



## The Millbrook Power (Gas Fired Power Station) Order

### Written Summary of the Applicant's Oral Case put at the Compulsory Acquisition Issue Specific Hearing – Submitted at Deadline 3

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## **WRITTEN SUMMARY OF MILLBROOK POWER LIMITED'S ("THE APPLICANT") ORAL CASE PUT AT THE COMPULSORY ACQUISITION ISSUE SPECIFIC HEARING – 3 MAY 2018**

### **1. INTRODUCTORY REMARKS**

- 1.1 The Issue Specific Hearing ("ISH") regarding compulsory acquisition ("CA") was held at 14:00 on 3 May 2018 at the Forest Centre, Station Road, Marston Moretaine, Bedfordshire, MK43 0PR.
- 1.2 The ISH took the form of running through items listed in the agenda published by the ExA on 24 April 2018 ("**the Agenda**"). The format of this note follows that of the Agenda. The Applicant's substantive oral submissions commenced at item 2 of the Agenda, therefore this note does not cover item 1 which was procedural and administrative in nature.

### **2. AGENDA ITEM 2 – INTRODUCTION OF THE PARTICIPATING PARTIES**

- 2.1 The ExA: - Planning Inspector, Jonathan Green.
- 2.2 The Applicant:
  - 2.2.1 Speaking on behalf of the Applicant: - Richard Griffiths (Partner at Pinsent Masons LLP) and Claire Brodrick (Senior Associate at Pinsent Masons LLP).
  - 2.2.2 Present from the Applicant: - David Ball (Drax Power, parent company of the Applicant), Nick Johnson (Stag Energy, project managers for the Applicant), Chris McKerrow (Stag Energy, project managers for the Applicant) and Collette King (Stag Energy, project managers for the Applicant).
  - 2.2.3 The Applicant's consultants and legal advisors:- Matthew Carpenter (Pinsent Masons LLP), Francesca Rowson (Senior Planner, Peter Brett Associates) and Steven Drennan (Carter Jonas, Land Agents for the Applicant)
- 2.3 The following parties participated in the ISH:
  - 2.3.1 Covanta Rookery South Limited ("**Covanta**"):- David Wood (Hogan Lovells International LLP).

### **3. AGENDA ITEM 3 – UPDATE ON DISCUSSIONS BETWEEN THE APPLICANT AND AFFECTED PERSONS**

- 3.1 The ExA stated that in accordance with the CA and temporary possession regime under the Planning Act 2008 (the "**PA 2008**") people interested in the land to which the CA and temporary possession request relates are known as "affected persons". It was noted that the only affected person present at the ISH was Covanta. It was noted that in order for CA powers to be authorised, the Secretary of State must be satisfied that the tests in s.122 PA 2008 have been met.
- 3.2 Claire Brodrick on behalf of the Applicant provided an update on discussions with affected persons by reference to the Land Plans [APP-009] which were put up on a screen in front of the ExA. The Land Plans were addressed on a plot by plot basis.
- 3.3 **Power Generation Plant**
- 3.4 **Plan 1** (drawing reference J0008128-101) Power Generation Plant Land Plan (Sheet 1 of 3) covering plots 1\_PGP to 7\_PGP.

