



The Planning Inspectorate Yr Arolygiaeth Gynllunio

Application by Wrexham Power Ltd for the Wrexham Energy Centre (EN010055)

Rule 17 Questions

Issued on 9 January 2017

The Examining Authority's (ExA's) questions under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR) are principally addressed to the Applicant and to named Interested Parties (IPs). That being said, all IPs are welcome to respond to any question that is relevant to their position.

References in square brackets (such as [APP-007]) in the questions are references to documents in the Examination library.

An editable version of this table in Microsoft Word is available on request from the case team: please contact WrexhamEnergy@pins.gsi.gov.uk and include 'Wrexham Rule 17 Questions' in the subject line of your email.

Responses are due by Deadline 8, Thursday 12 January 2017. Comments on responses can be provided by New Deadline 9, Tuesday 17 January 2017.

Q No.	Question	Response sought from
1.	<p>Provision of a Secure Perimeter for Maelor Gasworks</p> <p>Wales and West Utilities (WWU) have notified the examination that their Maelor Gas Works facility is a critical national infrastructure (CNI) installation. As a consequence, sufficient provision must be made in the land requirement for the gas connection works at Maelor to enable an appropriately designed secure perimeter to the gasworks to be provided. The specification and provision of such a perimeter is part of the CNI regime. WWU continue to assert at Deadline 7 [REP7-006] that the precise extent of the land requirement for a CNI secure perimeter and its interface with the Applicant's land requirement has not yet been agreed. It states that the earliest possible date for the completion of a design review of CNI requirements will be on 21 February 2017, after the statutory deadline for the closure of this examination.</p> <p>It is important to note that the draft DCO accompanying the application does not provide for the gas connection works at Maelor, as these form part of the broader gas connection, which is associated development and so cannot be included in an Order in Wales. The draft DCO only provides for (and can only provide for) the compulsory acquisition or temporary possession of the necessary land for the gas connection. It follows that responses to this question need not be concerned with the specifics of a CNI design solution, or the siting and design of the proposed gas connection alignment. It is necessary is for there to be clarity that either there is sufficient land remaining in the control of WWU to implement any reasonably foreseeable CNI secure perimeter for the gas works, or if this cannot be assured, that an agreement or other provisions are in place to enable land proposed to be controlled by the Wrexham Energy Centre (WEC) undertaker to be used to provide for elements of the CNI secure perimeter, should this become necessary.</p> <p>In this context:</p> <ol style="list-style-type: none"> i. WWU is asked to identify by Deadline 8 whether there is any significant likelihood that land currently proposed to be acquired or used by the Applicant to form the gas connection would be required to provide any part of the anticipated secure perimeter. ii. If this is the case, it appears to the ExA that there are two main approaches that WWU could take, which would be as follows. <ul style="list-style-type: none"> • <u>Not to object to compulsory acquisition or temporary possession</u> in relation to individual specified plot(s), on the basis that the precise configuration of land required for security measures can be the subject of a subsequent agreement with the Applicant or of other provisions in the DCO. In such circumstances, WWU is 	<p>Applicant, Wales and West Utilities (WWU) and (if any responses place obligations upon them) Wrexham County Borough Council (WCBC)</p>

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	<p>requested to identify whether a commercial agreement can be made or a protective provision drafted to ensure that their position is addressed. If either approach is proposed, WWU are asked to engage with the Applicant to propose heads of terms and or the drafting for such a provision. It should be noted that the Applicant's Responses to ExA Comments on the Draft DCO at Deadline 7 [REP7-010] (at Q12) has flagged that WWU have had the opportunity to comment on draft protective provisions since 15 November 2016. It is now important that, should there be any outstanding concerns, this opportunity is taken and any proposed revisions to the Applicant's draft set out. If it is considered that protective provisions for this purpose might rely on the submission of later details to and approval by the relevant local planning authority, the view of WCBC should be sought and provided at Deadline 9.</p> <ul style="list-style-type: none"> • <u>To object to compulsory acquisition or temporary possession</u> in relation to individual specified plot(s), on the basis that the precise configuration of land required for security measures is unknown, but there is a significant likelihood that land sought by the applicant will be needed to construct security measures and that at this stage no reasonable alternatives are considered likely to exist. In such circumstances, the ExA will wish to know why a commercial agreement and or protective provisions will not provide sufficient security to WWU. <p>WWU is invited to identify which of the above two approaches in (ii) it prefers, or alternatively to set out a different approach that it favours, by Deadline 8. In all such responses, reasons for its preferred approach must be provided.</p> <p>iii. The Applicant is requested to respond to the following questions by Deadline 8.</p> <ul style="list-style-type: none"> • If the possible need to construct a secure perimeter for the WWU CNI might infringe land sought for the development or use of the gas connection, to the extent that there is not already sufficient provision in the draft DCO, how that can be provided for? • Provide its latest thinking on the possible need for a commercial agreement or the drafting of protective provisions for WWU to address this point. If there is any additional drafting that needs to be added to the DCO to provide for agreement of a later detailed plan for the secure perimeter, this should be proposed. If any such a provision might rely on the submission of later details to and approval by the relevant local planning authority, the view of WCBC should be sought and provided at Deadline 9. 	

