessment (AA) is required under the Habitat Regulations to consider the effects of this Development alone and in-combination alongside other operational, consented and reasonably foreseeable projects (subject to a current planning application) as regards the likely impact upon the integrity of the Humber Estuary SAC, Humber Estuary SPA and Humber Estuary Ramsar site.

13. A copy of the Environmental Report, containing the Secretary of State's Habitats Regulation Assessment is attached to this decision letter and has been prepared on the basis of the ExA's report. This included a Report on the Implications for European Sites). As regards the assessment the Secretary of State agrees with the ExA that there is sufficient evidence to conclude that adverse effects on integrity can be excluded for all Humber Estuary European Sites. The assessment concludes that the Development, when considered in-combination with other plans or projects, will not have an adverse effect upon the integrity of the Humber Estuary SAC, Humber Estuary SPA and Humber Estuary Ramsar site or on the integrity of any other sites.

Flood risk assessment

14. As referred to in Overarching National Policy Statement for Energy (EN-1) ("NPS EN-1"), the three categories of Flood Risk Zone are: Flood Zone 3 where there is a high probability of flooding, Flood Risk Zone 2 where there is a medium probability of flooding and Flood Risk Zone 1 where there is a low probability of flooding. Electricity generating stations are classified as essential services for the purposes of national planning policy and should, wherever possible, be sited in the lowest Flood Risk Zone available – or failing that be able to operate during periods of flooding. The Secretary of State notes from the Flood Risk Assessment submitted by C.GEN that the Operational Area of the North Killingholme Power project is classified by the Environment Agency as within a Flood Risk Zone 3a (comprising land assessed as having a 1 in 200 year or greater (0.5 per cent) annual probability of flooding from the sea) and therefore subject to a "Sequential Test" and an "Exception Test". A Sequential Test is undertaken to ensure that no other reasonably available sites are in fact available for a development within areas or zones of lower flood risk. An Exception Test has to demonstrate that the development is able to operate during periods when the site is flooded.

15. The Secretary of State has considered the Flood Risk Assessment submitted by C.GEN and other relevant examination documents, including the ExA's consideration of this issue in its report [ER 4.174 to ER 4.186] and the requirements set out in national planning policy of:

- a) firstly, the sequential and
- b) subsequently, the exception test.

16. The Secretary of State notes from North Lincolnshire Council's Local Impact Report that the local planning authority is satisfied that the proposed development cannot be located elsewhere on a reasonably alternative site as the proposal is for a large scale, major energy infrastructure land use, and is a water compatible use and more suitable to be located next to the Humber Estuary. He sees no reason to disagree with the local authority's conclusion that the proposed land use satisfies the Sequential Test.

17. As specified in section 5 of NPS EN-1, the Exception Test requires an applicant to demonstrate:

- that the project provides wider sustainability benefits to the community (including need for the infrastructure) that outweigh flood risk;
- the project should be on developable, previously developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously developed land subject to any exceptions set out in the technological-specific National Policy Statements; and
- a Flood Risk Assessment must demonstrate that the project will be safe, without increasing flood risk elsewhere subject to the exception below and, where possible, will reduce flood risk overall.

Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, consent may be granted if satisfied that the increase in present and future flood risk can be mitigated to an acceptable level and taking account of the benefit of, including the need for nationally significant energy infrastructure.

18. The Secretary of State is satisfied that there is an overriding need for the development that outweighs flood risk. He notes that the Operations Area forms part of a previous naphtha/gas processing site and is surrounded by other industrial development and that there are no reasonable alternative sites.

19. The Secretary of State also notes the ExA considers that the examination of flood risks has been addressed adequately, taking full account of the additional risk of climate change and meets the requirement of NPS EN-1 [ER 4.186] and that the Environment Agency have not raised concerns with C.GEN's Flood Risk Assessment in the Statement of Common Ground [ER 4.183]. As agreed with the Environment Agency, a Requirement has been included in the Order to ensure all critical infrastructure is above flood risk levels [ER 4.184]. A further Requirement in the Order requires the development of a flood warning and evacuation plan to be approved by North Lincolnshire Council prior to commencement of operations [ER 4.185].

