

202[ ] No.

**INFRASTRUCTURE PLANNING**

The West Burton C (Gas Fired Generating Station) Order 202[ ]

*Made* - - - - - \*\*\*

*Laid before Parliament* \*\*\*

*Coming into force* - - - \*\*\*

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An application has been made to the Secretary of State under section 37 of the Planning Act 2008(a) (“the 2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (b) for an Order granting development consent.

The application was examined by [a single appointed person] (appointed by the Secretary of State) in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c).

[The single appointed person], having considered the representations made and not withdrawn and the application together with the accompanying documents, in accordance with section 83 of the 2008 Act, has submitted a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn, and the report and recommendation of the [single appointed person], has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial change to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 140 of the 2008 Act, makes the following Order—

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- (a) 2008 c.29. Sections 37, 83, 114 and 120 were amended by Localism Act 2011 (c.20). Section 115 was amended by the Localism Act 2011, Housing and Planning Act 2016 (c.22) and Wales Act 2017 (c.4)
- (b) S.I. 2009/2264, as amended by the Localism Act 2011, (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013 (S.I. 2013/522). There are other amendments to the Regulations which are not relevant to this Order.
- (c) S.I. 2010/103, as amended by S.I. 2012/635.

# PART 1

## Preliminary

### Citation and commencement

1.—(1) This Order may be cited as the West Burton C (Gas Fired Generating Station) Order 202[ ] and comes into force on [ ].

### Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1980 Act” means the Highways Act 1980(b);

“the 1989 Act” means the Electricity Act 1989(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 2008 Act” means the Planning Act 2008(f);

“authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

“CCGT” means combined cycle gas turbine;

“the combined heat and power assessment” means the document certified as the combined heat and power assessment by the Secretary of State for the purposes of this Order;

“commence”, unless otherwise provided for, means beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming the relevant part of the authorised development other than operations consisting of preliminary works, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” is construed accordingly;

“discharging authority” means the body responsible for giving any agreement or approval required by a requirement;

“electrical cables” means overhead or underground cables including fibre optic cables;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“framework construction environmental management plan” means the document certified as the framework construction environmental management plan by the Secretary of State for the purposes of this Order;

“framework construction transport management plan” means the document certified as the framework construction transport management plan by the Secretary of State for the purposes of this Order;

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- (a) 1961 c.33.
  - (b) 1980 c.66.
  - (c) 1989 c.29.
  - (d) 1990 c.8.
  - (e) 1991 c.22.
  - (f) 2008 c.29.

“framework construction workers’ travel plan” means the document certified as the framework construction workers’ travel plan by the Secretary of State for the purposes of this Order;

“gross rated electrical output” means the aggregate of gross electrical power as measured at the terminals of each generator in accordance with standards agreed with the regulating authority under the Environmental Permitting (England and Wales) Regulations 2010(a);

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative layout plans” means the plans certified as the indicative layout plans by the Secretary of State for the purposes of this Order;

“the land plans” means the plans certified as the land plans by the Secretary of State for the purposes of this Order;

“the landscaping and biodiversity management and enhancement plan” means the document certified as the landscaping and biodiversity management and enhancement plan by the Secretary of State for the purposes of this Order;

“Lead Local Flood Authority” means Nottinghamshire County Council or any replacement body;

“lighting strategy” means the document certified as the lighting strategy by the Secretary of State for the purposes of this Order;

“maintain” includes, to the extent assessed in the environmental statement, inspect, repair, adjust, alter, refurbish, remove, reconstruct any part (but not the whole), replacement of any part (but not the whole) and improve, but not so as to vary from the description of the authorised development and “maintenance” is construed accordingly;

“the Order limits” means the limits shown on the works plans as the limits within which the authorised development may be carried out;

“the Order limits plans” means the plans certified as the order limits plans by the Secretary of State for the purposes of this Order;

“outline drainage strategy” means the document certified as the outline drainage strategy by the Secretary of State for the purposes of this Order;

“outline written scheme of investigation” means the document certified as the outline written scheme of investigation by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(b);

“the plans” means together the land plans, Order limits plans and works plans;

“public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker;

“relevant archaeological body” means Historic England or any replacement body;

“relevant internal drainage board” means Trent Valley Internal Drainage Board or any replacement body;

“relevant planning authority” means Bassetlaw District Council or any replacement body;

“requirements” means those matters set out in Schedule 2 to this Order;

“scheduled works” means the numbered works specified in Schedule 1 to this Order, or any part of them;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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(a) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (S.I. 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), the Controlled Waste (England and Wales) Regulations (S.I. 2012/811).

