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16 September 2015

Dear Sirs

**ELECTRICITY ACT 1989
TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A COMBINED
CYCLE GAS TURBINE GENERATING STATION AT LAND AT SUTTON BRIDGE,
LINCOLNSHIRE**

I. The Application

- 1.1 I am directed by the Secretary of State for Energy and Climate Change (the “Secretary of State”) to refer to the application by EDF Energy (West Burton Power) Limited (“the Company”) dated 23 December 2005, as amended on 18 November 2013 for consent under section 36 (“section 36 consent”) of the Electricity Act 1989 (“the 1989 Act”) to construct and operate a Combined Cycle Gas Turbine (“CCGT”) generating station up to 1800 MW at land at Sutton Bridge, Lincolnshire (“the proposed development”), and for a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be deemed to be granted.
- 1.2 The application for section 36 consent was published in accordance with the Electricity (Applications for Consent) Regulations 1990 (“the 1990 Regulations”) and served on the relevant persons.
- 1.3 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 as amended (“the 2000 Regulations”) an Environmental Statement was submitted with the application. Following

proposed amendments to the Development and the time elapsed since the original application was submitted to the Secretary of State, an updated “Red Line Boundary” drawing (*Drawing Figure. SK00-A Rev 2*), showing the boundary of the proposed Development area and updated environmental information to update the December 2005 Environmental Statement was provided in November 2013. This consisted of the following documents: *‘Environmental Statement Addendum: Volume 1’* November 2013; *‘Environmental Statement Addendum: Volume 2’* November 2013; *‘Environmental Statement Addendum: Volume 3’* November 2013; *‘Non-Technical Summary’* November 2013; *‘CHP Assessment’* November 2013; *‘Habitats Regulations Screening Assessment’* November 2013; *‘Flood Risk Assessment’* November 2013; *‘CCR Feasibility Study’* November 2013; *‘Planning Statement’* November 2013; and *‘Consultation Report’* November 2013. Further supplementary information was submitted in the form of document *‘Analysis of Worst Case Metrological Conditions’* May 2014 and details relating to carbon capture readiness on 27 June 2014 and 15 July 2014. These documents are collectively referred to hereafter as “the Environmental Statement”. The Environmental Statement describes the proposed development and gives an analysis of its environmental effects. In accordance with the 2000 Regulations, the Environmental Statement was advertised both nationally and locally (in January 2006, November 2013 and November/December 2014) and placed in the public domain to give people an opportunity to comment on it.

- 1.4 South Holland District City Council (“SHDC”) and Lincolnshire County Council (“LCC”) the relevant planning authorities (“RPAs”) for the Application, entered into discussions with the Company over the terms on which it would be content for the proposed development to proceed. As a result of these discussions, 50 conditions (“the Planning Conditions”) to be attached to any section 90 direction were agreed between the Company, the RPAs and other relevant consultees.
- 1.5 In view of the successful conclusion of these discussions the RPAs have not maintained any objection to the Application providing that the Planning Conditions are imposed should the Secretary of State be minded to grant section 36 consent and issue a section 90 direction in respect of the proposed development.

II. Secretary of State’s Consideration of the Planning Conditions

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

III. Secretary of State's Decision on the Holding of a Public Inquiry

- 3.1 As indicated in paragraph 1.5 above, the RPAs have not maintained an objection to the Application. The Secretary of State is therefore not obliged to cause a public inquiry to be held.
- 3.2 Paragraph 3(2) of Schedule 8 to the 1989 Act also requires the Secretary of State to consider all objections that have been received pursuant to the Electricity (Applications for Consent) Regulations 1990 (made under paragraph 3(1) of Schedule 8), ("the Applications Regulations"), together with all other material considerations, in order to determine whether it would nevertheless be appropriate to hold a discretionary public inquiry.
- 3.3 The Secretary of State has received 13 objections from interested parties to the Application. SHDC has also forwarded the objections they received, including a representation from the Wash & Sutton Bridge Protection Group, which enclosed over 200 proforma objection letters from local residents. Although most representations were received after the period allowed for pursuant to the Application Regulations, the Secretary of State has nonetheless also taken them into consideration.
- 3.4 The Secretary of State considers that the key objections raised (in summary) relating to the Development were:
- a) the proliferation of existing and proposed industrial development in the locality and the cumulative impact of air emissions on the health of local residents;
 - b) the uncertainty relating to its design and method of cooling, which it is considered could potentially impact on wildlife and fisheries if water is used from and discharged to the River Nene;
 - c) its visual impact;
 - d) its cumulative construction traffic impacts;
 - e) construction and operational noise, light and odour impacts;
 - f) its location in an area at high risk of flooding;
 - g) safety concerns relating to locating a gas-fired power station near to the Energy Park Sutton Bridge biomass gasifier proposal;
 - h) it should be located nearer to energy and heat users;
 - i) impact on aviation;

