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By email only: **REDACTED**

**REDACTED**

**Spalding Energy Expansion Limited**

69 Carter Lane, London,

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19 September 2025

Dear REDACTED,

**ELECTRICITY ACT 1989 (the “Act”)**

**THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS) (ENGLAND AND WALES) REGULATIONS 2013 (the “Variation Regulations”)**

**ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 2017 (the “2017 EIA Regulations”)**

**SPALDING ENERGY EXPANSION PROJECT – SPALDING ENERGY EXPANSION, SPALDING POWER STATION, WEST MARSH ROAD, SPALDING**

## **1 THE APPLICATION**

- 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 17 April 2025 (“the Application”) on behalf of Spalding Energy Expansion Limited (“the Applicant”) to vary the consent granted by the Secretary of State under section 36 of the Act on 11 November 2010, as varied on 30 October 2015 under section 36C of the Act (“Section 36 Consent”) to construct and operate the Spalding Energy Expansion generating station at West Marsh Road, Spalding, Lincolnshire (“the Consented Development”).
- 1.2 The section 36 consent and section 90 direction granted on 11 November 2010 was for a 900MW combined cycle gas turbine (“CCGT”) generating station. The variation under section 36C granted on 30 October 2015 was to construct and operate either a CCGT generating station of up to 945MW or a generating station consisting of a CCGT unit of 645MW with an open cycle gas turbine (“OCGT”) unit(s) of up to 300MW. On 7 June 2017, as required by the section 36 consent, the Applicant notified the Secretary of State and

South Holland District Council that the gas turbine technology selected was the combined CCGT/OCGT option. The Secretary of State confirmed discharge of Conditions 4(2) of the section 36 consent and 5(3) of the section 90 direction covering the technology option choice and capacity of each gas turbine technology to be used on the same date.

- 1.3 The Applicant has stated that the changes it has proposed to the Section 36 Consent are for the following purposes:
- to reintroduce flexibility into the consent because the Applicant wishes to have the ability to choose whether to deploy the up to 645MW CCGT or the 2023 Battery Energy Storage System (“BESS”) Planning Consent on the land adjoining the extant OCGT taking relevant account of market conditions;
  - to introduce a second beneficiary, so that either the Applicant or Spalding Energy Park Limited may construct and operate the development, or each may construct and operate distinct parts;
  - to remove the 175MW BESS which we understand cannot form part of a S36 consent or variation consent issued following the introduction of the Infrastructure Planning (Electricity Storage Facilities) Order 2020 Regulations; and
  - to delete Condition 3 ‘Time Limits’ of the consent to reflect that the development commencement has been undertaken in accordance with Condition 3 via the construction and operation of the OCGT prior to 31 October 2020.

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

- 2.1 The guidance “Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales” (“the Variation Guidance Note”), issued in 2013, states:

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

- 2.2 The section 36 variation procedure does not allow changes that would result in a development that would be fundamentally different in character or scale from what was originally granted. Any such changes would require a new application.
- 2.3 The Secretary of State notes that the Applicant concluded there would be no significant additional impacts arising from the Application when compared with those arising from the Existing Consent.
- 2.4 The Secretary of State considers that the Application would not be fundamentally different in character or scale from the Consented Development, is in keeping with the Variation Guidance Note for the section 36 variation procedure and that it is appropriate for this Application to be considered under the section 36 variation procedure.

- 2.5 The Application was published in accordance with the Variation Regulations and served on South Holland District Council (“the Relevant Local Planning Authority”).
- 2.6 The Application was subject to public consultation between 15 May 2025 and 20 June 2025. As the Relevant Local Planning Authority, South Holland District Council had until 20 July 2025 to provide its consultation response.

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

- 3.1 The Secretary of State has reviewed the Application and considers it to be covered under Section 3(a) Schedule 2 of the 2017 EIA Regulations. As an EIA report was not provided by the Applicant, under Requirement 11 (2) of the 2017 EIA Regulations, the Secretary of State is required to make a screening decision, before dealing further with the Application.
- 3.2 The Applicant provided a covering letter as part of the Application. The covering letter sets out an overview of the site and its planning history, the legislation and guidance relating to variation applications, the consultation that had been undertaken in developing the Application, a description of the Proposed Development and the proposed changes to the consent, including a description of consents previously applied for, the planning policy framework, and a planning assessment.
- 3.3 The Applicant also provided a supporting letter from Ramboll UK Limited, dated 17 December 2024, in relation to the need for an EIA Screening Request. The supporting letter details a review of the Application and concludes that the proposed amendments would not result in the potential for new or additional significant environmental effects. The supporting letter concludes that the Application, whilst reinstating some flexibility in the final built form to be developed, maintains consistency with (and potentially a slight reduction to) the scale of the built form, and the associated emissions profiles, previously assessed and approved. The supporting letter also states that the proposed amendments do not increase the overall approved operating capacity of the Section 36 Consent.
- 3.4 The Secretary of State considers that the information submitted by the Applicant is sufficient to determine that no new environmental effects will arise from the Application. Any potential environmental effects will remain the same as those assessed in the previous EIA Reports.
- 3.5 The Secretary of State has considered the information submitted by the Applicant and Ramboll UK Limited and takes the view that an EIA is not required for this variation request.

