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BY EMAIL ONLY:
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For the attention of Gareth Leigh

Our ref: PM08/JB13/47016.3/MCGEA

Your ref: EN010092

12 January 2022

When telephoning please ask for: Julian Boswall

Dear Mr Leigh,

Planning Act 2008

Application by Thurrock Power Limited for an Order Granting Development Consent for the Thurrock Flexible Generation Plant project

APPLICANT'S RESPONSE TO REQUESTS FOR FURTHER INFORMATION DATED 21 DECEMBER AND 23 DECEMBER 2021.

This letter sets out the Applicant's response to the two requests for further information issued by the Secretary of State for Business, Energy and Industrial Strategy on 21 and 23 December 2021.

1 UPDATE ON ACCESS RIGHTS ACQUISITION DISCUSSION WITH PORT OF TILBURY LONDON LIMITED AND RWE GENERATION UK PLC

- 1.1 The Thurrock Flexible Generation Plant Development Consent order examination closed on 16 August 2021. At that date, there remained outstanding objections to the draft order submitted by Port of Tilbury London Limited ("PoTLL") and RWE Generation UK Plc ("RWE"). The Secretary of State has requested an update on the status of negotiations to voluntarily acquire access rights over land held by PoTLL and RWE. The Applicant is pleased to advise that these negotiations have been successfully concluded, and that suitable voluntary agreements have been completed on 12 January 2022.
- 1.2 As agreement has now been reached, and as agreed with PoTLL and RWE, the Applicant is accordingly now requesting that the powers rendered unnecessary within the draft DCO are not included by the Secretary of State in any Order granted. A separate letter setting out the DCO changes requested, the terms of which have been agreed with RWE and PoTLL is submitted along with this response.
- 1.3 In summary changes are sought to:
 - (a) remove any application of compulsory acquisition and temporary possession powers to PoTLL or RWE's land;

- (b) remove the application of powers to compulsorily undertake street works from streets within the ownership or control of PoTLL or RWE; and
- (c) delete Work Nos 10 (the causeway) and 11 (the changes to the flood defence wall to install a gate to access the causeway), Work No.12 (b) (access to the causeway) and the section of Work No. 12(a) needed exclusively to access Work Nos 10, 11 and 12(b).

- 1.4 For the avoidance of doubt, development consent is still required and sought for the physical works to form new sections of access way and upgrade some access ways within PoTLL and RWE's land. In so far it is required, development consent to use the access route for the purposes of constructing, operating, maintaining and decommissioning the flexible generation station in accordance with the voluntary land rights is also still sought. The land rights required have been secured through the voluntary agreements.

2 REVISION OF DOCUMENTS

- 2.1 As set out in the request dated 21 December 2021 we attach an updated draft DCO with the further amendments sought included.

- 2.2 As the Secretary of State will be aware, the Examining Authority requested the submission of various plans and documents which would need to be amended should the access route for abnormal indivisible loads be changed and the causeway removed. Many of the changes necessary to provide updated documents for certification incorporating the DCO change are accordingly already in the process. Rather than re-submit those along with this letter, the Applicant has listed these and would request that the following versions of each item form the basis for the certified plans and documents:

- (a) The location and order limits plans (REP7-052);
- (b) The Works plans (REP7-054);
- (c) The Rule 17 ES documents and outline plans:
 - (i) REP7-067 A6.2.2 Environmental Statement Volume 2 - Chapter 2: Project Description - Causeway removal
 - (ii) REP7-069 A6.5.1 Environmental Statement Volume 5 - Chapter 31: Summary of Inter-Related Effects - Causeway removal
 - (iii) REP7-071 A6.5.2 Environmental Statement Volume 5 - Chapter 32: Summary of Cumulative Effects - Causeway removal
 - (iv) REP7-073 A6.5.3 - Environmental Statement Volume 5 -Chapter 33: Summary of Further Mitigation, Residual Effects and Monitoring - Causeway removal
 - (v) REP7-075 A6.6.1 Environmental Statement Volume 6 - Appendix 2.1: Register of Mitigation, Enhancement and Monitoring Commitments - Causeway removal
 - (vi) REP7-077 A6.6.11Environmental Statement Volume 6 - Appendix 9.3: Biodiversity Net Gain Assessment - Causeway removal
 - (vii) REP7-081 A8.4 Design Principles Statement - Causeway removal
 - (viii) REP7-083 A8.6 Outline Code of Construction Practice - Causeway removal
 - (ix) REP7-085 A8.7 Outline Ecological Management Plan - Causeway removal