20. On the basis of the documentation before him, the Secretary of State sees no reason to disagree with the view that both tests can be passed and agrees with the conclusions reached in C.GEN's Sequential Test and the Exception Test in the Flood Risk Assessment and the ExA's conclusion on flood risk in its report [ER 4.186]. He considers therefore that there is no reason to refuse the application on the grounds of the proposed development presenting an unacceptable flood risk at the site.

Carbon Capture Readiness (CCR)/Carbon Capture Storage (CCS)

21. As set out in EN-1 and EN-2, all commercial scale fossil fuel generating stations have to be 'Carbon Capture Ready'. Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009¹ or any successor to it. In addition to satisfying the CCR criteria, to reduce CO² emissions new coal-fired generating stations, or significant extensions to existing stations, in England or Wales must have CCS on at least 300 MW net of the proposed generating capacity and secure arrangements for the transport and permanent storage of carbon dioxide.

22. The Secretary of State notes the ExA's consideration of CCS/CCR issues [ER 4.95 – ER 4.114]. He is content that they have been assessed adequately in line with the requirements of EN-1 and EN-2 and considers it would be appropriate to include in the Order Requirements to ensure that the necessary space is available at the site as to allow for the future installation of any carbon capture plant, and that the generating station shall not operate as an IGCC plant using fuel derived from coal until the necessary CCS infrastructure chain is in place. The SoS notes that Requirements 36-38 are designed to ensure the CCS obligations in EN-1 are complied with, but for the avoidance of any doubt, he considers that before the station is allowed to operate using coal-derived fuel, he should ensure that the necessary carbon capture infrastructure is in place. Therefore, he has added an additional provision in Requirement 38 providing that his consent is needed before the plant can operate as an IGCC using fuel derived from coal.

Compulsory Acquisition Of Land and Rights, including representations received from interested parties after the close of the ExA's examination of the Application on this Issue

23. The Secretary of State has carefully considered section 6 of the ExA's report on Compulsory Acquisition (CA) and agrees with most of the recommendations made in that section on which land and rights should be either included or excluded from the Order, for the reasons set out in that section and in this letter below. This includes agreeing with the recommendation to exclude from the Order land and rights for the Electrical Grid Connection and Gas Connection, which do not form part of the Development applied for by the Applicant, and certain plots of land requested for ecological mitigation. However, the Secretary of State has reached a different conclusion from the ExA in relation to land and rights held by Centrica and National Grid, for the reasons set out below.

Plots requested for the purposes of the grid and gas connection

24. The Secretary of State agrees with the ExA that the tests for compulsory acquisition have not been met in relation to the gas and grid corridors, as set out in the ExA's conclusions on this issue at paragraphs 6.293 and 6.294 ER. He has considered the impact on the deliverability [ER 6.436-6.441] of the project in

¹ Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810
http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/consents_planning/guidance.aspx

excluding compulsory acquisition powers in relation to land and rights in respect of the Electricity Grid and Gas Connections, as recommended by the ExA in its report. He notes the tests applied by the ExA to each plot, which are set out in the 2008 Act and related case-law and guidance, and only allow compulsory acquisition to be granted if certain conditions are met. He is satisfied with the ExA's reasoning for each plot and application and that refusal does not render the project undeliverable given there remain alternatives to the grant of compulsory acquisition within this Development Consent Order, including coming to voluntary agreement or by use of compulsory powers once proposals for the Electricity Grid and Gas Connection are further advanced. In the light of this conclusion, and insofar as the request for section 127 certificates relates to statutory undertakers whose affected rights and land fell solely within the gas and grid corridors, the Secretary of State has also concluded that the relevant section 127 certificates should be refused.