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

- 4.1 The Secretary of State is prohibited from granting a variation to a section 36 consent unless it can be demonstrated that any proposed change will not adversely affect the integrity of any Special Areas of Conservation and Special Protection Areas that form part of the National Site Network designated under the Conservation of Habitats and Species Regulations 2017. In the case that any proposed changes were to adversely affect the integrity of these sites, the Secretary of State should be satisfied that there are no feasible alternatives which would be less damaging to the sites, that there are imperative reasons of overriding public interest, and that sufficient compensation is provided to offset damage which could be caused to the sites.
- 4.2 The Secretary of State determined in Section 3 of this letter that the Application is not EIA development, and subsequently, there is no need for an EIA to be submitted.

- 4.3 On the basis of the information provided and in the absence of any views to the contrary from consultees, the Secretary of State considers that the Application will not have any likely significant effects on any sites designated as part of the National Site Network or other protected sites either alone or in-combination with other plans or projects.

## **5 ISSUES RAISED DURING CONSULTATION**

- 5.1 The following parties responded to the consultation: South Holland District Council; Civil Aviation Authority (“CAA”); Environment Agency (“EA”); Health and Safety Executive (“HSE”); Historic England; Lincolnshire County Council (Heritage); Lincolnshire County Council (Highways and Drainage); Ministry of Defence (“MoD”); National Air Traffic Services (“NATS”); and Natural England (“NE”).
- 5.2 South Holland District Council did not have any objections to the Application. The Defence Infrastructure Organisation (on behalf of the MoD) stated that the Application falls outside of MoD safeguarded areas and does not affect other defence interests. The EA did not have any comments to make on the Application. NATS stated that the Application had been examined from a technical safeguarding aspect and does not conflict with its safeguarding criteria. Lincolnshire County Council (Heritage) stated that the Application is unlikely to have an impact on significant archaeological remains. HSE stated that the conditions which the Application seeks to vary are not relevant matters for HSE’s Land Use Planning (LUP) team and has no comments to make on the Application.
- 5.3 The CAA, Historic England, Lincolnshire County Council (Highways and Drainage), the MoD, and NE did not provide a response.

## **6 THE SECRETARY OF STATE’S DECISION ON HOLDING 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 made to the Secretary of State by a relevant planning authority or any other person, where those representations are not withdrawn, and all other material considerations.
- 6.2 The Secretary of State notes that none of the representations raised any objection to the Application being granted and did not raise any other matters which are material to the Secretary of State’s decision on whether to hold a public inquiry into the Application.
- 6.3 The Secretary of State has carefully considered the views of the relevant planning authority and statutory advisers and all other material considerations. The Secretary of State notes that there were no requests for a public inquiry to be held and that no substantive comments were submitted in respect of any matters arising from the Application. The Secretary of State considers there is no further information required to take a decision on the Application and that it is not, therefore, necessary to hold a public inquiry.

## **7 POLICY CONSIDERATIONS**

- 7.1 The Secretary of State has considered the ongoing need for the Application. The Secretary of State notes the 2024 Overarching National Policy Statement (NPS) for Energy (EN-1) (“2024 EN-1”) and the 2024 National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2) (“2024 EN-2”) both set out that for the UK to meet its energy and climate change objectives there is a continuing need for new electricity generating plants of the type proposed by the Applicant given the contribution it will make to securing energy supply. The Secretary of State notes that the 2024 NPSs 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.

7.2 A new NPS suite came into force on 17 January 2024 after being approved by Parliament including the 2024 EN-1 and the 2024 EN-2. The transitional guidance in the 2024 EN-1 makes clear that the assessment of any decision-making about Nationally Significant Infrastructure Projects applications accepted for examination before the 2024 designations of the 2024 NPS suite, the 2011 suite of NPSs should have effect in accordance with the terms of those NPSs. Therefore the 2011 NPSs form 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, the Secretary of State has had regard to the new energy NPSs in deciding the Application but does not consider that there is anything within them that would lead the Secretary of State to reach a different decision on the Application.