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	<p>It should be taken into account that at this late stage of the examination, there is insufficient time to propose and examine an additional land requirement over and above or different to that which has already been sought as part of the application and meet relevant provisions of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (as amended).</p> <p>iv. The Applicant, WWU and (to the extent that any draft provisions propose to place duties upon it) WCBC are asked to comment on the answers provided to this question at Deadline 9.</p> <p>In responding to these questions, both the Applicant and WWU are requested to use their best endeavours to ensure that they bring the underlying matter to resolution by Deadline 9. If there are matters which remain outstanding at Deadline 9, this should be made clear in submissions for this deadline. In such circumstances, the ExA wishes to make clear that the parties should continue to press for the resolution following the closure of the examination, as if a report is submitted to the Secretary of State (SoS) on the basis of this matter being unresolved, it is anticipated that the SoS decision team will wish to be provided with further information early in the decision making period.</p>	
2.	<p>Effects on the Earthworm Energy Solar Farm</p> <p>The Earthworm Energy response to Deadline 7 [REP7-001] asserts in response to Q13 of my Rule 17 Questions published on 12 December 2016 that <i>'the solar array is currently under construction and should be complete and connected to the grid by 6.3.17'</i>.</p> <p>i. Earthworm Energy is asked to provide suitable documentary evidence that the construction of this facility has commenced, by Deadline 8.</p> <p>ii. The Applicant and WCBC as relevant local planning authority are asked to comment on the evidence provided at Deadline 9.</p>	Earthworm Energy, the Applicant, WCBC
3.	<p>Effects on the Earthworm Energy Solar Farm</p> <p>The Applicant's Responses to ExA Comments on the Draft DCO at Deadline 7 [REP7-010] (at Q4 & 13 – page 8) assert that (in summary terms) Earthworm Energy is <i>'not particularly concerned about the impact of the Gas</i></p>	Earthworm Energy, the Applicant

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	<p><i>Connection</i> and it appears to have used this as a foundation stone assumption in the preparation of its responses to the ExA's questions on this matter to date. The Applicant proceeds to assert that the ExA's exploration of these matters is <i>'pure assumption on the ExA's part, without foundation'</i>. With due respect to the Applicant, the ExA has investigated an apparent conflict between the application proposal and the consented solar farm based on its experience of the consenting and operation of energy generating facilities more broadly and has taken into account information included in the application (the Land Plans) and its observations during the accompanied site inspection. It remains apparent that the acquisition of land for the un-deviated gas connection alignment might have adverse effects on the development and or operation of a solar farm and the ExA is not clear that it has sufficient information about or understands the consequences sufficiently so as to justify a recommendation for compulsory acquisition. Nor is it clear that relevant mitigation for those effects has been identified and secured in the draft DCO.</p> <p>i. Whilst it is noted that Earthworm Energy is seeking and currently anticipate that the proposed deviated gas connection alignment would be consented and constructed, for the purposes of this examination this outcome is not within the scope of the application made to the ExA and so cannot be assumed¹. On that basis, Earthworm Energy is requested to document the prospective effects of the construction of the un-deviated gas connection alignment as shown in the latest version of the Land Plans [REP7-013] on the development of the solar farm and on what (subject to responses to Question 2 above) might be an operational solar farm at the time that the WEC seeks to exercise its proposed compulsory acquisition and / or temporary possession powers. Please provide suitable documentary evidence to support each asserted effect by Deadline 8.</p> <p>ii. If alternatively Earthworm Energy is not concerned about the possibility that the un-deviated gas connection alignment might continue to pass through its facility, this should be made clear by Deadline 8.</p> <p>iii. The Applicant is asked to comment on the evidence provided at Deadline 9.</p>	
4.	<p>Effects on the Earthworm Energy Solar Farm: Protective Provisions</p> <p>In its responses to ExA Comments on the Draft DCO at Deadline 7 [REP7-001] Qs 14 - 20, Earthworm Energy has identified a range of concerns with the proposed protective provisions for a solar farm undertaker [AS-006]. Taking into account the increased likelihood that, if the DCO were to be granted, the Wrexham Energy Centre</p>	<p>Earthworm Energy, the Applicant, WCBC</p>

¹ A separate application to Wrexham County Borough Council will be required to seek planning permission for the proposed diversionary route.