25. The Secretary of State received a number of other representations relevant to these plots of land after the close of the examination from the Applicant and Smart Wind Limited, as agent for the Hornsea Offshore Wind Farm Phase 1 and Phase 2 Project developers, Heron Wind Limited, Njorn Limited and Vi Aura Limited (Phase 1) and Optimus Wind Limited and Breesea Limited (Phase 2), concerning protective provisions for statutory undertakers. In the light of his conclusions on the gas and grid corridors above, the Secretary of State is in any event satisfied that the section 127 certificates be refused and the Order amended to exclude the exercise of powers in relation to the relevant land and rights. He does not consider the representations alter that conclusion.

26. A representation was also received by the ExA from W.A. Fussey Farmers after the close of the examination. This relates to concerns over the proposed powers of CA sought by the Applicant for the proposed gas pipeline connection in respect to plots of W.A. Fussey's land. In the circumstances, the Secretary of State is satisfied that WA Fussey's concerns have been addressed by the exclusion of the relevant plots from the Order.

Plots requested in relation to the authorised development

27. The Secretary of State notes that the ExA's consideration of plots required for the operational area [ER 6.97 – ER 6.133], ecological mitigation [ER 6.134 – 6.164], the transmission of water for cooling and other purposes [ER 6.165 – ER 6.199], working, laydown and construction areas [ER 6.200 - ER 6.227], fuel unloading [ER 6.228 – 6.236] and the railway connection [ER 6.237 – ER 6.247]. In relation to these plots, the Secretary of State:

- i. notes that the ExA recommended refusal of CA powers in respect of land and rights held by National Grid Property Holdings, National Grid Gas, Centrica KPS and Centrica Storage on the basis that agreement had not been reached with those Statutory Undertakers on protective provisions under the 2008 Act at the close of the examination. Taking account of agreement reached by the Applicant and National Grid since the close of the examination, and the advanced point reached in negotiations between the Applicant and Centrica, the Secretary of State has decided that compulsory acquisition powers should

be granted in relation to these land and rights, for the reasons set out in paragraphs 28-29, and has included suitable protective provisions within the DCO to reflect this;

- ii. agrees with the ExA that in relation to plots 05/02 and 07/01 requested for the purposes of ecological mitigation, the test have not been met, and compulsory acquisition should be refused, for the reasons set out at paragraph 30;
- iii. agrees with the ExA that in relation to the remaining rights and plots of land (except where the request for CA powers were found to be unnecessary or otherwise withdrawn during the Examination, see paragraph 31), the compulsory acquisition tests set out in guidance are met and is also satisfied with the ExA's overall and general conclusions on the test relating to consideration of reasonable alternative to CA are met.

National Grid and Centrica

28. CA powers were requested by the Company in relation to rights and land owned by National Grid Property Holdings Ltd and National Grid. National Grid Gas plc and National Grid Electricity Transmission plc are also the subject of applications for certificates under section 127, and in respect of section 138, of the 2008 Act [ER 6.104 and Appendix F]. The ExA stated that in the absence of any agreement on protective provisions, it was unable to conclude that the protective provisions proposed by C.GEN were sufficient to avoid serious detriment to the carrying out of National Grid's statutory undertaking in the absence of any agreement [Appendix F]. For that reason, it was unable to recommend the grant of powers of CA [ER 6.109]. However, the Secretary of State has since received clarification from both parties that agreement had in fact been reached on protective provisions between C.GEN and National Grid. Furthermore, C.Gen wrote to the Secretary of State on 28 August 2088 to withdraw its applications under sections 127 and 138 of the 2008 Act in respect of National Grid. In the circumstances, he has therefore decided that it is appropriate to grant powers of CA in respect of the rights and land held by National Grid Property Holdings Ltd and National Grid Gas in plots 05/04, 05/05, 05/06, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02, and 08/03. The agreed protective provisions have been included in Schedule 8 of the Order.