(b) 1981 c.67. The definition of “owner” was amended by the Planning and Compensation Act 1991 (c.34)

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“tree preservation order” has the meaning given in section 198 of the 1990 Act(a).

“undertaker” means EDF Energy (Thermal Generation) Limited (company number 4267569) or the person who has the benefit of this Order in accordance with article 7 (benefit of order);

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“West Burton B” means West Burton B CCGT, a gas fired power station operated by the undertaker, forming part of the West Burton Power Station Site;

“West Burton Power Station Site” means the land near Retford in Nottinghamshire within the ownership of the undertaker comprising West Burton A, a coal fired power station, West Burton B and other land including the Order limits; and

“the works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) Save in relation to Tables 1 and 2 of Schedule 2 all distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development will be taken to be measured along that work.

## PART 2

### Principal Powers

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Subject to article 6 (limits of deviation) the development must be constructed and installed in the lines and situations shown on the works plans.

#### **Maintenance of authorised development**

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

## PART 3

### Operations

#### **Operation of generating station**

5.—(1) The undertaker is hereby authorised to use and to operate the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

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(a) Section 198 was amended by the 2008 Act.

## Limits of deviation

6. In carrying out the authorised development the undertaker may deviate laterally from the lines or situations of the authorised development shown on the works plans within the relevant work areas shown on those plans.

## Benefit of Order

7.—(1) — The undertaker may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed

except where paragraph (5) applies in which case no such consent is required.

(2) Consent under paragraph (1) may not be unreasonably withheld or delayed.

(3) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4) include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) This paragraph applies where the transferee or lessee is a person who holds a licence under section 6 of the 1989 Act(a) or section 7 of the Gas Act 1986(b).

(6) Where the consent of the Secretary of State is not required under paragraph (5) the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph (1).

## Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(c) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine is to be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of the Control of Pollution Act 1974(d); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance

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(a) Section 6 was amended by Utilities Act 2000 (c.27), Energy Act 2004 (c.20), Climate Change Act 2008 (c.27), Electricity and Gas (Internal Markets) Regulations (2011/2704) and Electricity and Gas (Smart Meters Licensable Activity) Order (2012/2400).

(b) 1986 c.44, Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

(c) 1990 c.43. Section 82(1) was amended by the Environment Act 1995 (c.25). There are other amendments to this Act which are not relevant to this Order.

(d) 1974 c.40. Section 61 was amended by the Building Act 1984 (c.55), the Environmental Protection Act 1990 and the Environment Act 1995.

- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme of monitoring of noise agreed with the relevant planning authority as described in requirement 21; or
- (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

## PART 4

### Streets

#### **Temporary stopping up of streets and public rights of way**

**9.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily stop up, alter or divert any street or public right of way and may for any reasonable time

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for non-motorised users going to or from premises abutting a public right of way affected by the temporary stopping up, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) The undertaker may not temporarily stop up, alter or divert any street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent.

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions disputed compensation) of the 1961 Act.

(5) Without prejudice to the scope of paragraph (1), the undertaker may use the street or public right of way which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

#### **Agreements with street authorities**

**10.**—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the temporary removal and reinstatement of street furniture.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 5

### Supplemental powers

#### Discharge of water

**11.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise a water discharge activity or groundwater activity that is prohibited by regulation 1 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016 (requirement for an environmental permit).

(9) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(c) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

#### Removal of human remains

**12.**—(1) In this article “the specified land” means the land within the Order limits.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

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(a) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37).