- j) concerns relating to SHDC's handling of the current application and also enforcement of conditions relating to the existing Sutton Bridge A Power Station;
- k) impact on house prices; and
- l) the need for the proposed development.

3.5 The Secretary of State has carefully considered the objections which have been made and comments as follows:

a) The choice of location is, in part, a commercial matter for the applicant. This is subject to a project satisfying environmental and planning requirements. The environmental impact of the proposed development has been taken into account in the process, where the local planning authorities, statutory bodies such as Natural England ("NE"), the Environment Agency ("EA"), the Secretary of State's other non-statutory consultees and the local community's views have been given serious consideration.

Overarching National Policy Statement for Energy (EN-1) ("EN-1")¹ and National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) ("EN-2")² sets out the national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant in order to maintain security of supply. Though made under the Planning Act 2008 regime, the National Policy Statements ("NPSs") are material to the Secretary of State's consideration of the proposed development.

In respect of emissions from the proposed development and pollution control, the EA has indicated that the Company will need to obtain a variation to the existing Environmental Permit that will control emissions to air, water and land during the operation of the proposed development. EN-1 acknowledges that the planning and pollution control systems are separate but complementary and the Secretary of State should not seek to duplicate them. EN-1 also advises at paragraph 4.10.3 that focus should be on whether the development itself is an acceptable use of the land, and on the impacts of that use, rather than the specific subsequent control of processes, emissions and discharges themselves; the assumption should be that the

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/47855/1939-nps-for-fossil-fuel-en2.pdf

relevant pollution control regime, including those on land drainage, water abstraction and biodiversity, will be properly applied and enforced by the relevant regulator.

Whilst a variation to the Environmental Permit application has still to be submitted, the Secretary of State has been informed by the EA that its preliminary view, given on the basis of the information contained in the Environmental Statement and without prejudice to any decision it may take on the application once it is made, is that there is no reason to suppose that a permit will not be issued in respect of the proposed development. The EA has also not objected to the application subject to the imposition of planning conditions covering the prevention of pollution during the construction stage. Planning Conditions (5) to (14) require a Construction Environmental Management Plan to be in place prior to the commencement of the proposed development. Planning Conditions (39) and (40) also exercise control of air pollution monitoring. The Secretary of State is aware that the Company has entered into a legal agreement with SHDC dated 24 June 2015 for the provision and maintenance of offsite air quality monitoring equipment.

In conclusion, the EA will be required under any Environmental Permit granted to set limits, to ensure that there will be no increase in emission levels sufficiently significant to cause harm to life or damage the health of local residents. The Secretary of State considers that in line with national planning policy the role of the EA should not be duplicated. While acknowledging therefore that there is concern over the impact of health in the locality, the Secretary of State is satisfied that such concerns can be addressed in the Environmental Permitting process for the operation of the proposed development and through planning conditions relating to the construction phase of the development.

b) With regard to concerns raised that there is inadequate information on the design and cooling technology to be used and the possible impact on wildlife and fisheries if water is used from and discharged to the River Nene, the Secretary of State acknowledges that developers are not required to have finalised the design of their proposals at the planning consent stage. The Secretary of State notes that the Company has applied for a choice of potential cooling methods for the proposed development. The Environmental Statement, in which the environmental impact of a Development is assessed on the basis of the Company's worst case design, considers both the use of "Hybrid Cooling" and "Air Cooled Condenser" methods of cooling for the plant for 'make up' water. The Secretary of State notes that "direct cooling" would not be used and the Company has not applied for use of that cooling method. As indicated above, the EA has indicated that the proposal will require an application to vary the existing Environmental Permit and also a new Abstraction Licence if the hybrid cooling option is followed. The determination on whether hybrid cooling, or air cooling, is "Best Available Technique" ("BAT") will be assessed by the EA's National Permitting Service when an application is received. However, the EA has indicated that, on the

basis of the information available to it, it does not foresee any barriers to a new permit being issued.

