



Applicant's comments on Deadline 5 Submissions

PINS Reference Number: EN010069

Deadline 6 – 18 March 2019

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1 Summary

- 1.1.1 The Applicant, Abergelli Power Limited, is applying to the Secretary of State (SoS) under the Planning Act 2008 (PA 2008) for development consent to construct, operate and maintain an Open Cycle Gas Turbine (OCGT) gas fired peaking power generating station, fuelled by natural gas with a rated electrical output of up to 299 Megawatts (MW) (the Abergelli Power Project).
- 1.1.2 The Development Consent Order (DCO) Application for the Abergelli Power Project (the Project) was submitted by the Applicant to the SoS in May 2018. It was formally accepted to progress to examination in June 2018.
- 1.1.3 This document contains the Applicant's comments on other parties' submissions to the Examining Authority for Deadline 5 on 15 February 2019.
- 1.1.4 The Applicant has reviewed submissions made by other parties at Deadline 5, and has provided below responses to those where necessary. Unless otherwise indicated, the Applicant has not provided responses where it has already made submissions at previous deadlines on the points made.

2 REP5-007 County and City of Swansea

2.1 Applicant's Response to Appendix A of CCS' Deadline 5 Comments

Appendix E – Ecological Management Plan

- 2.1.1 The Applicant notes County and City of Swansea Council's (CCS) further concerns about the need for a review mechanism for the Ecological Management Plan, secured by Requirement 9 of the DCO.
- 2.1.2 To address these concerns, the Applicant has updated Requirement 9 to include 9(3), see updated draft DCO submitted at Deadline 6.

2.2 Response to Appendix B of CCS' Deadline 5 Comments

CCS Response to: Planning Statement Addendum

- 2.2.1 With reference to the CCS response to paragraph 1.2.2 of the Planning Statement Addendum, the Applicant notes and welcomes the view of CCS that PPW – 10th Edition and the Swansea LDP should be treated as relevant and important policy considerations by the Examining Authority and the Secretary of State.
- 2.2.2 With reference to the CCS response to paragraph 2.5.2 of the Planning Statement Addendum, the Applicant has reviewed the Inspector's Binding Report of the CCS Local Development Plan (LDP) Examination and considers there to be no material and relevant changes to LDP modifications from those already considered in the Planning Statement Addendum. The Inspector's Binding Report also does not raise any new matters of relevance to the Abergelli DCO Application. The Planning Statement Addendum submitted at Deadline 4 therefore remains valid, particularly with regards to the identification of relevant policy changes and the assessment provided of the accordance of the Project with PPW - 10th Edition and the CCS LDP (as modified).

2.3 Response to Appendix C of CCS' Deadline 5 Comments

Table 3 – Parameters of Road Structure over Water Main

- 2.3.1 CCS have queried whether the height of the safety barrier (1.2 m) described in Schedule 2 Table 3 of the DCO is included in the maximum height of the road structure (5 m). To clarify, the height of the safety barrier is not included in the 5 m maximum height, rather 1.2 m is the maximum height of the safety barrier, measured above the top of the road structure.
- 2.3.2 Grid lines have been added to Schedule 2 Table 3 of the DCO submitted for Deadline 6 so that the presentation of the parameters for the crossing structure and its safety barrier is clearer.
- 2.3.3 Work No. 2 has also been updated to include express reference to the structure over the water main and decommissioned oil pipeline that will be constructed as part of the Access Road.

Requirement 15 – Mineral Resources Survey

- 2.3.4 The Applicant notes the comments from CCS and confirms that the updated DCO submitted for Deadline 6 corrects the cross reference to the Decommissioning Requirement in Requirement 15.

Requirement 17 – Construction Environment Management Plan

- 2.3.5 The Applicant notes the comments from CCS. Requirement 17 of the draft DCO submitted for Deadline 6 has been updated to confirm that the final Construction Environment Management Plan must include details of an out of hours working procedure.