- 3.5 Claire Brodrick confirmed that all of the land shown on Plan 1 is owned by O & H Limited. An Option Agreement was entered in to between the Applicant and O & H Limited in July 2014. The Option Agreement covers the freehold acquisition of the land coloured in pink; the grant of rights over the land coloured in blue and the temporary use of the land coloured in yellow. As set out in the Statement of Reasons (SoR) [APP-014], the Applicant has included CA powers over the land subject to the Option Agreement in order ensure that the Project is deliverable in the event that the agreement falls away or that further third party or unknown interests are subsequently uncovered. There is a provision in the Option Agreement which states that the Applicant cannot utilise any CA powers granted by the Order provided that O & H complies with the terms of the Option Agreement. The Applicant will not therefore need to use the CA powers over the Power Generation Plant plots unless absolutely necessary.
- 3.6 **Electrical Connection**
- 3.7 **Plan 2** (drawing reference J0008128-102) Electrical Connection Land Plan (Sheet 2 of 3) covering plots 1\_EC to 14\_EC.
- 3.8 Claire Brodrick confirmed that plots 1\_EC and 2\_EC are small plots which are owned by Mr. Moran. Temporary use powers are being sought over these two plots in order to facilitate the diversion of the existing 400KV overhead transmission line and the restringing of the new pylon. It is noted that the Book of Reference (BoR) [APP-016] identifies the land as being owned by both John Moran and Sheila Moran however the Applicant understands that the land is now owned solely by Mr. Moran.
- 3.9 Mr Moran submitted a written representation to the Examination at Deadline 2 [REP2-036]. However, discussions have continued and an offer was accepted by Mr. Moran on 30th April 2018. Solicitors have been instructed to negotiate the documentation. The Applicant is therefore hopeful that the temporary use will be obtained by voluntary agreement. Temporary use powers over the two plots will still be sought, however, to provide the Applicant with the necessary powers in the event that the agreement is breached. However, the agreement with Mr Moran will state that such powers will not be used so long as the terms of the agreement are complied with.
- 3.10 Plot 3\_EC is owned by the Millbrook Proving Ground Limited. The Applicant has met with representatives of the Millbrook Proving Ground Limited on two separate occasions since the Application was submitted in order to discuss the necessary arrangements for works proposed on the plot. Temporary use powers will be sought which will require access to the land for a diversion to take place between the two existing tension pylons (one located in plot 2\_EC and one located in plot 14\_EC). Following a request from the ExA, Nick Johnson explained the process under which a temporary pylon will be erected (as permitted under the DCO, Work No.7) in order to divert the line. Mr Johnson confirmed that a diversion can only be carried out between two tension pylons due to the weight of the cables. The Applicant understands from National Grid that both circuits will be temporarily removed and one circuit will be erected on a diverted alignment whilst the existing pylon in plot 6\_EC is replaced. Both circuits will then be restrung.
- 3.11 The remainder of the plots on Plan 2, with the exception of plot 14\_EC, are owned by O & H Limited and are covered by the existing Option Agreement as outlined in more detail at paragraph 3.5 above. Minor variations are being negotiated to the Option Agreement in respect of plots 6\_EC and 9\_EC to allow for the two Sealing End Compounds (SECs) to be acquired. This is because the Applicant will not know exactly where the SECs will be located until National Grid finalises its detailed design. Therefore, the land included in plots 6\_EC and 9\_EC is of an appropriate size to incorporate the limits in which the SECs could be constructed.
- 3.12 Plot 14\_EC is owned by Mr. and Mrs. Parrish (who are also owners of a large amount of land for the Gas Connection and the above ground installation (AGI)). The

Applicant met with Mr. and Mrs. Parrish in February 2018 and further discussions were held in March and April 2018 with various offers and counter offers being made. A final offer was made to Mr. and Mrs. Parrish on 2 May 2018. The Applicant understood that the only outstanding issues related to money. Following the hearing, Mr and Mrs Parrish accepted the final offer, subject to contract, on 16 May 2018. Therefore the Applicant is hopeful that it will be able to acquire the relevant plots by voluntary agreement.

3.13 In response to a query from the ExA, Claire Brodrick explained that Article 21(1) of the Draft Millbrook DCO Revision 1 [REP2-015] states that temporary use powers must be exercised within 5 years beginning on the day on which the Order is made. Article 28(3) states that the time limit for the temporary possession of land is after the end of the period of one year beginning with the date of final commissioning of the authorised development.

3.14 **Gas Connection**

3.15 **Plan 3** (drawing reference J0008128-103) Gas Connection Land Plan (Sheet 3 of 3) covering plots 1\_GC to 12B\_GC.

3.16 Claire Brodrick set out the purpose for the use of the powers sought over the Gas Connection plots owned by O & H Limited: 1\_GC (new rights for the Gas Connection), 1A\_GC (temporary use for the Gas Connection), 1B\_GC (temporary use for the Gas Connection), 2\_GC (rights of access along the low level secondary access track), 3\_GC (new rights for landscaping), 4\_GC (new rights for landscaping), and 6\_GC (new rights for landscaping). As these plots are all owned by O & H Limited they are therefore covered by the Option Agreement outlined in more detail at paragraph 3.5 above.

3.17 Claire Brodrick set out the proposed access to be provided within the Gas Connection plots and a summary is included in more detail in response to Agenda item 5 at paragraph 4 below.

3.18 Claire Brodrick confirmed that plots 7\_GC to 12B\_GC are owned by Mr. and Mrs. Parrish and the status of negotiations is set out in more detail at paragraph 3.12 above.