NE has also been consulted on the amended application and has raised no objections subject to the inclusion of planning conditions. Furthermore, it is noted that NE has confirmed that based on the details provided in the Environmental Statement, it does not object and considers that, whether alone or in combination with other plans and projects, this development would not be likely to have a significant effect on the internationally important features of *The Wash Special Protection Area* (“SPA”), *The Wash Ramsar* and *The Wash and Norfolk Coast Special Area of Conservation* (“SAC”) European Sites and *The Wash Site of Specific Scientific Interest* (“SSSI”). Pursuant to the Conservation of Habitats and Species Regulations 2010 (‘the Habitats Regulations’) the Secretary of State’s further consideration of whether the proposed development would be likely to have a significant effect on a European site is set out in Section V below. In addition, Planning Condition (15) has been included to enable SHDC to exercise reasonable and proper control over the design and appearance of the proposed development. Similarly, Planning Condition (20) has been included to protect and enhance biodiversity at the site. In the circumstances, the Secretary of State is satisfied that there are no design or ecological grounds for refusal of the application, provided that these conditions are implemented.

c) The Secretary of State notes that the proposed development site is an unallocated greenfield site (in the South Holland Local Plan, which is to be replaced by the South East Lincolnshire Local Plan), which is currently farmed grade 1 agricultural land. The Secretary of State notes that SHDC’s Planning Committee Report 4 June 2014 that the proposed development is considered acceptable in terms of its landscape and visual impact. Furthermore, although objections have been raised by other interested parties, no concerns have been raised by any of the Secretary of State’s statutory or non-statutory consultees on the grounds of adverse landscape and visual impact. However, the Secretary of State also recognises that, like most energy infrastructure projects, the proposed development will have a negative visual impact when considered alone and cumulatively with other existing and proposed development in the locality. Whilst accepting that no power station can ever be completely hidden from view, the Secretary of State believes that the measures provided by Planning Conditions (15) and (17) to (19) will go some way to meeting the grounds of objection and that there is no need to refuse consent on visual grounds.

d) Concerns have been raised from objectors about the impact of construction traffic on the A17 road and in particular its cumulative impact should PREL’s proposed Energy Park Sutton Bridge Plant gain approval in due course and also be constructed at the same time. The Secretary of State notes that access to the site would be via Centenary Way, the existing road access to Sutton Bridge A power station, which joins the A17 approximately 2km to the north-east of the proposed development site. It is

noted that as the A17 does not form part of the trunk road network, Highways England had no comment to make and the County Highway Authority also raised no objections. Planning Condition (16) requires the Company to submit and agree with SHDC a Construction Traffic Management Plan prior to the commencement of the proposed development. This will require, for example, the Company to agree measures for Heavy Goods Vehicles avoiding sensitive residential routes and periods of the day and arrangements for the transportation of Abnormal Indivisible Loads. In the circumstances, the Secretary of State is satisfied therefore that with the mitigation measures to be put in place, there are no construction or operational transportation grounds for refusing the proposed development.