2.4 Response to comments on Decommissioning raised in Appendices A, B, C and G

- 2.4.1 The Applicant has reviewed the further comments from CCS lodged at Deadline 5 in relation to decommissioning. The Applicant is of the view that the representations do not raise any additional points to those already raised and answered by the Applicant at previous deadlines.
- 2.4.2 The Applicant wishes to note however that CCS has materially misrepresented the Applicant's position in relation to Requirement 28, in suggesting that the Applicant accepts that the requirement is insufficient or unenforceable. The Applicant has explained that the wording of Requirement 28 is, in the Applicant's view, entirely appropriate to secure decommissioning of the Power Generation Plant. It meets the tests set out in Advice Note 15 and is precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects. The Applicant has also made clear its position regarding the proposal of a bond for decommissioning.
- 2.4.3 The Applicant's most recent amendment to insert Requirement 28(4) and to insert Requirement 28(2)(h) (in relation to provision of information regarding the type of consents required and a programme for submission of applications) was proffered to offer comfort to CCS that the Applicant would act properly in seeking necessary consents at the appropriate time, but the Applicant considers that the requirement would comply with the tests noted above without sub-paragraph (4). The Applicant notes that CCS appears to seek a guarantee that consents will be granted – clearly this is not reasonable and not something that the Applicant can offer, being outside its control.
- 2.4.4 The Applicant has pointed to established precedent in other similar DCO projects to demonstrate that its proposed wording (including the phrase "subject to obtaining the necessary consents") for the decommissioning requirement has been considered previously to meet the test of enforceability. The Applicant considers that it continues to do so. The Applicant has also provided extensive examples of other comparable DCOs to demonstrate that no decommissioning bond has been required and that there are no special circumstances applicable to this project which would justify a departure from that approach.
- 2.4.5 The Applicant has set out fully its position in relation to the lack of policy support for a decommissioning bond and has nothing further to add.
- 2.4.6 The only precedent pointed to by CCS is its own decision to grant the Myndd y Gwair wind farm planning permission. This is not a comparable precedent for several reasons. The technology type is different, and it is a permission granted under a different statutory regime. A planning permission runs with the land and therefore will enure for the benefit of any future owner of the land. There are no controls on who may benefit from the permission in future or how ownership may change. In the DCO, the benefit of the consent is limited to the named undertaker, who is a licence holder under the Electricity Act 1989. Any future transfers under the DCO can only take place in accordance with Article 7, which offers a safeguard to ensure that the powers and obligations in the DCO rest with a suitable undertaker in the future.
- 2.4.7 The Applicant considers that it is unlikely to be able to reach agreement with CCS on this point and therefore invites the Examining Authority to make a recommendation to the Secretary of State based on the parties' submissions to date.

3 REP5-009 Natural Resources Wales

3.1 Applicant's Response to NRW

- 3.1.1 As stated in the Applicant's response to the Examining Authority's Written Question 2.7.4, the suitability for watercourses to support water vole and otter is assessed in Environmental Statement (ES) Appendix 8.10 [APP-038] which confirms that only one of the four watercourses within the Project Boundary (Stream B) is suitable to support otter and/or water vole. The Landscape and Ecological Mitigation Plan (LEMP) Figure 3.6e [APP-024] also references measures to allow otter movement across this stream. Further to discussions with NRW and CCS, and on the basis that no evidence of otter or water vole has to date been recorded across the streams within the Project Boundary, the Applicant considers that "wildlife crossings" at these watercourses would not be necessary.
- 3.1.2 However, as per the Landscape and Ecology Mitigation Strategy (LEMS) (revision 4) [REP4-008] secured via Requirement 9 (Ecological Management Plan) and agreed in consultation with CCS and NRW, ecology surveys must be undertaken prior to construction. If otter or water vole are found to be using Stream B during pre-construction surveys, the installation of wildlife crossings here would be appropriate, along with burrow or holt/couch creation as noted in paragraphs 4-6 and 9-10 of LEMS Appendix D Otter and Water Vole [REP4-008].
- 3.1.3 Following the representation made by NRW's at Examination Deadline 5, the Applicant has consulted with NRW to confirm that the above approach is appropriate and that these matters are secured through Requirement 6 Surface and Foul Water Drainage, and Requirement 9 Ecological Management Plan; and that the submissions pursuant to those requirements must be in substantial accordance with (respectively) the Outline Drainage Strategy [REP1-017] and the LEMS [REP4-008].