

The Wrexham Gas Fired Generating Station Order

18.1 The Applicant's response to representations made at Deadline 8

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Examination deadline 9

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Compiled for Wrexham Power Limited by:

Savills
Wessex House
Wimborne
Dorset
BH21 1PB

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1. Introduction

OVERVIEW OF THE SCHEME AND THE DCO APPLICATION

- 1.1. Wrexham Power Limited (WPL or '*the Applicant*') has applied to the Secretary of State for a Development Consent Order (DCO) under the Planning Act 2008 (PA 2008). The application for the proposed Wrexham Gas Fired Generating Station Order (*the Order*) is for powers to construct, operate and maintain the Power Station Complex Site on land at Bryn Lane on Wrexham Industrial Estate (WIE) in the County and Borough of Wrexham. The Order would also authorise the Applicant to compulsorily acquire land rights to construct, operate and maintain the Gas Connection.
- 1.2. Unless defined in this document, the terms used in this document have the same meaning as in the *Glossary* submitted with the Application (Examination Library Reference APP-156).
- 1.3. WPL is a joint venture company established by St. Modwen Properties V Sarl and Glenfinnan Properties. Both companies have an extensive background in the development and economic regeneration of sites throughout the UK, including experience in the energy sector.
- 1.4. The Power Station Complex Site constitutes a Nationally Significant Infrastructure Project (NSIP) by virtue of section 14(1)(a) and section 15 of the PA 2008, which includes within the definition of an NSIP any onshore generating station in England or Wales of more than 50 megawatts capacity. Under section 31 of the PA 2008 a DCO is required for development to the extent that the development is, or forms part of, an NSIP. Under section 37 of the PA 2008, this can only be granted if an application is made for it to the relevant Secretary of State – in this case, the Secretary of State for Business, Energy and Industrial Strategy.
- 1.5. The Gas Connection element of the Scheme has been consented separately under the Town and County Planning Act 1990 by means of a planning application granted by the local planning authority, Wrexham County Borough Council (WCBC or '*the Council*'), on 5 September 2016. However, powers of compulsory acquisition over the land required for the Gas Connection are being sought as part of the Application. The Environmental Statement (ES) that accompanies the Application has assessed both the Power Station Complex Site and the Gas Connection together pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. In addition, the ES has cumulatively assessed other proposed developments including the Electrical Connection required for the WEC, as agreed with WCBC.

1.6. The Scheme comprises:

- a combined cycle gas turbine (CCGT) power station (the '*Power Station Complex*') (work numbered 1 in Schedule 1 to the Order) which would be fuelled by natural gas and would have a gross rated electrical output of up to 299 megawatts (MWe);
 - temporary and permanent Laydown Areas (works numbered 2A and 2B respectively in Schedule 1 to the Order);
 - surface water drainage works (work numbered 3 in Schedule 1 to the Order);
 - the landscape and ecological mitigation works (work numbered 4 in Schedule 1 to the Order); and
 - the alteration and use of the Kingmoor Park Access Road from Bryn Lane (work numbered 5 in Schedule 1 to the Order)
- (together identified as the '*Power Station Complex Site*'); and
- the Gas Pipeline and an Above Ground Installation (AGI) (the '*Gas Connection*').

1.7. The Power Station Complex will occupy a site known as Kingmoor Park South, on the north-eastern side of the WIE, adjacent to Bryn Lane and to the north of a large logistics warehouse and distribution centre operated by XPO Logistics. The Gas Connection Route is approximately 3.5km in length and would largely cross agricultural land, connecting to the AGI Site adjacent to the existing Maelor Gas Works to the south of the WIE.

1.8. The Electrical Connection is not part of the Application, but will be required for the export of electricity.

1.9. An updated *Grid Connection Statement* submitted by WPL in June 2016 (Examination Library Reference OD-006) confirms that the distribution network operator, SPEN, has made a connection offer to the Applicant to export electricity into SPEN's 132kV network via underground cables from the Power Station Complex Site to the Legacy substation south-west of Wrexham. No new overhead lines are required for the export of electricity from the Scheme.