e) Concerns have been raised that the proposed development will increase noise to local residents both during the construction period and during operation of the generating station. Some residents are also concerned about operational light pollution and gas odour impacts. Planning Conditions (5) to (14) requires: a Construction Environmental Management Plan, covering details of how, noise, vibration, dust and other airborne pollutants, smoke, odour, lighting and spillages from construction work will be monitored, controlled and mitigated, to be agreed with SHDC prior to commencement of the proposed development. The planning conditions also place restrictions on construction hours and activities resulting in noise or vibration impacts. The Secretary of State is satisfied therefore that adequate mitigation measure would be put in place during construction of the proposed development. Similarly, Planning Conditions (25) to (27) have been included to ensure the proper control of noise during the operation of the proposed development. Whilst it is considered that compliance with these conditions will adequately address the concerns of local residents, the Secretary of State has also included Planning Condition (44) to ensure that any complaints during the construction and operation of the proposed development are properly dealt with;

f) As referred to in 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 that the proposed development would be located in an area deemed to be at a high risk of flooding (Flood Zone 3a), which means that there is a 1 in 100 or greater annual probability of river flooding, or a 1 in 200 or greater annual probability of tidal flooding in any year 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.

The Secretary of State has considered the Flood Risk Assessment (“FRA”) submitted by the Company and other relevant representations and the requirements set out in national planning policy of:

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

The ES also considers Site Selection in Section 6.0 of the Environmental Statement Addendum: Volume 1. The Company’s evaluation criteria fell broadly into three categories, which comprised:

- i) proximity to vital facilities and resources including: close proximity to the National Grid Electricity Transmission System, with capacity to export electrical power; the close proximity to the National Grid Gas Transmission System, required for the operation of the gas-fired power station; the availability of make-up water for plant cooling; the potential for CHP opportunities, the likely suitability for carbon capture, transportation and storage; and the potential opportunities to link beneficially with local industry (i.e. direct supply of power to minimise transmission losses);
- ii) compatibility with existing land uses/surrounding land uses, including: the availability of sites with sufficient land area; and alignment with Planning Policies and Local Development Plans; and
- iii) factors which affect the potential magnitude of likely significant environmental impacts including the presence of receptors (i.e. conservation designations and the presence of protected species) sensitive to environmental impacts.

As specified in section 5 of 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 or previously developed land subject to any exceptions set out in the technological-specific National Policy Statements; and
- a FRA 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.

In consideration of the above, the Secretary of State is satisfied that the need case for the proposed type of development is made in EN-1 and EN-2 (i.e. in order to maintain security of supply and to provide flexible back-up for intermittent renewable energy from wind) that outweighs flood risk. The Secretary of State notes that the view of SHDC's Planning Officers that there are not considered to be sequentially preferable sites in the district. The Secretary of State also notes that, although reference has been made in representations to alternative siting of the development elsewhere in order to be closer to heat and electricity users, no other potentially suitable sites have been suggested by objectors. The Secretary of State sees no reason to disagree with the SHDC's conclusion that the proposed land use satisfies the Sequential Test.

The Secretary of State notes the FRA has been consulted on and that neither the EA nor SHDC have raised concerns or objected subject to inclusion of Planning Condition (24) to mitigate flood risk and protect the Development, the local environment and personnel from flooding. These measures include the creation of embankment or wall defence structures, as well as the setting of floor heights and site levels and also a surface water drainage system and a Flood Response Plan setting out evacuation and flood response procedures.

In conclusion, therefore, and on the basis of the comments received and the documentation submitted, the Secretary of State sees no reason to disagree with the conclusions reached in the Company's Sequential Test and Exception Test in the FRA and considers that there is no reason to refuse the application on the grounds of the proposed development presenting an unacceptable flood risk at the site.

g) The Secretary of State notes that the Health and Safety Executive ("HSE") has advised that Hazardous Substances Consent is not required for the proposed development. Although they have raised no objections on safety grounds, the Secretary of State is also aware that if built and operated, the full requirements of the Health and Safety at Work Act 1974 and related legislation would apply with the operator of a generating station having a duty to maintain adequate arrangements to ensure safety, which is enforceable by HSE inspectors. The Secretary of State is also aware that existing standards, regulations such as the Regulatory Reform (Fire Safety) Order 2005 and use of best working practices would also apply to minimise the risk of fire and provide safety to the public to an acceptable level.

h) As indicated above, the choice of location is a commercial matter for the applicant, subject to meeting environmental and planning considerations. The Secretary of State notes that no alternative sites closer to heat users have been suggested in the representations received on the application. Section 4.6 of EN-1 sets out the Government's strong support for combined heat and power ("CHP"). The Application is also covered by the

Departmental published guidance³ for all combustion power station proposals, requiring developers to demonstrate that opportunities for CHP have been seriously explored before section 36 consent can be granted. The Secretary of State is satisfied that the Company has complied with those requirements.

