



Department for  
Business, Energy  
& Industrial Strategy

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18 July 2017

Dear Sirs

## **PLANNING ACT 2008**

### **APPLICATION FOR THE WREXHAM GAS FIRED GENERATING STATION ORDER**

#### **I. Introduction**

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to advise you that consideration has been given to the report dated 18 April 2017 of the Examining Authority (“the ExA”), Rynd Smith, who conducted an examination into the application (“the Application”) submitted on 18 March 2016 by Wrexham Power Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Wrexham Energy Centre (“the Development”).

1.2 The Application was accepted for examination on 13 April 2016. The examination began on 19 July 2016 and was completed on 19 January 2017.

1.3 The Order, as applied for, would grant development consent for the construction and operation of a Combined-Cycle Gas Turbine (“CCGT”) power station with a generating capacity of up to 299 MWe at Kingmoor Park South, part of the Wrexham Industrial Estate, near Wrexham in Wales.

1.4 The Development would comprise the following principal elements:

- CCGT Power Station complex, incorporating one gas turbine building with up to two gas turbines and one steam turbine building with one steam turbine, each connected to its own generator, up to two exhaust gas emission flue stacks, up to two heat recovery steam generator buildings with up to two heat recovery steam generators, an air cooled condenser, switchgear room, administrative/control building, heat

network interface building, 132kV switchyard, up to three transformer compounds with up to three transformers, other plant and site infrastructure;

- A temporary construction laydown area as required during construction;
- A permanent laydown area for use during construction and maintenance activities during operation;
- Work for the foul, surface water and trade effluent drainage for the Power Station Complex;
- Landscaping, habitat creation and ecological mitigation, including a cluster of three ponds (also to form part of the drainage strategy), a new woodland belt and bund, and a grassland area; and
- Alteration of the existing access road at Kingmoor Park, off the east side of Bryn Lane including levelling, regrading and resurfacing.

1.5 Additionally the Order would include land for and powers related to the gas connection and an Above Ground Installation (“AGI”) (taken together, the gas connection alignment) [ER 4.6.10].

1.6 Published alongside this letter on the Planning Inspectorate’s website<sup>1</sup> is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the ExA Report”). The ExA’s findings and conclusions are set out in Chapters 4 to 8 of the ExA Report, and the ExA’s summary of conclusions and recommendation is at Chapter 9.

## **II. Summary of the ExA’s Report and Recommendation**

2.1 The principal issues considered during the examination on which the ExA has reached conclusions on the case for development consent are set out in the ExA Report under the following broad headings:

- Legal and Policy Context, including the relevant National Policy Statements, European, Welsh and Local planning policy (Chapter 3);
- Finding and Conclusions in relation to policy and factual issues (Chapter 4) which includes consideration of: land and land use covering option development, the siting of and primary land requirement for the Proposed Development, gas and electricity connections; and other strategic projects and proposals; landscape and visual impacts; historic environment; design; biodiversity, ecology and natural environment; air quality and emissions, debris and waste; combined heat and power (CHP) readiness; water environment; risk and hazard management; noise and vibration; transportation and traffic; socio-economic effects; and other matters;

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/wales/wrexham-energy-centre/>

- Findings and Conclusions in relation to Habitats Regulations (Chapter 5);
- The Case for Development Consent/the Planning Balance (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and
- Draft Development Consent Order and Related Matters (Chapter 8).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA Report, the ExA recommends that the Order be made, as set out in Appendix D to the ExA Report [ER 9.1.5].

### **III. Summary of the Secretary of State’s Decision**

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is a statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (“2009 Regulations”).

### **IV. Secretary of State’s Consideration of the Application**

4.1 The Secretary of State has considered the ExA Report and all other material considerations, including the further representations received after the close of the ExA’s examination in response to BEIS’s consultation letters dated 8 May 2017<sup>2</sup> and 8 June 2017<sup>3</sup>. The Secretary of State’s consideration of the ExA Report and further representations is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report.

4.2 The Secretary of State has had regard to the Local Impact Report (“LIR”) as updated during the examination and submitted by Wrexham County Borough Council (“WCBC”) [ER 1.6 and ER 3.10], the Development Plan [ER 3.11], environmental information as defined in Regulation 2(1) of the 2009 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State’s decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes forty relevant representations were made by Welsh Government, statutory consultees, utility providers, WCBC, community councils, local residents and businesses located on Wrexham Industrial Estate [ER 4.2.1] and that oral submissions were also made during the examination and taken into account by the ExA.

