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05 June 2024

Dear Hannah Thomas-Davies,

## **SECTION 36C OF THE ELECTRICITY ACT 1989**

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

#### **PROPOSED VARIATION TO THE SECTION 36 CONSENT FOR THE CORYTON SOUTH POWER STATION, THE MANORWAY, CORINGHAM, STANFORD-LE-HOPE, SS17 6GN**

##### **1. Introduction**

- 1.1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to refer to the application dated 5 January 2024 (“the Variation Application”) on behalf of Coryton Energy Company Limited (“the Applicant”) to vary the consent granted by the Secretary of State under section 36 of the Electricity Act 1989 (“the Section 36 Consent”) and the direction under Section 90 of the Town and Country Planning Act 1990 (“the Deemed Planning Permission”) granted on 14 March 1997 for the construction and operation of a Combined Cycle Gas Turbine generating station, located in Corringham, Stanford-le-Hope, Essex.
- 1.2. The Variation Application seeks to vary the Section 36 Consent and the Deemed Planning Permission to allow an increase in the permitted electrical output of the generating station from “about 750MW capacity” to “up to 850MW”, which is facilitated by an upgrade to the existing gas turbines and associated systems (“the Varied Development”). The Secretary of State’s decision on this variation is set out below.
- 1.3. The Variation Application also seeks to amend the conditions pursuant to which the Section 36 Consent and Deemed Planning Permission were granted: to reflect the fact that the construction of the generating station is complete and in operation; to allow for certain further changes to Deemed Planning Permission conditions, or matters controlled by those conditions, to be agreed by the local planning authority; and, to reflect other changes in circumstances since the consent was granted.

1.4. The Secretary of State has considered these additional proposed amendments (beyond the primary change outlined in paragraph 1.2) and has decided to retain the original conditions within the Section 36 Consent and Deemed Planning Permission, irrespective of whether they have been discharged. This is because the proposed amendments to conditions are not relevant to the Varied Development itself and there is a risk that removal of these conditions may have unintended consequences. The Secretary of State is satisfied that this approach is appropriate in this case.

## **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 36C variation procedure is not intended to authorise a material change to an existing consent that would result in a development that would be fundamentally different in character or scale from what is authorised by the existing consent. Any such changes would need to 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 environmental impacts arising from the Varied Development when compared to those arising from the consented 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 and notes that the proposed change is in keeping with those referred to in the Guidance Note as being able to be appropriately dealt with under the section 36C variation procedure. The Secretary of State considers that it is appropriate for this Variation Application to be considered under the section 36 variation procedure.

2.5. The Variation Application was published in accordance with the Electricity Generating Stations (Variation of Consent) (England and Wales) Regulations 2013 ("the Variation Regulations") and served on Thurrock Borough Council ("the Borough Council"), who are the "relevant planning authority" as provided for by the Variation Regulations.

2.6. The Variation Application was subject to public consultation between 5 February 2024 and 21 March 2024.

## **3. The Secretary of State's consideration of the environmental information**

3.1. The Applicant requested a screening decision from the Secretary of State on 28 September 2023. Following a consultation with the Borough Council, the local planning authority, the Secretary of State concluded on 22 November 2023 that the Variation Application is not an EIA development.

#### **4. The 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 in the case that any proposed change were to adversely affect the integrity of these sites, that there are no feasible alternatives which would be less damaging to the sites, there are imperative reasons of overriding public interest, and sufficient compensation is provided to offset damage which could be caused to the sites.
- 4.2. Based on 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. Consultation**