The Secretary of State notes the Company has considered the potential for CHP and concluded that there are no viable opportunities to provide heat offsite at present, but that it intends to keep the situation under review and to design the proposed facility so as to ensure that should the situation change, the opportunity can be addressed.

In view of the Government's strong support for CHP and the use of heat, the Secretary of State does not wish to lose the opportunity to exploit potential heat demand which may arise in the future. To this effect the Secretary of State has decided to include a condition in the section 90 direction which requires the Company to carry out a further CHP Feasibility Review prior to commissioning of the development and for potential CHP opportunities to continue to be monitored. Where viable opportunities are identified, the Company is also required to agree a scheme with the relevant planning authority for the provision of the necessary plant and pipework to the boundary of the site and to install it in accordance with the agreed details (Planning Condition (46)). The Secretary of State has also decided to ensure that there are no barriers to exploitation of future CHP opportunities by including a condition which requires the Company to install, prior to commissioning of the proposed development, the necessary infrastructure to facilitate the future supply of waste heat should a demand for such heat arise (Planning Condition (45)).

Similarly, no alternative sites closer to energy users have been identified in the representations received on the application. The Secretary of State notes that it is anticipated that electricity would be delivered to the National Grid via a connection to the nearest suitable point at National Grid Walpole Substation, approximately 3.5km from the proposed development site. It is anticipated that the gas connection for the provision of natural gas would be via the nearby National Grid Gas Transmission System. Separate consent applications for the electrical and gas connections would be submitted in due course. Whilst not wishing to prejudge what the decisions on those applications might be, the Secretary of State is satisfied that there are feasible corridor routes for both the gas and electrical connections.

i) The Secretary of State notes that no objections have been received from the three aviation consultees, Defence Infrastructure Organisation

³ Guidance on background information to accompany notifications under section 14(1) of the Energy Act 1976 and applications under section 36 of the Electricity Act 1989: December 2006 - <http://www.berr.gov.uk/files/file35728.pdf>

("DIO"), Civil Aviation Authority ("CAA") and National Air Traffic Service ("NATS"). The Secretary of State is also satisfied that Planning Conditions (41) to (43) will ensure that the proposed Development is not a safety threat to aviation.

j) As a "relevant planning authority" under the 1989 Act, SHDC were consulted by the Secretary of State and required to make their formal views known on the application. However, how they reach those views is a matter for them. Similarly, the enforcement of conditions relating to the existing Sutton Bridge 'A' generating station is also a matter for them. The Secretary of State understands that if local residents wish to raise a complaint, the correct procedure is to contact the Council's Complaints Officer in the first instance. If unhappy with how the complaint is handled by the Council, the complainer may then pursue the matter with the Local Government Ombudsman.⁴

k) Whilst the Secretary of State acknowledges concerns expressed about house prices, this is not a planning matter that can be taken into account for the purposes of this decision.

l) As indicated in a) and f) above, EN-1 and EN-2 sets out the national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant in order to maintain security of supply and to provide flexible back-up for intermittent renewable energy from wind.

Conclusion

3.4 The Secretary of State has carefully considered the views of the relevant planning authorities, the comments of the objectors (including their requests that the discretionary power to hold a public inquiry be used by the Secretary of State) and others, the matters set out above and all other objections raised. The Secretary of State takes the view there is nothing further that needs probing and therefore it would not be appropriate to cause a public inquiry to be held into the Application.

IV. Secretary of State's Consideration of the Environmental Information

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

⁴ <http://www.lgo.org.uk/>

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

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

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

V. Secretary of State's Consideration of Possible Effects on a European Site

5.1 The Conservation of Habitats and Species Regulations 2010 ("the Habitats Regulations") require the Secretary of State to consider whether the proposed development would be likely to have a significant effect on a European Site, as defined in the Habitats Regulations and if so, to undertake an Appropriate Assessment ("AA") of the implications for the European Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may only be granted if it can be shown that the development will not have an adverse effect on the integrity of the European Site (regulations 61(5) and 62). Regulation 61(6) provides that when considering whether the proposed development will adversely affect the integrity of a European Site, the competent authority can take into account measures proposed to mitigate such impacts.