29. The Secretary of State also notes CA powers were requested by the company in relation to rights and land owned by Centrica KPS and Centrica Storage Limited, but that there was also an absence of agreement on protective provisions with Centrica by the close of the examination, and the section 127 Examiner therefore concluded that the protective provisions proposed by C.GEN were not sufficient to avoid serious detriment to the carrying out of Centrica plc's statutory undertaking [Appendix F]. As a result, the ExA was unable to recommend the grant of powers of CA in respect of land and rights held by Centrica Storage over plots 05/04, 05/05, 05/06, 05/09, 06/01, 07/03, 07/04, 07/05, 07/06, 08/01, 08/02 and 08/03 [ER 6.111 and ER 6.191] and also Centrica KPS (although the Secretary of State notes the powers of CA for them are in respect of land and rights for the grid and gas connections referred to in paragraph 24 above, and have therefore been refused in any event). The Secretary of State has since received representations from C.GEN and Centrica's representatives confirming the protective provisions they consider would be acceptable to them. He has carefully considered the representations and notes that the parties have largely agreed the protective provisions save for one

paragraph where there is still disagreement. Centrica's version of that paragraph requires Centrica's agreement to the exercise of CA powers, not to be unreasonably withheld. On balance, rather than refuse CA powers altogether, and given that the points of disagreement as to how this power might be exercised relate principally to the Electrical Grid connection plots that are to be excluded from the Order, the Secretary of State considers it is appropriate to grant powers of CA in respect of the land and rights held by Centrica which are required for the authorised development, to include the protective provisions in the DCO as put forward by Centrica. Given his decision that appropriate protective provisions can be put in place to ensure that there is no serious detriment to Centrica, the Secretary of State has also decided to give the related Centrica Storage Ltd section 127 certificate. He also considers that the extinguishment of Centrica's rights and removal of its apparatus in relation to these plots to the extent permitted by the protective provisions is necessary for the purposes of carrying out the authorised development for the purposes of section 138 of the 2008 Act.

Ecological mitigation land

30. In respect of the ExA's consideration and recommendation of refusal of CA powers in respect of certain of the ecological mitigation land [ER 6.134 – 6.164], which lies outside of both the Operation Area and Construction and Laydown Area, the Secretary of State notes the uncertain position regarding the need by C.GEN for, and extent of, plots 05/02 and 07/01 in view of the extant planning permission for the proposed Able Logistic Park [ER 6.158 – ER 6.159]. In the event that ecological mitigation is not carried out first as part of the Able Logistic Park development, he is satisfied that Requirement 35 of the Order will ensure that appropriate mitigation for the protection of species is put in place prior to the commencement of C.GEN's development. The Secretary of State also considers that alternatives to the grant of CA powers exist, including, if necessary, coming to voluntary agreement, or by seeking the use of compulsory powers once there is greater certainty on the Able Logistic Park development.

Rights and land in respect of which requests for CA powers were unnecessary or withdrawn

31. The Secretary of State notes that during the course of the Examination, the request for CA powers in respect of land held by Associated British Ports, CR.O Ports Killingholme and the Environment Agency were withdrawn. The effect of the withdrawal in relation to CR.O Ports was also to make the request for CA powers for Fortis Bank, as a mortgagee of CR.O Ports, unnecessary; it also became apparent during the Examination that requests for CA powers in respect of North Lincolnshire Council were unnecessary (6.192-6.197 ER). A representation was received by the ExA from Associated British Ports (ABP) after the close of the examination which confirmed that they had agreed terms and entered into formal underleases with the Applicant to allow removal of its section 127 application and all references to powers of CA over ABP's land interests from the Order. This issue was taken into account by the ExA in its report [ER 6.182-6.183] and the Order now excludes any land or interest owned by these parties.

Crown Land

32. Section 135(2) of the 2008 Act requires consent from a relevant Crown Authority for inclusion of any provision applying in relation to “Crown Land”. The Secretary of State notes that cooling water infrastructure and temporary working areas would be located on Crown land in areas comprising in part or in whole the ‘*river (Humber) and bed thereof*’ and extend below Mean Lower Water. The Secretary of State has therefore sought explicit consent from The Crown Estate Commissioners. He further notes that The Crown Estate Commissioners (as the appropriate “Crown Authority” under section 227(5)(a) of the 2008 Act) have consented by way of a letter dated 4 July 2014 to the inclusion of provisions in the Order to take account of the requirements of section 135(2) of the 2008 Act (see article 13 of the DCO).