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010055/EN010055-001728-Wrexham%20Energy%20Centre%20-BEIS%20Consultation%20Letter.pdf>

<sup>3</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010055/EN010055-001745-Wrexham%20Energy%20Centre%20-BEIS%20Second%20Consultation%20Letter.pdf>

Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of its conclusions and recommendations.

#### Electricity and Gas Connections

4.4 The Secretary of State understands that planning permission under the Town and Country Planning regime for the gas connection was granted by Wrexham County Borough Council on 5 September 2016 under reference P/2016/0358 [ER 4.7.11]. The land requirement for the gas connection relates to land required that is beyond the site sought to be developed for the generating station. This is land to provide for the construction and operation of a gas connection alignment between the generating station site and the existing gas transmission supply at Maelor Gasworks [ER 4.7.1]. However, the Order sought does not seek development consent for or powers to construct the connection alignment. It is limited to seeking powers to compulsorily acquire ("CA") and/or take temporary possession ("TP") of the land necessary for the connection alignment, together with supporting powers relating to matters such as access, survey, tree and hedgerow works [ER 4.7.2].

4.5 In respect of the electricity connection, the Secretary of State notes that SP Energy Networks' (as the Distribution Network Operator) connection offer is to connect the generating station to their distribution network via a new 13km, 132kV double circuit underground cable to the Legacy Grid Substation. This would mainly be on highway land within the Distribution Network Operator's existing permitted development rights. No land is therefore being sought by the Applicant outside the main application site and the Order does not contain any powers to acquire or possess land for an electricity connection as the Distribution Network Operator already has the powers to construct and operate a connection of the type currently proposed [ER 4.8.1].

#### Need for the Proposed Development

4.6 After having regard to the comments of the ExA set out in Chapter 3 (ER 3.3] of the ExA Report, and in particular the conclusions on the case for development consent in Chapter 4, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements ("NPS") EN-1 (the Overarching NPS for Energy), EN-2 (the NPS for Fossil Fuel Electricity Generating Infrastructure), EN-4 (the NPS for Gas Supply Infrastructure and Gas and Oil Pipelines) and that taken together, these NPSs set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant. For the reasons set out in paragraph 4.5 above, the Secretary of State agrees that EN-5 (the NPS for Electricity Networks Infrastructure) is not applicable to the ExA's examination of the Application [ER 3.3.12].

#### Carbon Capture Readiness (CCR)

4.7 As set out in EN-1 and EN-2, all commercial scale fossil fuel generating stations with a generating capacity of 300MW or more have to be 'Carbon Capture Ready'. Applicants

are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009<sup>4</sup> or any successor to it.

4.8 As the CCR requirements apply to power stations with a generating capacity of 300MW or more, the Secretary of State can confirm that the CCR requirements do not apply to this Development as it will operate at a gross rated electrical output of no more than 299MW. The Secretary of State is satisfied with the ExA's assessment of this particular issue, and is satisfied that the conclusions reached are in accordance with the requirements set out in the guidance [ER 4.5.22].

#### Combined Heat and Power (CHP)

4.9 EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been explored where the proposal is for a generating station without CHP. The Secretary of State notes that the Applicant's Planning Statement submitted with its application identifies the potential for CHP was a criterion used in site selection. Wrexham Industrial Estate was regarded as advantageous in offering a likely market for heat and the Applicant undertook an energy survey of 332 occupiers to test the demand for heat. It is noted that it has ensured that the Power Station Complex is 'CHP ready' by including a site for a future CHP facility from which heat would be distributed in the event that a heat network is developed, subject to market viability of heat distribution and sale proposals. A requirement (Requirement 16) included in the Order provides that CHP must be delivered if viable to do so in the future and also requires that CHP opportunities must be reviewed and delivered if a viable heat network is found [ER 4.16.3 – ER4.16.5].

4.10 The Secretary of State has considered the information provided by the Applicant, and is satisfied that CHP issues have been addressed adequately and meets the requirement on NPS EN-1. The Secretary of State agrees that the requirement in the Order will also ensure that viability testing for CHP network delivery is required to be carried out [ER 4.4.6].

## **V. Biodiversity and Habitats**

5.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") require the Secretary of State to consider whether the proposed Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site or European offshore marine site as defined in the Habitats Regulations and the Offshore Habitats Regulations. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternative or imperative reasons of overriding public interest apply.