5.2 The Secretary of State notes that *The Wash Special Protection Area* ("SPA"), *The Wash Ramsar* and *The Wash and Norfolk Coast Special Area of Conservation* ("SAC") European Sites, (i.e. areas of special importance for flora and/or fauna) are within approximately 6.8km of the application site. At national level, *The Wash Site of Specific Scientific Interest* ("SSSI") is also within approximately 6.8km of the Application Site.

5.3 Natural England ("NE") has confirmed that, based on the details provided in the Environmental Statement, it does not object and considers that, whether alone or in combination with other plans and projects, this development would not be likely to have a significant effect on the relevant protected features of the Wash European Sites or any features of the SSSI. The Secretary of State agrees with NE's advice and considers that an AA is not required. The Secretary of State is satisfied that sufficient environmental information has been provided to have confidence that, when considered in-combination with other plans or projects, the proposed development will not have an adverse effect

upon the integrity of the Wash European Sites and that there will be no likely significant effects on the integrity of any other sites.

5.4 In respect of ecological matters at the site, Planning Condition (20) also requires measures to be put in place measures for further ecological surveys to update those already prepared and a submission of a strategy for the protection and enhancement of biodiversity to be agreed with SHDC, in consultation with NE and EA. The Secretary of State also notes that both NE and the Lincolnshire Wildlife Trust support inclusion of these mitigation and enhancement measures.

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

6.1. As required by the DECC guidance published in November 2009 in a document entitled “*Carbon Capture Readiness (CCR) – A guidance note for Section 36 Electricity Act consent applications*” (URN09D/810)⁵ (the “CCR Guidance”) and Part 4 of EN-1 and Part 2 of EN-2, to ensure that no foreseeable barriers exist to retrofitting CCS equipment on combustion generating stations, all applications for new combustion plant over 300MW in England and Wales and of a type covered by the EU’s Large Combustion Plant Directive (as transposed by the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013) are required to demonstrate they are “Carbon Capture Ready”. More specifically, the purpose of the Department’s guidance on consents policy with regard to carbon capture readiness (CCR), which was is to allow the UK to benefit from the security and diversity of supply contributed by CCGT plant without being “locked-in” to dependency on higher carbon forms of generation in the longer term, by ensuring that generating stations which are subject to CCR policy are not constructed in a way, or in locations, which it is clear would make it unfeasible, either technically or economically, to retrofit carbon capture and storage technology to them at a later date.

6.2 The guidance states the following:

“CCR Requirements

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

- that sufficient space is available on or near the site to accommodate carbon capture equipment in the future;*
- the technical feasibility of retrofitting their chosen carbon capture technology;*
- that a suitable area of deep geological storage offshore exists for the storage of captured CO₂ from the proposed power station;*

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

- *the technical feasibility of transporting the captured CO₂ to the proposed storage area; and*
- *the likelihood that it will be economically feasible within the power station's lifetime, to link it to a full CCS [carbon capture and storage] chain, covering retrofitting of capture equipment, transport and storage.*

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

6.3 The Company submitted a report on 18 November 2013 entitled “*CCR Feasibility Study*” November 2013, which the Secretary of State’s decision on CCR is based (“the CCR Report”). For the purposes of deciding the points referred to in the first two bullets above, the Secretary of State has taken the appropriate advice from the EA. In response to that consultation, the Company also provided further information to the EA on 15 July 2014. The EA has confirmed that the information provided covers their requirements and enables them to conclude that the applicant has set aside more space than required and that there are no foreseeable barriers to the technical feasibility of carbon capture retrofit.