1.10. The detailed specification of the 132-kV underground connection will be determined at a later date by SPEN in its capacity as the statutory undertaker for electrical infrastructure in the area. Any works associated with the underground connection will be consented through the appropriate lawful consenting regime and will be the responsibility of SPEN.

PURPOSE OF THIS STATEMENT

- 1.11. This statement provides the Applicant's response to representations made to the ExA for Deadline 8 of the examination. Responses are made in the order set out by the Examining Authority (ExA) in the Examination Library on its project website¹. Where possible, the Applicant's comments cross-refer to earlier submissions in order to avoid repetition.

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010055/EN010055-000937-Examination%20Library.pdf>

2. Applicant's responses to Deadline 8 representations

THE APPLICANT'S COMMENTS ON WALES AND WEST UTILITIES' RESPONSE TO R17Q NO.1

Wales and West Utilities Response to R17QNO.1 submitted at Deadline 8 [REP8-003]

- 2.1. The Applicant notes that WWU has confirmed that it will not object to the compulsory acquisition or temporary possession on the basis that, and subject to, WWU and the Applicant agreeing both a commercial lease agreement and protective provisions.
- 2.2. The Applicant therefore maintains its position that the land and new rights included in the draft Order can be acquired without serious detriment to WWU's undertaking and the tests set out in sections 127(3)(a), 127(6)(a) and 138(4) of the Planning Act 2008 have been satisfied.
- 2.3. The Applicant notes that WWU requires a 4m clearance zone outside of the proposed line of the secure perimeter fence required for operation of the surveillance equipment. The Applicant has therefore amended the definition of "specified work" in the draft Order submitted for Deadline 9 to refer to any works within 4m of any security infrastructure belonging to or maintained by WWU.
- 2.4. The Applicant is in discussions with WWU's solicitors but it has not been possible to agree the form of the protective provisions for Deadline 9. The Applicant will update the Secretary of State as soon as the protective provisions have been agreed.

THE APPLICANT'S COMMENTS ON EARTHWORM ENERGY'S RESPONSE TO R17Q NO.1 AND NO.2

- 2.5. The Applicant notes that Earthworm Energy has not provided a response to questions 2 or 3 of the Examining Authority's Rule 17 Letter dated 9 January 2016.
- 2.6. The Applicant therefore submits that there is no evidence before the Examination relating to the impact of the compulsory acquisition powers for the Gas Connection on the solar farm and no evidence to suggest that any losses incurred during construction of the Gas Connection cannot be adequately compensated.
- 2.7. Any assumptions that the compulsory acquisition powers will result in the solar farm being unviable are therefore without evidential basis. Indeed, Earthworm Energy confirmed in its Deadline 7 submission [REP7-001] that it had commenced construction work and therefore demonstrated that any financing risk as a result of the Gas Connection seeking compulsory acquisition powers has not materialised.