Secretary of State’s conclusions and decision

33. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application, given the added contribution to energy capacity and in ensuring security of supply and that the case is not outweighed by the potential adverse local impacts of the Development, as mitigated by the proposed terms of the Order and the s.106 agreement entered into with North Lincolnshire Council. He considers granting consent would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-2 (NPS for Fossil Fuel Electricity Generating Infrastructure), which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed.

34. The Secretary of State has also considered the requests for powers to compulsorily acquire land and rights, which formed part of the application, and granted powers of compulsory acquisition in relation to a number of the plots concerned. He agrees with the ExA’s conclusion that, in respect of some plots, the requests for such powers do not meet the tests set out in statute and in guidance. He agrees with the ExA’s recommendation that consent for CA should be withheld for certain specified plots relating to the grid and gas connections and ecological mitigation, but has determined that CA powers should be granted subject to suitable protective provisions in relation to rights and land relating to the authorised development held by National Grid and Centrica.

35. Having carried out a Habitats Regulations Assessment containing an AA, which is attached to this letter, the Secretary of State considers that there will be no adverse effects on the integrity of the Humber Estuary SAC, Humber Estuary SPA and Humber Estuary Ramsar site or on the integrity of any other sites either alone or in combination with other plans and projects.

36. The Secretary of State has therefore decided to accept the ExA’s recommendation in chapter 8 of the Report to make the Order granting development consent and imposing the Requirements as proposed by the ExA, but subject to the modifications described in paragraphs 38 - 40 below. He confirms that, in reaching

this decision, he has had regard to the ExA Report, as amended by the Errata Sheet referred to in paragraph 4 above, the local impact report submitted by the relevant local authority and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations. In accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, he has also had regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when considering this application.

Modifications to the Order

37. Article 4 relating to the authorisation of 'Non-material changes' has been removed, as the Secretary of State considers this power should more properly sit with him rather than the local planning authority, in accordance with the appropriate procedures set out in the 2008 Act.

38. Although the Secretary of State notes that there are Combined Heat and Power obligations in the section 106 agreement between C.GEN and North Lincolnshire Council, he has revised the Combined Heat and Power requirement (Requirement 28) to ensure consistency with the approach taken to other Nationally Significant Infrastructure Projects approved under the 2008 Act.

39. Amendments have also been made to fully reflect the conclusions set out above, notably on carbon capture and storage (CCS), compulsory acquisition and protection of Crown Rights. In view of the conclusion that the request for compulsory acquisition of land related to the electrical and gas connectors should be refused because the applicant has failed to demonstrate that risks and impediments to the implementation of the scheme have been properly managed, or that all the land is required for the development, the Secretary of State has in addition concluded that it would be inappropriate to use the DCO to authorise the stopping up of footpaths on the plots of land requested for those purposes, and has amended Schedule 3 to the Order accordingly. Changes have also been made to the requirements relating to CCS to ensure that land which would be required for CCS could be available for that purpose within 2 years, and that emissions obligations can only be waived by the Secretary of State where he has statutory authority to do so.

40. In addition to the above, the Secretary of State has decided to make various minor changes to the form of the draft Order as set out in Appendix E to the Report produced by the ExA which, while altering the way in which specific issues are dealt with, do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g. modernisation of language), changes in the interests of clarity and consistency, and changes to ensure that the Order has the intended effect.

Challenge to decision

41. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

42. The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours faithfully

Giles Scott

Head of National Infrastructure Consents

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks from the date when the Order is published. The North Killingholme (Generating Station) Order 2014 as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/yorkshire-and-the-humber/north-killingholme-power-project/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)