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<sup>4</sup> Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43609/Carbon\\_capture\\_readiness\\_-\\_guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf)

5.2 The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. UK Government policy is to afford Ramsar sites in the United Kingdom the same protection as European sites.

5.3 Whilst the Development is not located within or adjacent to any European or Ramsar Site, the Applicant reported that the following sites are situated within a 15km radius:

- Midland Meres and Mosses Phase 1 Ramsar Site;
- Midland Meres and Mosses Phase 2 Ramsar Site.
- Fenns, Whixall, Bettisfield, Wem and Cadney Mosses Special Area of Conservation (SAC);
- Johnstown Newt Sites SAC;
- Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC;
- Berwyn a Mynddoedd De Clwyd/Berwyn and South Clwyd SAC; and
- West Midlands Mosses SAC.

5.4 It is possible that sites within this distance could be affected by changes to air quality, but upon undertaking an assessment, the Applicant concluded that significant effects to the sites features are unlikely. Emissions from Development are not predicted to exceed 1% of the critical load for each of the relevant site features and this was demonstrated for the Development alone and in combination with other plans and projects.

5.5 Disturbance to the features of the Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC was also highlighted as a possible effect. A section of the gas connection crosses the River Clwydedog so in-combination effects were considered. However, the Applicant concluded that any disturbance to the features would be avoided with use of Horizontal Direction Drilling.

5.6 Under the original proposals for the electricity grid connection, work would have been required along a stretch of the Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC. During the Examination the Applicant outlined a change to the route to the one originally submitted. The new route would be undergrounded under an existing road and would not directly affect the Afon Dyfrdwy a Llyn Tegid/River Dee and Bala Lake SAC. However, it is noted that a further, more detailed assessment will be required when the application for the grid connection is progressed.

5.7 Both NE and NRW agreed with the Applicant’s position on air emissions. With regards to in-combination effects, NRW stated that it had no outstanding concerns.

5.8 In conclusion, the Secretary of State is satisfied that the Development is not likely to have a significant effect on any European Site, or any other site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. The Secretary of State is also content that sufficient information has been

provided for the Secretary of State to determine that an AA under the Habitats Regulations is not required.

## **VI. Other Matters**

### Environmental Permit and other consents, licences and permits

6.1 The Secretary of State notes that the scheme will require an Environmental Permit (“EP”) from NRW to cover operational emissions from the proposed development. It also requires a number of other consents, licences and permits from NRW and other authorities to construct, operate and maintain the proposed development [ER 1.8]. Without prejudice to the exercise of discretion by other authorities, and excepting matters arising from the gas connection alignment at Pickhill Bridge Farm (which are further considered by the Secretary of State below), the ExA’s view is that none of the other consents, licences and permits indicate a significant barrier to the proposed development or provide a reason why the Secretary of State should not make the recommended Order [ER 8.7.3]. In the circumstances, the Secretary of State considers there are no reasons to believe the Environmental Permit (and the other consents required for the construction, operation and maintenance of the proposed development) will not be granted in due course.

## **VII. Consideration of Compulsory Acquisition and Related Further Representations**

7.1 The Secretary of State notes that some issues relating to Compulsory Acquisition (“CA”), Temporary Possession (“TP”) and/or protective provisions for statutory undertakers were unresolved at the close of the ExA’s examination. As a result, the ExA recommended that the Secretary of State might wish to further consult the relevant interested parties (i.e. the Applicant, Wales and West Utilities (“WWU”), SP Manweb plc/Scottish Power Energy Networks (“SPEN”), Mr Gerard Owen and Earthworm Energy Limited). The BEIS consultation letters to interested parties were issued on 8 May 2017 and 8 June 2017 and the outstanding issues and subsequent representations received by the Planning Inspectorate since the close of the ExA’s examination are considered further below. The representations received were:

- Pinsent Mason’s e-mail of 15 May 2017 on behalf of the Applicant with enclosed draft WWU protective provisions;
- Osborne Clarke’s e-mail of 15 May 2017 on behalf of WWU;
- Forge Property Consultant’s e-mail of 23 May 2017 on behalf of Mr GMO Owen;
- Earthworm Energy Limited’s e-mail of 24 May 2017;
- WWU’s letter of 24 May 2017;
- Pinsent Mason’s e-mail of 24 May 2017 enclosing a letter of 24 May 2017 on behalf of the Applicant and revised draft DCO (Revision 8, May 2017);
- Pinsent Mason’s e-mail of 24 May 2017 enclosing a comparison between amendments made to the draft DCO (Revision 8) and previous draft DCO (Revision 7);
- WWU’s e-mail of 15 June 2017 enclosing a letter of 15 June 2017; and

- Pinsent Mason's e-mail of 15 June 2017 enclosing a letter of 15 June 2017 on behalf of the Applicant.