- 5.1. The Variation Application was advertised in the London Gazette and in the Thurrock Gazette (published in both on successive weeks on 8 February 2024 and 15 February 2024). The advertised notice specified that any person wishing to make representations on the Variation Application should do so by no later than 21 March 2024.
- 5.2. The Borough Council, as local planning authority, had until 5 April 2024 to respond. The other consultees that were consulted directly by the Applicant were: the Environment Agency, Natural England, NATS EN-Route Safeguarding (“NATS”), the Civil Aviation Authority, the Defence Infrastructure Organisation (Ministry of Defence), the Health and Safety Executive (East & South-East), National Grid Gas Plc, National Grid Electricity Transmission Plc, Historic England (“HE”), and National Highways (“NH”). These consultees were given until 21 March 2024 to respond.
- 5.3. On 19 February 2024, NATS responded confirming it operates no infrastructure within 10km of the development area and accordingly, it anticipates no impact from Variation Application and has no comments to make.
- 5.4. On 1 March 2024, HE responded confirming that it would not be offering advice on the Variation Application.
- 5.5. On 20 March 2024, NH responded confirming that it has no objections to the Variation Application.
- 5.6. On 5 April 2024, the Borough Council responded confirming that it has no objection to the Variation Application.
- 5.7. A late submission was provided by the Ministry of Defence (“MoD”), who on 25 March 2024, confirmed that it has no objection to the Variation Application.

#### **6. Secretary of State's decision on the holding of a public inquiry**

- 6.1. 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 her by a

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

- 6.2. Representations made in respect of the Variation Application were received, as set out above. None of the representations raised any objection to the Variation Application. Further, the representations did not raise any other matters material to the Secretary of State's decision on whether to hold a public inquiry into the Variation Application.

### Conclusion

- 6.3. The Secretary of State has carefully considered the views of the relevant planning authority and statutory advisers and all other material considerations. She notes that there were no requests for a public inquiry to be held and that no substantive comments were submitted to her in respect of any matters arising from the Variation Application. The Secretary of State is, therefore, of the view that she requires no further information to enable her to take a decision on the Variation Application and that it would not, therefore, be appropriate to cause a discretionary public inquiry to be held into the Variation Application.

## **7. Other matters**

- 7.1. The Secretary of State has considered the ongoing need for the Varied Development. The Secretary of State notes the Overarching National Policy Statement for Energy (EN-1) sets out that for the UK to meet its energy objectives there is a continuing need for electricity generating plants of the type proposed by the Applicant given the contribution it will make to securing energy supply.
- 7.2. 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.
- 7.3. The new NPS suite came into force on 17 January 2024 after being approved by Parliament. The transitional guidance in the new NPS EN-1 makes clear that the assessment of any decision-making about NSIP applications in progress should continue to be made with reference to the currently designated NPS suite which remains in force and therefore forms the basis of the Secretary of State's consideration of the Application. The Secretary of State considers the new NPSs to be important and relevant when in considering applications for variations of section 36 consents. As such, she has had regard to the new energy National Policy Statements in deciding the Application but does not consider that there is anything within them that would lead her to reach a different decision on the Application.
- 7.4. The Secretary of State has noted the policy contained within the relevant NPS documents and considers that the ongoing need for the Variation Application is established and that granting the Variation Application would be compatible with the amended Climate Change Act 2008, the NPSs, and Powering Up Britain 2023.

## **8. Equality Act 2010**

- 8.1. 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; sex and sexual orientation; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion or 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.
- 8.2. The Secretary of State has considered the potential impacts of granting or refusing the Variation Application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on persons sharing any of the protected characteristics and sees no evidence which suggests that such differential impacts are likely in the present case.
- 8.3. The Secretary of State does not, therefore, consider that either the grant or refusal of the Variation Application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

## **9. Human Rights Act 1998**

- 9.1. 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. She considers that the grant of a consent in respect of the Varied Application would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

## **10. Natural Environment and Rural Communities Act 2006**

- 10.1. The Secretary of State notes the “general biodiversity objective” to conserve and enhance biodiversity in England, in section 40(A1) of the Natural Environment and Rural Communities Act 2006 and considers the application is consistent with furthering that objective, having also had regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when making this decision.

## **11. Secretary of State's decision on the Variation Application**

- 11.1. The Secretary of State notes that no internal modification works are required as part of the Variation Application. She also notes that there are no significant changes in the environmental and other impacts identified in relation to the Variation Application. The Secretary of State is therefore of the view that the Variation Application 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 Variation Application 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.

- 11.2. 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 her to refuse the Variation Application.
- 11.3. 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.
- 11.4. I accordingly enclose the Secretary of State's variation of consent.

Yours sincerely,

John Wheadon  
Head of Energy Infrastructure Planning Delivery  
Department of Energy Security and Net Zero