

Cleve Hill Solar Park DCO

Revised Draft Decommissioning Requirement

Context:

1. On 3 July 2019 representatives of the Environment Agency ("EA") and the Applicant (Cleve Hill Solar Park Limited) attended a conference call to discuss the version of revised Requirement 16 (decommissioning) that was submitted to the Examining Authority at Examination deadline 2 ("DL2") [REP2-003].
2. The EA agreed with the Applicant that:
 - (i) the sole justification for placing a time limit on any DCO granted for the authorised development is the EA's proposed managed realignment of the flood defence as described in the draft MEASS;
 - (ii) in the event of managed realignment not being required, the EA has no interest in impeding other uses of the land, including continued power generation from the authorised development; and
 - (iii) for so long as the authorised project is capable of generating power, the decommissioning of the authorised development should not be required on any land within the Order limits not needed for managed realignment of the flood defence.
3. The EA also confirmed its agreement in principle to the revised Requirement submitted at DL2 and its conditionality, which broadly reflects the stage of the EA's internal approval process for its flood defence projects at which the full business case is approved (currently known as "Gateway 3").
4. However, the EA expressed concerns with the timescales set out in the revised Requirement, in particular, whether or not the EA would have satisfied the conditionality by the 39th anniversary of the date of final commissioning of the authorised development. The EA also expressed a desire for a review mechanism by which the EA and undertaker could meet, discuss the progress made towards discharging the conditionality set out in the Requirement, and agree a programme to complete that exercise and decommissioning of the authorised development.
5. Therefore, the Applicant agreed to redraft Requirement 16 to remove the 39th anniversary trigger and introduce a review mechanism at the 35th anniversary, which could be repeated in the event any timescales agreed in one review could not subsequently be met by the EA.
6. The Applicant provided that revised drafting to the EA on 3 July 2019 and after further discussion and amendment on 9 July 2019, the revised drafting set out below was agreed between the Applicant and the EA's officers on 12 July 2019, subject to the revised drafting being approved by the EA's senior management. The parties hope to be able to update the ExA in this regard shortly.
7. It should be noted that in the previous version of the dDCO submitted to the ExA Requirement 16 was numbered 15.

Proposed requirement 16 (decommissioning):

16.—(1) Within 14 days of the date of final commissioning the undertaker must serve written notice on the relevant planning authority and the Environment Agency of the date of final commissioning.

(2) Subject to sub-paragraphs (3) to (6) inclusively, the authorised development must cease generating power on a commercial basis on the 40th anniversary of the date of final commissioning, or such later anniversary as determined by the decommissioning review process and approved by the relevant planning authority.

(3) No later than the 35th anniversary of the date of final commissioning, the undertaker and Environment Agency must:

(i) undertake a review of the progress made by the Environment Agency in respect of managed realignment of the flood defence, with particular regard to the timescales for achieving:

(a) all necessary consents and approvals;

(b) all the land and/or rights over land; and

(c) funding, required for managed realignment of the flood defence; and

(ii) as soon as reasonably practicable following that review, submit a managed realignment and decommissioning programme to the relevant planning authority for approval, which sets out the timescales for achieving the matters prescribed in sub-paragraphs (3)(i)(a)-(c) inclusively and the decommissioning of the authorised development, provided that:

(a) decommissioning of the authorised development must not be required before the 40th anniversary of the date of final commissioning; and

(b) if the undertaker and Environment Agency cannot agree the timescales to be included in the managed realignment and decommissioning programme those timescales shall be determined pursuant to Article 35 (Arbitration). (4) The decommissioning review process may, if required, be repeated on the 5th anniversary of the date on which the managed realignment and decommissioning programme was approved by the relevant planning authority, and every five years thereafter.

(5) Sub-paragraph (2) applies if the relevant planning authority has served the decommissioning notice on the undertaker provided that:

(a) prior to serving the decommissioning notice, the relevant planning authority must be satisfied on the evidence before it that all of the following have been unconditionally secured by the Environment Agency to construct and maintain the managed realignment of the flood defence:

(i) the matters prescribed in sub-paragraphs (3)(i)(a)-(c) inclusively; and

(ii) any additional evidence required by the relevant planning authority.

(b) the relevant planning authority shall consult with the undertaker and have regard to any submissions made by the undertaker prior to serving the decommissioning notice; and

(c) the decommissioning notice must:

(i) give reasons for the relevant planning authority determining that the Environment Agency's proposals for implementing managed realignment of the flood defence are viable; and

(ii) include a plan detailing the extent of land within the Order limits required for managed realignment of the flood defence.

(6) The authorised development may continue to generate and store power on a commercial basis:

(a) until such time as any appeal, arbitration or judicial review of any decommissioning notice served by the relevant planning authority on the undertaker in accordance with sub-paragraph (5) has been determined; and

(b) on any land within the Order limits that is not required for managed realignment of the flood defence as shown on the plan included in the decommissioning notice pursuant to subparagraph (5)(c)(ii).

(7) Within 3 months of all or part of the Order land ceasing to be used for the purposes of electricity generation or energy storage (either actively generating electricity or being available to generate electricity on a standby basis), or such other timescale as may be approved by the relevant planning authority in writing, the decommissioning and restoration plan relating to such parts of the Order land must be submitted to the relevant planning authority for approval.

(8) The decommissioning and restoration plan required by subparagraph (7) must:

(a) accord with the outline decommissioning and restoration plan (to the extent relevant); and

(b) not require the undertaker to decommission the flood defence located within the Order limits.

(9) The decommissioning and restoration plan must be implemented as approved.

(10) In this requirement the following definitions have effect:

"date of final commissioning" means the date on which the authorised development commences operation by generating power on a commercial basis but excluding the generation of power during commissioning and testing;

"decommissioning notice" means written notice confirming the relevant planning authority's opinion that the Environment Agency's proposals for implementing the managed realignment of the flood defence are viable;

"decommissioning review process" means the process prescribed by sub-paragraph (3);

"managed realignment and decommissioning programme" means the managed realignment and decommissioning programme required by sub-paragraph (3)(ii); and

"managed realignment of the flood defence" means the physical realignment of the flood defence located within the Order limits (that would require the removal of all or any part of Work No. 1, 2 and 3) as it exists at the date of this Order and as described in the Medway Estuary and Swale Strategy published on [insert date] or as otherwise agreed between the undertaker and the Environment Agency, or determined by Article 35 (Arbitration).

END

Pinsent Masons LLP

12 July 2019