7.2 Further late e-mail representations were also received from Osborne Clarke of 5 July 2017 enclosing a letter of 5 July 2017 on behalf of WWU and Pinsent Masons of 10 July 2017.

Wales and West Utilities("WWU") objection and proposed DCO Protective Provisions -Land plots at Maelor Gasworks [ER 7.6.18 – ER 7.6.21]

7.3 Although not objecting in principle, the Secretary of State notes that in order not to prejudice its ongoing operations and ability to provide a secure perimeter for its existing Maelor Gasworks site, WWU objected in respect of the CA of land, rights and TP at and surrounding the site, subject to negotiations on protective provisions (i.e. to be included in any Order that may be granted by the Secretary of State) and also a commercial lease agreement.

7.4 The Secretary of State also notes that whilst a final design review by WWU for its critical national infrastructure was not yet complete, it was content that this would not impinge on the intended Wrexham Power Lease area or AGI compound footprint. A 4m strip was identified adjacent to the boundary between the intended lease area and the existing Maelor Gasworks perimeters during the ExA's examination where measures to enable the operation of perimeter surveillance equipment may be required. On that basis it was understood by the ExA that the Applicant would prepare a commercial lease and protective provisions and that WWU would withdraw its objection to CA and TP.

7.5 The Applicant provided an updated Land Plan [REP9-006] in which the land subject to CA for the AGI is identical to the lease area shown on 'WWU PSUP Exclusion Zone' plan annexed to its written representation [REP8-003]. The Applicant also agreed to amend the definition of "specified works" to provide for the 4m surveillance strip within the lease area in Article 2(1) of the relevant protected provisions of its preferred draft Order submitted at examination Deadline 9.

7.6 However, it is noted that WWU did not confirm its agreement to the above change. Nor did it prove possible to agree the final form of protective provisions benefitting WWU before the end of the examination. As such, the statutory undertaker's objection was outstanding. For these reasons, the ExA suggested that the Secretary of State may wish to consider seeking from the Applicant: i) a final form of protective provisions in Schedule 9 Part 6 of the draft Order; ii) a definition of "specified works"; and iii) confirmation from the Applicant and WWU that the outstanding objection has been withdrawn.

7.7 The Secretary of State notes that the Applicant and WWU's representatives, Osborne Clarke, subsequently responded to BEIS's consultation letter confirming that protective provisions to protect WWU's interests have been agreed. However, WWU has also written separately to confirm the wording of the protective provisions have been agreed save for some amendments as a result of the Housing and Planning Act 2017 (since incorporated into the Applicant's revised DCO –see also paragraph 10.1 below). It has also confirmed that no material amendments to the previously presented plan and specification of works are envisaged and the works on the proposed security fence to encompass the 4 metre strip are proposed to start in January 2018. In respect of the commercial lease



agreement, its representation confirms that representatives have been appointed and are close to providing the Applicant with detailed Heads of Terms (subject to contract) for consideration. WWU's representation confirms that the outstanding objection can be treated as withdrawn once (i) the final agreed version of the protective provisions is circulated by the Applicant and ii) completion of the lease agreement has been completed, but that its objection remains in place until then. In view of the conflicting information, BEIS issued a further Consultation letter to the three parties on 8 June 2017 in order that they could provide confirmation of their current understanding of the position and in particular whether the outstanding objection had been withdrawn.

7.8 Representations received from the Applicant and WWU on 15 June 2017 confirm that the protective provisions (submitted on 24 May 2017 and included in the Order at Part 6 of Schedule 9) are agreed. WWU has also confirmed that in principle it is prepared to grant a lease (in respect of Plot AG/1) to the Applicant and withdraw its objection once the agreement has been entered into. The Applicant's view is that plot AG/1 can be compulsorily acquired and not replaced without serious detriment to the carrying on of WWU's undertaking. Although noting agreement between parties on Heads of Terms and costs have not yet been reached, the Secretary of State is content that the protective provisions agreed between the Applicant and WWU provide sufficient protection for WWU's apparatus, including the proposed security fence, and considers the conditions set out in sections 127(3)(a), 127(6)(a) and 138(4) of the Planning Act 2008 in respect of authorisation of the compulsory acquisition of WWU's land and new rights over its land are satisfied.