6.4 The Secretary of State notes from the CCR Report that both Indefatigable Gas Field and Leman Gas Field have been identified as potential CO₂ storage areas which would meet the CO₂ requirements for the proposed development. Both fields are considered as potentially suitable for CO₂ storage in the DTI’s 2006 study of UK storage capacity.⁶ Although the Company has not stated a preference, the Department has updated its list of CO₂ storage areas to reflect selection of the Indefatigable Gas Field for the captured CO₂ from the proposed development. Onshore pipeline corridor options have been proposed for the transportation of CO₂ to the storage areas, which would follow the route of the existing National Grid Transmission System pipeline routes wherever possible. Similarly, transportation offshore is proposed following existing pipeline routes wherever possible from the coastal transition point at Bacton Gas Terminal to the proposed storage area. The Secretary of State sees no reason to disagree with the Company’s conclusion that it will be technically feasible to transport the captured CO₂ to the offshore storage areas.

6.5 The Department’s Economic Advisor in the Office of Carbon Capture and Storage has advised that the economic assessment is in accordance with the requirements of the CCR guidance insofar as it demonstrates that the fitting of carbon capture plant would be potentially viable over the lifetime of the proposed development.

6.6 In conclusion, the Secretary of State has considered the information provided by the Company and the comments of consultees both within and outside the Department. The Secretary of State is of the view that the Company has demonstrated that the proposed development, to the extent that CCR policies requires, will be able to retrofit carbon

⁶ <http://webarchive.nationalarchives.gov.uk/20090609003228/http://www.berr.gov.uk/files/file35684.pdf>

capture plant and equipment as and when carbon capture and storage becomes both technically and economically viable. The Secretary of State also considers it would be appropriate to include conditions modelled on those contained in Annex G of the CCR Guidance in any section 36 consent granted in this case.

VII. Equality Act 2010

7.1 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 under the Act;
- (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
- (c) the fostering of good relations between people who share a protected characteristic and those who do not.

7.2 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 people sharing any of the protected characteristics.

7.3 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.

VIII. Human Rights Act 1998

8.1 The Secretary of State considers that there is no proposed interference with the human rights of individuals that the grant of development consent would not be unlawful under section 6(1) of the Human Rights Act 1998.

IX. Secretary of State's Conclusion and Decision on the Application

9.1 The Secretary of State has carefully considered the views of the relevant planning authorities, consultees and other interested parties, the matters set out above and all other material considerations. For the reasons given in this letter, the Secretary of State considers that consent for the proposed development should be granted, given the national need for development of new nationally significant electricity generating

infrastructure of the type proposed by the Company in order to maintain security of supply and to provide flexible back-up for intermittent renewable energy from wind and that this case is not outweighed by the potential adverse local impacts of the Development as mitigated by the proposed terms of the consent and planning conditions.

9.2 In reaching this decision, in particular, the Secretary of State considers the following issues material to the merits of the section 36 consent application:

- i) adequate environmental information has been provided for the Secretary of State to judge its impact;
- ii) the Company has identified what can be done to mitigate any potentially adverse impacts of the proposed development;
- iii) the matters specified in paragraph 1(2) of Schedule 9 to the 1989 Act have been adequately addressed by means of the mitigation set out in the Environmental Statement and the Secretary of State has judged that the likely key environmental impacts are acceptable;
- iv) the fact that legal procedures for the application have been properly followed;
- v) the views of the relevant planning authorities, the views of statutory consultees under the Habitats Regulations, the 2000 Regulations, and the Electricity (Applications for Consent) Regulations 1990, the views of other interested parties, the environmental information and all other relevant matters have been considered;
- vi) the Company has demonstrated that the proposed development is carbon capture ready;
- vii) Government's policies on the need for and development of new electricity generating infrastructure, and specifically gas-fired generating stations, as set out in the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)*, designated by him on 19th July 2011 under the Planning Act 2008 following their approval by Parliament and the reasons given for those policies in those national policy statements;
- viii) the Company's consideration in its Planning Statement of compliance with local planning policies, which the relevant planning authorities have not objected to; and
- ix) The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has had regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 in making this decision.

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

9.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990, which has also been published at <https://itportal.decc.gov.uk/EIP/pages/recent.htm> .

X. General Guidance

10.1 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, including time limits, 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).

Yours faithfully

Giles Scott

Head of National Infrastructure Consents and Coal Liabilities