- 2.8. The Applicant is currently negotiating the terms with Mr Owen for a voluntary agreement for a diversion of the Gas Connection; however, an agreement has not yet been entered into.
- 2.9. Accordingly, the need and justification of compulsory acquisition powers over plots GC12 (part), GC12A and GC12B, being the plots in which Earthworm Energy has an interest, remains.
- 2.10. For the reasons set out in a letter from the Applicant's solicitors dated 7 December 2016 [AS-006], compulsory acquisition powers over plots GC12 (part), GC12A and GC12B are necessary to enable the Scheme to proceed without hindrance. The land and rights over the Order land as shown on the Land Plans [Revision 5 to be submitted for Deadline 9] to be acquired are reasonable, necessary and proportionate. As previously stated in the Applicant's Response to Rule 17 letter dated 12 December 2016 [REP7-009] the amount of electricity generation from the Wrexham Energy Centre means it qualifies as a NSIP, unlike the solar farm, which means the Secretary of State must determine the Applicant's DCO Application in accordance with National Policy Statements EN-1 and EN-2 (section 104(3) of the Planning Act 2008). EN-1 and EN-2 recognise the need for fossil fuel generation (see paragraph 3.3.11 of EN-1 for example), whilst National Policy Statements EN-1 and EN-3 (for renewable energy) do not cover, or apply to, solar generation (see paragraph 1.8.1 of EN-3). Therefore, the Examining Authority and the Secretary of State must weigh the benefits of the Wrexham Energy Centre NSIP in delivering the policies set out in EN-1 and EN-3 unhindered against the solar farm development (and the fact that the two can co-exist). There is therefore a compelling case in the public interest for the land and rights over land to be acquired compulsorily so that the Scheme can be delivered.
- 2.11. In the event that a voluntary agreement with Mr Owen is entered into for the diversion of the Gas Connection Route, compulsory acquisition powers are still required over the land in which Earthworm Energy has an interest. This is to ensure the Scheme can be delivered in the event that planning permission is not granted for the proposed Gas Connection Route diversion, or if Mr Owen fails to comply with the terms of the voluntary agreement for the diversion. In such circumstances the Applicant would not be able to construct the Gas Connection under the voluntary agreement and the Applicant would need to exercise its compulsory acquisition powers.

THE APPLICANT'S ADDITIONAL RESPONSE TO R17Q NO.4

The Applicant and Earthworm Energy are requested to engage together in the revision of the proposed protective provisions and particularly to address the following:

- 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.

2.12. The Applicant has been trying to liaise with Earthworm Energy in respect of the form of protective provisions to be included in the draft Order including sending Earthworm Energy a copy of the amended protected provisions which are to be submitted at Deadline 9. Unfortunately, the Applicant has not received any response from Earthworm Energy other than confirmation that the latest draft of the protective provisions will be sent to their lawyers.

2.13. As referred to in its Deadline 8 submission [REP8-006], the Applicant has made a number of amendments to the protective provisions included in the draft Order submitted for Deadline 9 to address some of the concerns raised by Earthworm Energy in its Deadline 7 submission [REP7-001], for example the notice periods have been extended from 28 days to 56 days which is the same that has been agreed for National Grid's critical national infrastructure and demonstrates that the Applicant is being reasonable.

2.14. In the absence of any evidence being submitted by Earthworm Energy to the contrary, the Applicant maintains its position that the Gas Connection and the solar farm can coexist. The Applicant considers that the draft protective provisions included in the draft Order submitted for Deadline 9 are sufficient to protect the Solar Operator's apparatus.

THE APPLICANT'S COMMENTS ON MRS HARBER'S SUBMISSION [REP8-004]

Mrs Harber has submitted a copy of an article on the BBC website regarding the refusal of an environmental permit for a proposed waste treatment centre in Caerphilly.

- 2.15. The Applicant notes that no commentary regarding the relevance of this news article to the Application has been provided.
- 2.16. The Applicant notes that the article relates to an environmental permit application and not to a planning application. As the Examining Authority is aware, under National Policy Statement EN-1, the Secretary of State should **not** refuse consent on the basis of pollution impacts unless it has good reason to believe that any relevant necessary operational pollution permits or licences or other consents will not be subsequently granted (paragraph 4.10.8).
- 2.17. There is no evidence before the Examination that would indicate that Natural Resources Wales (NRW) would not grant the necessary environmental permit for the Wrexham Energy Centre. NRW was given plenty of opportunity during the Examination to raise any concerns and has not done so; indeed, they have been supportive of the DCO Application.
- 2.18. In addition, given the subject matter of the two applications is different - the environmental permit application was for a waste treatment facility, whilst the DCO Application for Wrexham Energy Centre is for a gas fired CCGT generating station - so the two processes that require regulating are different and not in any way comparable.
- 2.19. Accordingly, the Applicant considers that the article is not relevant to this Examination and that no weight should be attached to it given no explanation for its submission has been given.
- 2.20. The Applicant therefore does not intend to respond any further.