7.3 2024 EN-1 states:

*"The use of unabated natural gas and crude oil fuels for heating, cooking, electricity and transport, and the production of many everyday essentials like medicines, plastics, cosmetics and household appliances, will still be needed during the transition to a net zero economy. This will enable secure, reliable, and affordable supplies of energy as we develop the means to address the carbon dioxide and other greenhouse gases associated with their use, including the development and deployment of low carbon alternatives" [Paragraph 2.3.10].*

7.4 2024 EN-2 states:

*"The majority of new generating capacity will need to be low carbon. But new unabated natural gas generating capacity will also be needed during the transition to net zero. This will ensure that the system remains reliable and affordable" [Paragraph 1.1.2].*

7.5 The Secretary of State notes that the 2022 British Energy Security Strategy recognises the importance of addressing our underlying vulnerability to international energy prices by reducing our dependence on imported oil and gas, improving energy efficiency, remaining open minded about our onshore reserves including shale gas, and accelerating deployment of renewables, nuclear, hydrogen, CCUS, and related network infrastructure, so as to ensure a domestic supply of clean, affordable, and secure power as we transition to net zero. The Secretary of State notes the Climate Change Act 2008 sets the legal binding target of GHG emission reductions in the UK of at least 100% by 2050.

7.6 The Secretary of State has also had regard to the updated National Planning Policy Framework from February 2025. The Clean Power 2030 Action Plan ("CP2030") was published on 13 December 2024 and sets out a pathway to a clean power system. The Secretary of State had regard to these publications and finds that there is nothing contained within them which would lead him to reach a different decision on the Application.

## **8 PUBLIC SECTOR EQUALITY DUTY**

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; gender<sup>1[66]</sup>; pregnancy and maternity; religion and belief; race; sex and sexual orientation.) 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 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 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 Application. The Secretary of State considers that the grant of a consent in respect of the 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, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting a variation to a section 36 Consent.

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

## **11 SECRETARY OF STATE'S DECISION ON THE APPLICATION**

11.1 The Secretary of State has considered the planning balance and has weighed the benefits of the Application against the harms associated with it. The Secretary of State notes that no significant environmental effects and other impacts have been identified in relation to the Application. The Secretary of State therefore considers that the 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 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. In conclusion,

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1 In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

the Secretary of State considers that the ongoing need for the Application is established and that granting the requested variations would not be incompatible with the amended Climate Change Act 2008 nor the 2024 National Policy Statements, The CP2030 and the National Planning Policy Framework February 2025. On balance, the Secretary of State concludes that the benefits of the Application outweigh the harms. The Secretary of State, having regard to all relevant matters, has decided to make a variation to the Section 36 Consent pursuant to section 36C of the Act. The section 36 consent as varied is provided with this decision letter and is subject to the conditions set out in the varied consent.

11.2 The Secretary of State also considers the planning conditions, as revised, form a sufficient basis on which the Application can proceed. However, the Secretary of State rejects the Applicant's request to remove the following condition:

- to delete Condition 3 'Time Limits' of the consent to reflect that the development commencement has been undertaken in accordance with Condition 3 via the construction and operation of the OCGT prior to 31 October 2020.

11.3 The retention of this condition prevents unintended or unforeseen consequences that the removal of the Condition could have, and allows the record of this condition to be tracked if the Applicant were to submit future variation applications. The information provided as part of this Variation Application has not demonstrated that the deletion of this condition provides any particular value or benefit.

11.4 The Secretary of State has therefore decided to make a direction under section 90(2ZA) of the Town and Country Planning Act 1990 to vary the Section 90 Direction on the basis of the conditions specified in the Section 36 Consent to that direction.

11.5 I accordingly enclose the Secretary of State's variation of consent under section 36C of the Act and a varied direction under section 90(2ZA) of the Town and Country Planning Act 1990.

## **12 GENERAL GUIDANCE**

12.1 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. Any such application must be made within 30 days of the decision being made. Parties seeking further information as to how to proceed, including the relevant time limits for making an application, should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

12.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than sections 36 and 36C of, and Schedule 8 to, the Act and section 90 of the Town and Country Planning Act 1990.

Yours sincerely,

**John Wheadon**

**Head of Energy Infrastructure Planning Delivery & Innovation**