3.19 **AGENDA ITEM 4 – REPRESENTATIONS FROM AFFECTED PERSONS**

3.20 As set out above, Covanta was the only affected person represented at the ISH. The summary of Covanta's submissions is set out below.

3.21 David Wood on behalf of Covanta stated that Covanta has an interest in some of the plots over which CA powers are sought by the Applicant through a separate Option Agreement with O & H Limited. There is no overlap over the land to be acquired freehold, however, there are rights which are common to the two schemes being granted by O & H Limited (for example the right of access from Green Lane is common to both projects).

3.22 Claire Brodrick set out that the extent of plot 4\_PGP in relation to the Access Road is under review and it is hoped that the size of this plot can be reduced once there is certainty over the progress in relation to works carried out by Covanta to the Access Road. At present, the limits of deviation for the Access Road mirror those contained in the RRF Order which are very wide and are not made specific to work numbers. The plot cannot be reduced in size until the Applicant can be certain that the Access Road has been constructed and will not be moved or relocated. Until then, the plot must cover the whole area where Covanta has the right to build the Access Road. Covanta has confirmed that it is anticipated that the access road will be completed by the end of June 2018.

3.23 Richard Griffiths explained that in respect of the Draft Millbrook DCO (Revision 1) [REP2-015] there are two works which relate to the construction of the Access Road: numbered works 2A and 2B. The works give the Applicant optionality dependent on the extent of works carried out by Covanta. If and when the works to the Access Road carried out by Covanta are completed, it may be the case that the draft DCO can be amended in order to reflect the updated position on the ground and the required remaining works in respect of the Access Road. The Applicant will make such amendments if they become appropriate.

4. **AGENDA ITEM 5 – CLARIFICATION ON THE NEED FOR COMPULSORY ACQUISITION OF SPECIFIC PLOTS SHOWN ON THE LAND PLANS AS 4PGP, 12EC, 13EC, 2GC, 3GC, 4GC, 6GC**

4.1 The ExA queried the need for compulsory acquisition powers in respect of certain plots and in particular those which pertain to access points shown on the land plans.

4.2 Claire Brodrick explained that the Applicant is seeking permanent rights of access over plot 12\_EC in order to maintain the SECs. This will also provide a secondary emergency access and egress route to be used in the event that there was a problem with the Access Road from Green Lane. Plot 12\_EC forms part of the low level restoration scheme secondary access track which is already permitted as part of the low level restoration scheme planning permission. Claire Brodrick set out the access to the project site in further detail in respect of the electrical connection by reference to the Land Plans. For the Gas Connection she explained that for the purpose of maintenance, access can be taken from the power station site or from the road at plot 10\_GC depending on where maintenance works along the pipeline were required. New rights of access are also being sought over plot 2\_GC as this is also part of the low level restoration scheme secondary access track and will provide a secondary emergency access. It was noted that the new rights being sought to maintain the Gas Connection include a right of access but this is a right of access across agricultural as opposed to being an access track. In summary, the power generating site would be served by two accesses, the main one being from the Access Road and Green Lane, with the secondary access being for emergencies.

5. **AGENDA ITEM 6 - NEXT STEPS AND ANY OTHER BUSINESS**

5.1 It was agreed that the Applicant would provide updates to the ExA on any progress in the discussions with affected persons and would provide an updated schedule of negotiations for Deadline 3. An updated schedule is included at Appendix One of this summary.

5.2 Subject to any updates to the negotiations and to the possible amendment to the DCO outlined at paragraph 3.23 above there may also be a need to update the Works Plans, the Land Plans, the BoR and the SoR. Should the works to the Access Road be completed on time then submissions of such updated documents may be made as early as the start of July.

5.3 The ExA confirmed that further hearings regarding CA would be unlikely to be required and that further discussions on the matter will continue on paper.