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	<p>undertaker would be engaging with an operational solar farm, subject to the conditions of its own consent(s) in relation to matters such as the siting and appearance of apparatus, decommissioning and re-commissioning works and to its own requirements in terms of ensuring that works to apparatus are conducted by appropriately trained and qualified personnel, the Applicant and Earthworm Energy are requested to engage together in the revision of the proposed protective provisions and particularly to address the following:</p> <ul style="list-style-type: none"> i. the effects of the removal of solar farm apparatus on the operability and productivity of the remaining solar farm and how these may reasonably be mitigated; ii. the reasonable duration of any notice periods to enter land and to remove and or reinstate operational solar farm apparatus; iii. the need to address conditions in the solar farm consent in relation to the removal, reinstatement and/or re-siting of apparatus and to provide a clearly operable process for removal and reinstatement (with reference to the views of WCBC on the extant planning permission); and iv. whether there are any circumstances in which the Wrexham Energy Centre undertaker could reasonably undertake removal and reinstatement works itself? v. More generally, the Applicant and Earthworm Energy are requested to consider the application of the proposed protective provisions [AS-006] in circumstances where there could be transfer of undertaking of the solar farm and / or a variation of conditions or replacement of the planning permission under which the solar farm is to be constructed or operated. The current drafting is not fully resolved on these possible circumstances, for example, because the definitions of “planning permission” and of “the Solar Operator” are both linked to a specific planning permission granted by WCBC, as it stood on a particular day. <p>The Applicant and Earthworm Energy are strongly encouraged to provide an agreed revised draft of protective provisions to develop and replace [AS-006] in the light of current information by Deadline 8 and, to the extent that this is not possible, to provide their own alternative drafts and statements of agreed and outstanding positions by Deadline 9.</p>	

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5.	<p>Crown Consent</p> <p>In its response to the ExA's Rule 17 Questions of 12 December 2016 [REP7-009] Question 7, the Applicant sets out tables outlining the latest position on Crown, statutory undertaker and other special consents, correct at Deadline 7. On page 56, in relation to Table 3 (re Crown interests), the response quotes from the letter from the Welsh Government dated 26 July 2016 as follows:</p> <p><i>"...the land being the subject of the Development Consent Order was registered to The Welsh Ministers in error and no application has been made by the correct owner to register the land in their name. I understand discussions have been taken place between yourselves and Jacquelyn Rees in Welsh Government and our consent is still required but <u>we limit our consent to the extent that we have an interest in land which was incorrectly registered.</u>"</i> <small>(emphasis added)</small></p> <p>With regard to plots purported to belong to Mr Owen, but erroneously registered as owned by the Welsh Ministers, this position is clear and is understood by the ExA. However in relation to other land in Table 3 to Question 7 [REP7-009] required for access (SAT5, 6 and 7) the Book of Reference indicates that the plots are owned by WWU (not the Welsh Ministers, who are listed as the owners of the other Table 3 plots), and the Welsh Ministers are listed as having a Category 2 interest. The Crown consent obtained so far does not seem to cover these plots. On the face of the information to hand, s135(2) PA2008 would appear to apply to them?</p> <ol style="list-style-type: none"> i. If this is another instance of erroneous registration, the Applicant is requested to confirm this and secure Welsh Ministers' confirmation that the limitation on their consent also applies to this land, for the same reason as it is understood to apply to the Owen land. ii. Alternatively, if the Crown interest in this land is not an erroneous registration, then the Applicant is requested to confirm this and to confirm that the interests lie within the scope of the Crown consent or alternatively to explain why Crown consent cannot be provided at this time. <p>These are factual matters on which there is no particular need for comment by other interested parties, provided the Applicant engages and undertakes due diligence with Welsh Ministers and WWU in responding to this question. A single response at Deadline 9 which evidences such engagement and diligence will be sufficient.</p>	<p>The Applicant in liaison with the Welsh Ministers and WWU</p>