SP Manweb plc/SPEN Proposed Protective Provisions–Multiple land plots throughout the Order land [ER 7.6.30 –ER 7.6.32]

7.9 It is noted that SP Manweb plc/SPEN played no active role in the examination beyond its written representation of 11 July 2016 [REP1-021]. Whilst noting that its expectation at that time was of a positive conclusion on negotiations in relation to CA and TP, rights, a grid connection agreement for the application proposal, effects on installed apparatus and protective provisions, these matters had not been addressed in a final written submission or withdrawal of its representations. Although the representations are not considered by the ExA to amount to an objection to CA, confirmation was sought from the Applicant and SP Manweb plc/SPEN in BEIS's consultation letter that the protective provisions at Part 5 of Schedule 9 to the Applicant's preferred draft DCO were agreed.

7.10 No representation was received from SP Manweb plc/SPEN in response to BEIS's consultation letter. The Applicant's representation indicates that it chased for confirmation that the relevant protective provisions set out in Part 5 of Schedule 9 of the Order are agreed. It received a holding response that the correspondence had been referred to SP Manweb plc/SPEN's legal department with a view to responding within the BEIS deadline set. However, no substantive response has been received.

7.11 The Applicant's view is that the protective provisions in Part 5 of Schedule 9 of the Order provide sufficient protection for SP Manweb plc/SPEN and that the CA and TP powers sought can be carried out without serious detriment to the carrying out of its undertaking. It is noted that SP Manweb/SPEN's written representation of 11 July 2016 to the ExA during the examination states '*SP Energy Networks has helpfully been sent a copy of the proposed protective provisions. The powers detailed in the proposed protective provisions are referred to in Part 4 for the Protection of SP Energy Networks and whilst no*

*impediment has yet been identified, remain the subject of ongoing negotiation between SP Manweb and the applicant with both parties working together to reach agreement. A further update will be provided on behalf of SP Manweb to the ExA in due course'. The Secretary of State considers SP Manweb plc/SPEN has been given ample opportunity to raise any concerns on the draft protective provisions should it have chosen to do so and is satisfied the protective provisions included in the Order will protect the undertaker's interests.*

Consented Solar Farm and Land Plots at Pickhill Bridge Farm [ER 7.6.51 – ER 7.6.60, ER 8.5.3 – ER 8.5.10 & ER 8.7.1]

7.12 The Secretary of State notes that the proposed gas connection alignment passes across land owned by Mr Owen on which full planning permission had previously been granted to Earthworm Energy Ltd to develop and operate a solar farm. It was understood that the permission was in the process of being implemented and construction commenced shortly before the end of the examination. It was also understood that the Applicant, Mr Owen and Earthworm Energy Ltd were engaged in the preparation of a commercial agreement, under which a diversion could route the gas connection alignment away from the solar farm and negate the need to dismantle it (or part of it) should development consent be granted. This route realignment would require a further grant of planning permission pursuant to the Town and Country Planning Act 1990. In the circumstances, BEIS's consultation letter requested that the Applicant, Mr Owen and Earthworm Energy Limited provide an update on: i) construction of the consented Solar Farm; ii) the commercial agreement referred to above for the diversion of the gas connection (including confirmation by the Applicant that any commercial agreement in place for the realignment negated the need for the CA and TP powers sought at plots GC12,GC12A and GC12B); and iii) any further planning permission application made under the Town and Country Planning regime and, if so, its current status.

7.13 The representations received from the Applicant, Earthworm Energy and Mr Owen's representatives, Forge Property Consultants, confirm that the consented Solar Farm has now been constructed and commissioned. An option agreement with Mr Owen is in place for an easement for the gas connection along an alternative route avoiding the Solar Farm. The agreement includes a provision enabling that the Applicant may exercise its powers of CA and TP over Mr Owen's land if: i) he fails to comply with the terms of the option agreement; and/or ii) planning permission is not granted by the local planning authority for the diversion of the gas connection or is granted and challenged by a third party. It is noted that no planning permission application for the proposed diversion has been made yet by the Applicant and discussions are currently taking place as to whether an environmental impact assessment is required. The Applicant has indicated that for the above reasons CA and TP powers are still required over Mr Owen's land, that the tests for CA set out in legislation and guidance are met, and that the Solar Farm and gas connection can co-exist. It also points out that the Solar Operator (i.e. Earthworm Energy) commenced and completed the Solar Farm with full knowledge of the Applicant's proposals.