- (x) REP7-087 A8.8 Outline Construction Traffic Management Plan - Causeway removal
- (d) REP7-089 Explanatory Memorandum - Causeway removal
- (e) REP7-091 Statement of Reasons - Causeway removal

2.3 The exceptions from this are the land plans and Book of Reference. We do not have suitable revisions of those to submit at this time and respectfully request that, should the DCO be made as sought, these are directed to be submitted for certification under the amendment necessary to align with the DCO as made. As set out in the change request letter we suggest that the Rule 17 Land Special Category Land and Crown Land Plans (REP7-053) and Book of Reference (REP7-063) should be directed to be amended before certification in order to:

- (a) On the lands plans: remove the colouring from the plots in the ownership of PoTLL and RWE; and
- (b) In the Book of Reference: delete the plots in the ownership of PoTLL and RWE.

In both cases (a) and (b) and with reference to the Rule 17 revision of the Land Special Category Land and Crown Land plans (REP7-053) and Book of Reference (REP7-063), the plots concerned are:

- (i) PoTLL: 01/04, 01/33, 01/35, 01/36, 05/01, 05/02, 05/03, 05/04 and 05/07;
- (ii) RWE: 01/04, 01/11, 01/19, 01/20, 01/21, 01/22, 01/28, 01/30, 01/31, 01/32, 01/34, 01/37, 04/01, 04/03 and 04/05; and
- (iii) for the avoidance of doubt, the following further RWE plots already deleted from the Rule 17 revisions but which are shown in the deadline 7 submissions are also requested to be omitted: being the southern portion of plot 04/01 and all of plot 04/02.

2.4 Plot 04/06, which is believed to be owned by RWE but for which title investigation work is ongoing, shall be retained in the land plans and book of reference but the application of compulsory powers will be subject to consent under the protective provisions.

3 DCO DRAFTING

Requirement 18(4) Causeway decommissioning plan

- 3.1 The Applicant notes that, further to the access agreement being concluded and as set out in the DCO change request submitted along with this letter, it is no longer seeking consent for the construction and operation of the causeway (Work No.10). As no consent is sought, the need for requirements 18 and 19 is removed and deletion of these has been requested. The Applicant, however, responds to the specific query below.
- 3.2 In response to the request for comment on the drafting of Requirement 18(4) proposed by PoTLL at deadline 8 requiring the causeway to be removed within 1 month of the approval of the decommissioning plan, the Applicant would strongly object to such an insertion. In accordance with the drafting of Requirement 19(3)(f), any decommissioning plan submitted must include a timetable for its implementation. The Applicant objects in principle to the imposition of a time period in the requirement which pre-empts the detail required in the plan to be approved.
- 3.3 Requirement 18 sets out that creation and use of an alternative access must be environmentally acceptable and have regard to any required assessment of habitats and species. As this could not arise until several years after construction, this would include the need to reassess the foreshore to ensure that no new impacts would arise there. Any time limit imposed would, as a matter of principle, need to be caveated to allow for any working restrictions imposed for ecological protection in any other

required consent. For example, if seasonal restrictions on working were imposed in the marine licence for the protection of over-wintering birds using the foreshore, the Applicant would not be able to comply with a deadline which would require working during that period.