**APPENDIX ONE**

**LAND/RIGHTS NEGOTIATIONS WITH LANDOWNERS**

<b>Land in respect of which powers of compulsory acquisition or temporary possession are sought</b>			
<b>Plot Nos.</b>	<b>Work Nos.</b>	<b>Reason for acquisition or possession</b>	<b>Owner / occupier and status of negotiation</b>
1-PGP	1A, 1B, 1C, 1D, 4A, 5	Freehold acquisition for Power Generation Plant, Electrical Connection (part) and Gas Connection (part)	<b>O&amp;H Q7 Limited:</b> An option agreement dated 16 <sup>th</sup> July 2014 was entered into between O&H Q7 Limited and MPL.
1A-PGP, 1B_PGP	8	Temporary possession to facilitate construction of the Power Generation Plant	<b>O&amp;H Q7 Limited:</b> An option agreement dated 16 <sup>th</sup> July 2014 was entered into between O&H Q7 Limited and MPL.
2_PGP, 3_PGP, 4_PGP, 5_PGP, 5A_PGP, 6_PGP, 7_PGP	2A, 2B, 1D(e)	Acquisition of rights and imposition of restrictions for access to the Power Generation Plant and drainage and temporary use to facilitate construction of the Power Generation Plant	<b>O&amp;H Q7 Limited:</b> An option agreement dated 16 <sup>th</sup> July 2014 was entered into between O&H Q7 Limited and MPL.
1_EC	7(b)-(f)	Temporary use for the temporary diversion of the existing 400kV transmission line to facilitate construction of the Electrical Connection	<b>John Joseph Moran and Sheila Julia Moran:</b> An offer was issued to the last known residential address of the landowners in February 2015 but no current address was identified at the time. During the public consultation process in June 2017, the landowners were successfully contacted. A formal offer was issued by Carter Jonas on 22 September 2017. No concerns have been raised

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			<p>by the landowner in connection with the Project in principle.</p> <p>The Applicant understands that Mr Moran is now the sole owner of the land. Mr Moran is not resident at or near the property for which temporary use is required. The adjacent property, Moreteyne House, is owned by Mr Hogan. The Applicant is not aware of any current redevelopment plans for Moreteyne House.</p> <p>Discussions took place between Mr Moran and MPL's agent between September 2017 and February 2018.</p> <p>A further offer was made to Mr Moran on 30 April and Mr Moran confirmed that this was acceptable. Solicitors have been instructed to negotiate the documentation. The Applicant is therefore very hopeful that the temporary use will be obtained by voluntary agreement.</p>
2_EC	7(b)-(f)	Temporary use for the temporary diversion of the existing 400kV transmission line to facilitate construction of the Electrical Connection	<b>John Joseph Moran:</b> See summary for plot 1_EC.
3_EC, 4_EC (part)	7(b)-(f)	Temporary use for the temporary diversion of the existing 400kV transmission line to facilitate construction of the Electrical Connection	<b>Millbrook Proving Ground Limited:</b> The MPL project was first discussed with Martin Hughes, a director of Millbrook Proving Ground and Technology Park, in September 2014 concerning the timing of the project and the potential impact on privacy and security at the landowner's operational site. A fully termed offer was made for the required land affected by the temporary over sailing by National Grid transmission lines in February 2015 but the terms were not discussed in



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			<p>detail at that time. As the project has progressed through consultation during 2017, various updates have been sent to the landowners to update them of the project progress and timing.</p> <p>MPL (David Ball and Nick Johnson) met with Martin Hughes at the Proving Ground on 9 June 2017.</p> <p>A meeting was held with Mr Hughes on 9th September 2017 to discuss the timing of the project and any impacts on the landowner. An updated offer was issued by Carter Jonas on behalf of MPL on 22 September 2017.</p> <p>A subsequent meeting took place between MPG (Martin Hughes and their agent) and MPL (Nick Johnson) and its agent, Steven Drennan, on 10 November 2017.</p> <p>A further meeting with Martin Hughes (MPG) and National Grid representatives took place on 22 February 2018 to discuss the nature of the works.</p> <p>Discussions with Millbrook Proving Ground are ongoing and the Applicant is hopeful that a voluntary agreement will be reached for the temporary use of the land.</p>
6_EC, 9_EC	6(a), 6(c), 6(f)	Freehold acquisition for the Electrical Connection	<p><b>O&amp;H Q7 Limited:</b> An option agreement dated 16<sup>th</sup> July 2014 was entered into between O&amp;H Q7 Limited and MPL. MPL and O&amp;H have agreed to amend the option to include the acquisition of land required for the SECs.</p> <p><b>David Tomkins (tenant of Plot 6_EC):</b> MPL has been in discussions with David Tomkins since 2014. In April 2017, MPL contacted Mr Tomkins to discuss</p>