7.14 The Secretary of State notes the ExA considers that should an agreement be made and planning permission be granted for an alternative route, it may negate the need for CA and TP powers over Mr Owen's land. However, he notes the Applicant's preferred draft DCO and protective provisions for the Solar Operator provide that CA and TP powers would cease to apply to the Solar Farm site *'[i]f the undertaker (acting at its sole discretion) determines that it no longer requires the ability to carry out any specified work over the part*

*of the Order land subject to the planning permission*'. This provides for the continuation of CA and TP powers in circumstances where both a legal agreement and planning permission for that route have been granted. Whilst the ExA considers it unlikely that such powers would be exercised, the persistence of any unused and unnecessary powers would still burden the land and provide uncertainty to the Solar Farm Operator. He considers unnecessary powers would also not comply with the tests for CA and has recommended that the protective provisions be revised to allow the 'falling away' of CA and TP powers over the solar farm site should both a diversionary agreement be concluded and planning permission for the diversion route be granted. The Secretary of State is satisfied that such an approach is necessary and has included the ExA's suggested amendment in the Order.

#### Conclusion on CA and TP [ER 9.1.2 –ER 9.1.5]

7.15 Having considered the ExA's analysis of CA and TP including objections made during the examination and also the further representations received, in summary, the Secretary of State agrees that the proposed development for which land and rights are sought would be in accordance with national policy, as set out in the NPS, which also identify a national need for electricity generating capacity including capacity from gas combustion. He notes the ExA's view that there is a need to secure the land and rights required, and to construct the proposed development within a reasonable commercial timeframe, represent a significant public benefit. The private loss to those affected is mitigated through the choice of the application land, and the limitation to the minimum extent possible of the rights and interests proposed to be acquired. The Secretary of State is satisfied that the Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and with the exception of land at Pickhill Bridge Farm subject to the solar farm consent, there are no preferred alternatives. He is content that financial provisions to enable the CA would be available following the Order being made and a guarantee of its availability is included in the Order. The Secretary of State notes the ExA's view that the proposed interference with human rights of individuals would be for legitimate purposes that are justified, in the public interest and to a proportionate degree. In conclusion, the Secretary of State is satisfied there is a compelling case in the public interest for the CA powers sought (and as amended) and that the proposed development would comply with sections 122(2) and 122(3) of the Planning Act 2008.

### **VIII. General Considerations**

#### Equality Act 2010

8.1 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships<sup>5</sup>; pregnancy and maternity; religion and belief; and race. This matter has been

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<sup>5</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

#### Human Rights Act 1998

8.2 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and compulsory purchase powers. The Secretary of State notes the ExA concludes that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree [ER 9.1.2]. The Secretary of State agrees with the ExA's rationale for reaching its conclusion, as set out in ER 7.6.66 - ER 7.6.68, provides a justifiable basis for taking the view that any human rights as enacted into UK law by the Human Rights Act 1998 would not be violated by the grant of development consent.

#### Natural Environment and Rural Communities Act 2006

8.3 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 development consent.

8.4 The Secretary of State is of the view that the Examining Authority's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the development, the Secretary of State has had due regard to conserving biodiversity.

### **IX. Secretary of State's conclusions and decision**

9.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not believe that this is outweighed by the Development's potential adverse local impacts, as mitigated by the proposed terms of the Order.

9.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.1.5]. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the LIR submitted by Wrexham County Borough Council and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

## **X. Modifications to the Order by the Secretary of State**

10.1 As indicated in paragraph 7.8 above, revised protective provisions have been agreed between WWU and the Applicant and included in Part 6 of Schedule 9 to the DCO.

10.2 Amendments have also been made in light of changes to the Compulsory Purchase (Vesting Declarations) Act 1981 and the Compulsory Purchase Act 1965 brought in by the Housing and Planning Act 2016

### Other Drafting Changes

10.4 In addition to the above, the Secretary of State has made various changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

## **XI. Challenge to decision**

11.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

## **XII. Publicity for decision**

12.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

12.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

**Giles Scott**  
**Head of Energy Infrastructure Planning and Coal Liabilities**

## **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/Wales/Wrexham-Energy-Centre/>

**These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)**