

HORIZON

NUCLEAR POWER



Wylfa Newydd Project

Examination Hearing Note on CPO Compensation

PINS Reference Number: EN010007

19 February 2019

Revision 1.0

Examination Deadline 6

Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

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1 Compensation for compulsory acquisition

1.1 Introduction

1.1.1 Following the recent suspension of the Wylfa Newydd DCO Project (“Project”), the purpose of this note is to set out how Horizon Nuclear Power Wylfa Limited’s proposal to include a new article in the draft DCO to satisfy the Examining Authority, Interested Parties and the Secretary of State that adequate funding will be available to enable compulsory acquisition following grant of the DCO.

1.2 Implications of the suspension

1.2.1 As the Examining Authority is aware, on 17 January 2019 Hitachi¹ and Horizon² announced that they were suspending the Project until satisfactory funding arrangements with the UK Government can be agreed. Both Hitachi and Horizon confirmed that they would continue to discuss a nuclear power programme with the UK Government and were keeping options open to resume the Project in future.

1.2.2 Horizon, therefore, would like to confirm that the Funding Statement, submitted with the DCO application [APP-033], is still valid and correct; although it is subject to an appropriate financing structure being agreed with the UK Government.

1.3 Proposal to address compensation concerns

1.3.1 Horizon notes that Department for Communities and Local Government’s (“DCLG”) *Planning Act 2008: Application Form Guidance*³ and *Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land*⁴ state that a DCO Promoter must provide sufficient information to demonstrate to the Secretary of State that, if it were to grant the compulsory acquisition request, adequate funding is likely to be available to enable the compulsory acquisition.

1.3.2 Horizon confirms that the Funding Statement meets the requirements in the DCLG Guidance and demonstrates that Horizon, through its parent company Hitachi, has the requisite funds for compulsory acquisition, as well as compensation claims in respect of blight.

1.3.3 However, Horizon acknowledges that the Examining Authority may have concerns about granting an order with compulsory acquisition powers where the funding arrangements for the Project have not yet been finalised.

¹ <http://www.hitachi.eu/en-gb/press/horizon-suspends-uk-nuclear-new-build-activities> and <http://www.hitachi.eu/en-gb/press/hitachi-announces-suspension-uk-nuclear-power-stations-construction-project-and-posting>

² https://www.horizonnuclearpower.com/files/downloads/News/2019/Press%20Release%20-%202017_01_19.pdf

³ At paragraph 26

⁴ At paragraphs 9, 17 and 18

- 1.3.4 In order to allay any concerns, Horizon proposes that a new article is inserted into the DCO which makes it clear that compulsory acquisition powers **cannot** be exercised unless, and until, Horizon has demonstrated that funding will be in place to cover any compensation claims.
- 1.3.5 The proposed article is set out below and Horizon proposes that this will be inserted into the updated draft DCO (Revision 5.0) submitted at Deadline 8 (25 March 2019):

[83] Guarantees in respect of payment of compensation

83.— (1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (3) in relation to any land within the Order Limits unless it has first put in place either—

(a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or

(b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State.

(2) The undertaker must provide the Secretary of State with such information as may be reasonably required relating to the interests in land affected by the exercise of powers under paragraph (3) for the Secretary of State to be able to determine the adequacy of the proposed guarantee or security including—

(a) the interests affected; and

(b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(3) The provisions are—

(a) Article 25 (Compulsory Acquisition of land);

(b) Article 27 (Compulsory Acquisition of rights);

(c) Article 29 (Private Rights);

(d) Article 31 (Acquisition of subsoil only);

(e) Article 32 (Acquisition of land limited to subsoil lying more than 9 meters beneath the surface);

(f) Article 34 (Rights under or over streets);

(g) Article 35 (Temporary use of land for carrying out the authorised development);

(h) Article 36 (Temporary use of land for maintaining the authorised development).

(4) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation

is payable and must be in such a form as to be capable of enforcement by such a person.

(5) Nothing in this article requires a guarantee or alternative form of security to be in place for more than [15] years after the date on which the relevant power is exercised.

- 1.3.6 This article has been based on corresponding articles in precedent DCOs such as Swansea Bay Tidal Generating Station Order 2015/1386, Eggborough Gas Fired Generating Station Order 2018/1020, Keuper Underground Gas Storage Facility Order 2017/433 and Hornsea One Offshore Wind Farm Order 2014/3331.
- 1.3.7 Horizon considers that this article, together with the Funding Statement, will provide the necessary certainty to satisfy the Examining Authority and the Secretary of State that funding of compulsory acquisition will be secured prior to any of the compulsory acquisition powers under the draft DCO being exercised.

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