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			<p>the Project. MPL explained that the land required for the Project was the same as that discussed in 2014 and 2015.</p> <p>In May 2017, MPL met Mr Tomkins and members of Millbrook Parish at the Project Site to discuss the Project and its potential impacts. The site visit included going to the edge of Rookery South Pit such that it could be seen where some of the elements of the Project would be located, including the Power Generation Plant and the Electrical Connection.</p> <p>Mr Tomkins attended the Amptill public exhibition (part of Phase 2 Statutory Consultation). MPL explained using various plans and maps where the elements of the Project would be located and what the potential impacts are likely to be.</p> <p>MPL understands that the terms of Mr Tomkins tenancy enable it to be terminated in part to facilitate development and for easements to be granted for the installation of the underground cables required for the Electrical Connection.</p>
5_EC, 7_EC, 8_EC, 10_EC, 11_EC, 12_EC, 13_EC,	6(b), 6(e), 6(g), 6(h), 7	Acquisition of rights and imposition of restrictions for the Electrical Connection access and landscaping and temporary use to facilitate construction of the Electrical Connection (including the temporary diversion of the existing 400kV transmission line)	<p><b>O&amp;H Q7 Limited:</b> An option agreement dated 16<sup>th</sup> July 2014 was entered into between O&amp;H Q7 Limited and MPL.</p> <p><b>David Tomkins (tenant of Plots 12_EC and 13_EC):</b> See summary for plot 6_EC.</p>
14_EC	7(b)-(f)	Temporary use to facilitate construction of the Electrical	<b>Jacalyn Heather Parrish and Robert James Parrish:</b> The MPL project was first discussed with Mr and Mrs Parrish in 2014 with exchanges between the

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Plot Nos.	Work Nos.	Reason for acquisition or possession	Owner / occupier and status of negotiation
		Connection	<p>parties in September 2014 on the preferred orientation of the AGI. The AGI was designed to accommodate the preference of the landowners at that time. A fully termed offer was made for the required permanent and temporary land easements for the Pipeline and acquisition of land for the AGI in February 2015 but the Project was then put on hold. In conjunction with the statutory consultation for the Project undertaken in 2017, various telephone calls and emails have been sent to the landowners to update them of the Project progress. No concerns have been raised by the landowners in connection with the Project in principle. An updated offer was issued by MPL's agent, Carter Jonas, on 22 September 2017.</p> <p>The landowners have appointed land agents and a meeting took place with Carter Jonas and the landowners and their agent on 2 February 2018.</p> <p>Further information with respect to the anticipated design of the AGI site was provided on 21 February 2018 and a counter offer received on 20 March 2018.</p> <p>A further improved offer was made by MPL to the Mr and Mrs Parrish on 10 April 2018 and a further counter offer made on 13 April 2018.</p> <p>On 17 April 2018, a further offer was submitted to the Mr and Mrs Parrish by MPL and further information provided with respect to the DCO application status to their agents. A counter offer was received on 20 April 2018. A final offer was made by MPL on 2 May 2018.</p> <p>Mr and Mrs Parrish accepted the final offer, subject to contract, on 16 May 2018. Therefore the Applicant is hopeful that it will be able to acquire the relevant plots by voluntary agreement.</p>

Land in respect of which powers of compulsory acquisition or temporary possession are sought			
Plot Nos.	Work Nos.	Reason for acquisition or possession	Owner / occupier and status of negotiation
1_GC, 1A_GC, 1B_GC, 2_GC, 3_GC, 4_GC, 5_GC, 6_GC,	4A, 1D(e), 6(e)	Acquisition of rights and imposition of restrictions for the Gas Connection, access, drainage and landscaping and temporary use to facilitate construction of the Gas Connection	<b>O&amp;H Q7 Limited:</b> An option agreement dated 16 <sup>th</sup> July 2014 was entered into between O&H Q7 Limited and the Applicant.  <b>David Tomkins (tenant of Plot 4_GC):</b> See summary for plot 6_EC.
7_GC, 7A_GC, 7B_GC, 8_GC, 9_GC, 9A_GC, 9B_GC, 9C_GC, 10_GC, 11_GC,	4A, 3B	Acquisition of rights and imposition of restrictions for the Gas Connection, access and temporary use to facilitate construction of the Gas Connection	<b>Jacalyn Heather Parrish and Robert James Parrish:</b> See summary for plot 14_EC.
12GC,	3A, 4A,	Freehold acquisition for the AGI forming part of the Gas Connection	<b>Jacalyn Heather Parrish and Robert James Parrish:</b> See summary for plot 14_EC.
12A_GC, 12B_GC	4B	Temporary use to facilitate construction of the Gas Connection	<b>Jacalyn Heather Parrish and Robert James Parrish:</b> See summary for plot 14_EC.