- 3.4 The timetable required as part of the decommissioning plan will be drafted having regard to the conditions of the marine licence and river works licences, consultation with affected parties and the availability of the Applicant's specialist contractors. That timetable, upon which PoTLL amongst others would be consulted, is the appropriate control mechanism for securing the implementation of any decommissioning, not an arbitrary period imposed without knowledge or sight of any applicable licence conditions.
- 3.5 In any case, and while objecting to the imposition of a deadline in principle, the Applicant also considers that 1 month is an entirely inadequate period within which to carry out these works. Where such a time limit is imposed, the Applicant submits that it should be 6 months to allow for any ecological surveys which need to be carried out before commencement, procuring of specialist contractors and the carrying out of the works. This also reflects the period allowed for construction of the phase including the causeway in the ES which is specified as Q3 and Q4 of 2022 for single phase construction¹.

Requirements 18(4) and 19: Causeway decommissioning

- 3.6 As noted above the Applicant is requesting that these requirements are deleted.
- 3.7 The Applicant considers that decommissioning has a natural meaning in this case which does not need a more specific definition as the details of the works will be set out in the causeway decommissioning plan. That plan will be subject to consultation as specified, allowing affected parties to comment on the scope proposed.
- 3.8 The Applicant also notes that decommissioning of the causeway is described in the ES² as follows;
- "Decommissioning of the causeway would involve the removal of the security gate, concrete slabs and stone gabion foundations comprising the causeway structure. The permanent sea wall would be reinstated in place of the access gate. The mudflat area beneath the causeway and barge berthing pocket would refill through natural accretion. The stone from the causeway is likely to be repurposed for coastal defence works elsewhere and therefore likely to be removed by barge; whether by barge or road vehicle the transport requirements would be no greater than in construction. "
- 3.9 The Port of London Authority as the statutory harbour authority and landowner, and the MMO as the regulator for the required marine licence will both have to be satisfied with the detail of the decommissioning works and the condition the foreshore and river areas of the site would be returned to under separate regimes. The Environment Agency would also require to be satisfied with the reinstatement of the sea defence wall following the removal of the gate. The specific detail of these works will therefore require to be developed having regard to the need to satisfy all of these key stakeholders and regulators. The Applicant is accordingly reluctant to try and define this too precisely at this time without knowing what the requirements on the design would be.
- 3.10 Should the Secretary of State disagree and consider that a definition of decommissioning is required the Applicant would suggest:
- "Decommissioning in relation to the causeway means: the removal the causeway structure and any ancillary structure including the security gate all as constructed as Work No. 10, and, as agreed with

¹ REP7-019, ES project description, paragraph 3.1.8

² REP7-019, ES project description, paragraph 3.6.5

the Environment Agency, the removal of the gate installed in the sea defence wall as Work No.11 and reinstatement of that wall.”

4 PROPOSED GROSS (INSTALLED) ELECTRICITY GENERATING CAPACITY AND CCR

- 4.1 The letter of 23 December 2021 requested further information on the gross generating capacity and the CCR provision. The Applicant’s intention is to export up to 600 MW of electricity to the grid, with this being the ‘net rated output’ as described in Schedule 1 of the DCO and in the ES. At this stage in the procurement and technology development of the gas engines, their efficiency, exhaust energy recovery and internal plant electricity demand (‘parasitic load’) are not fixed precisely. The DCO includes flexibility in the number and configuration of the gas engines, within the ‘Rochdale envelope’ parameters assessed in the EIA. For these reasons it is the Applicant’s preference that the gas fired generating station is described/defined with reference to its net export capacity rather than gross generating capacity. However, if the Secretary of State does consider it is necessary to state a figure for the latter, “up to 620 MW gross (installed) electricity generating capacity” is suggested.
- 4.2 The Applicant is actively exploring decarbonisation options for the gas fired generating station, including the potential use of hydrogen/ammonia. Although it is possible that an initial Phase 1 of the development may be constructed with a gross electrical generating capacity below the 300 MW CCR threshold, it is the Applicant’s intention to follow CCR requirements or indeed to develop a hydrogen-led solution in line with the ‘decarbonisation ready’ consultation for the development as a whole, notwithstanding any phased construction.
- 4.3 The Applicant has stated in the ES that the first phase would be up to 299MW net and this could therefore exceed 300MW gross installed capacity and the CCR threshold. Notwithstanding this position the Applicant intends to produce a monitoring report for the development including this first phase. Requirements 23 and 24 on CCR and CCR monitoring report have therefore been worded accordingly and do not distinguish between development phases or take effect only when the 300 MW gross generating capacity threshold is met.
- 4.4 The reference to making a CCR report within three months of “full commissioning of Work no. 1A” in requirement 24(1)(a) should be read in this context, as indicating that this requirement applies from completion rather than the start of commissioning, but not indicating that it applies only when the full capacity of Work no. 1A is commissioned. The Applicant accepts that having regard to a phased development ‘full’ commissioning may be misinterpreted. If the Secretary of State considers that this should be clarified in the DCO, the Applicant would be content for Requirement 24(1)(a) to be reworded to read “*no later than three months from the date of **first** commercial operation of Work no. 1A (or any first phase thereof)*” in line with the wording in paragraph 8 of the CCR guidance.

5 OTHER OUTSTANDING DCO DRAFTING POINTS

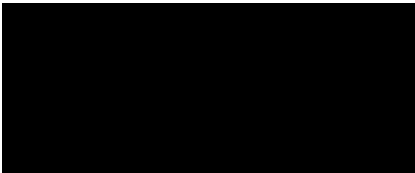
- 5.1 As noted, agreement has now been reached on the voluntary acquisition of access rights for the project, however, there remains a small number of drafting points not agreed between the Applicant and PoTLL. PoTLL submitted at the final deadline a marked up dDCO³ with numerous changes upon which the Applicant had no opportunity to respond during Examination. This section addresses those points.
- 5.2 The Applicant objected to the expanded definition of “Port” in Article 2. PoTLL is seeking to include future expansion within the definition and the Applicant does not accept that is reasonable. During discussion leading up to the agreement of the change request made at the same date as this letter, the Applicant agreed that the land owned by RWE which PoTLL had advised it was in the process of purchasing could be included and that change has been sought. The Applicant does not consider it to be fair or reasonable that it can become bound by the Protective Provisions in respect of unknown,

³ REP8-011

unidentified land at an uncertain point in the future simply because this acquired by PoTLL and which cannot, by its nature be in Port use at the time any order is made.

- 5.3 The Applicant notes that specialist legal submissions on this point conclude that: "it is not appropriate to extend the undertaking being protected in the DCO beyond its current operational land. It would not be proportionate to extend the protection speculatively to any future extension to that operational land, which PoTLL is looking to purchase on risk, fully aware of the proposals for this nationally significant infrastructure project ⁴.
- 5.4 In Article 8, PoTLL has inserted a new paragraph (9) requiring the Secretary of State to consult PoTLL before granting consent for any transfer. This point was covered extensively in the Examination, and the Applicant maintains its position that it is for the Secretary of State, having regard to the request before them, to determine who requires to be consulted; this is not a point that an interested party should prescribe.
- 5.5 In various articles⁵, PoTLL has inserted a provision that powers cannot be used in Plot 04/02 or in the River Thames. PoTLL does not own plot 04/02 and is not statutorily responsible for the River Thames. PoTLL is seeking to draft in relation to interests outside of its own. For example, the area for Work No 10 is owned by the Port of London Authority. The PLA, as set out in the statement of common ground⁶, is content with the drafting and is not seeking this additional, unnecessary wording regarding the river Thames. As is set out in the SoCG, the PLA is content regarding the approach to land interests in the river and its protection from application of compulsory acquisition. The PoTLL amendments are unnecessary, contrary to the agreement reached on the dDCO with the affected landowner and should not be included in any Order made.

Yours sincerely,



Partner
BURGES SALMON LLP

⁴ REP7-042 at section 3.7

⁵ Articles 17, 19, 22, 28 and 29

⁶ REP5-012