(b) S.I. 2016/1154. “Groundwater activity” is defined in paragraph 3 of Schedule 22 of the Regulations. “Water discharge activity” is defined in paragraph 3 of Schedule 21.

(c) 1964 c.40.

(d) 1991 c.57.



(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,  
and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,  
subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority.

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with this article.

## PART 6

### Miscellaneous and General

#### **Application of landlord and tenant law**

**13.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

#### **Operational land for purposes of the 1990 Act**

**14.** Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is not being treated as operational land).

#### **Felling or lopping of trees**

**15.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging the Order limits or within the extent of the publicly maintainable highway, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in

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(a) 1857 c.81. Section 25 was substituted by the Church of England (Miscellaneous Provisions) Measure 2014 no 1 and existing text renumbered as 5.25(4)(a) and 5.25(4)(b) by the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 No.3 Sch3(1)Para1

connection with the authorised development or constituting a danger to persons using the authorised development.

(2) In carrying out any activity authorised by paragraph (1) –

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees)(a) does not apply.

(3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act (determination of questions of disputed compensation).

### **Protective provisions**

16. Schedule 5 (protective provisions) has effect.

### **Certification of plans etc.**

17.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the combined heat and power assessment (Document 7.2 Rev 0);
- (b) the environmental statement (Document 5.2 Rev 0);
- (c) the framework construction environmental management plan (Document 7.3 Rev 0);
- (d) the framework construction transport management plan (Document 7.6 Rev 0);
- (e) the framework construction workers' travel plan (Document 7.7 Rev 0);
- (f) the indicative layout plans (Document 3.4 Rev 0);
- (g) the land plans (Document 3.3 Rev 0);
- (h) the landscaping and biodiversity management and enhancement plan (Document 7.5 Rev 0);
- (i) the lighting strategy (Document 7.4 Rev 0);
- (j) the order limits plans (Document 3.5 Rev 0);;
- (k) the outline drainage strategy (Document 7.8 Rev 0);
- (l) the outline written scheme of investigation (Document 7.9 Rev 0); and
- (m) the works plans (Document 3.2 Rev 0);

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Procedure in relation to certain approvals etc.**

18.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 3 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to the requirements.

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(a) Section 206(1) was amended by the 2008 Act.

**Arbitration**

19. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Address  
Date

*Name*  
Position  
Department

# SCHEDULES

## SCHEDULE 1

Article 2, 3, 5

### AUTHORISED DEVELOPMENT

In the County of Nottinghamshire and District of Bassetlaw a nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act, comprising—

Work No.1- a gas fired generating station located on the West Burton Power Station Site with a gross electrical output capacity of up to 299MW comprising—

- (a) Up to five (5) open cycle gas turbine (“OCGT”) units and associated generators, potentially housed within building(s) with stack(s), transformer(s), air inlet filter(s) and exhaust gas diffuser(s);
- (b) associated switchgear and ancillary equipment; and
- (c) auxiliary closed loop cooling equipment/system.

Work No.1 may also include a banking compound comprising up to six (6) transformers, overhead busbars, cable sealing ends and associated switchgear and ancillary equipment.

Work No.2 – a gas receiving area, gas treatment and control facilities, a compression station, generator and other auxiliary control cabinets and equipment.

Work No.3 – electrical connection works comprising—

Work No. 3A – up to 400 kV electrical cables and control systems cables to and from the existing West Burton B switchyard; and

Work No. 3B – works within or adjacent to the existing West Burton B switchyard, including electrical cables, connections to busbars and upgraded or replacement equipment.

Work No.4 – auxiliary buildings, structures and equipment, comprising—

- (a) emergency diesel generator and associated diesel fuel tank;
- (b) contained road tanker diesel unloading area;
- (c) workshop, store, control, administration and welfare building;
- (d) above ground raw water and fire water storage tanks and associated infrastructure;
- (e) area of hardstanding for maintenance laydown and erection of temporary buildings associated with the commissioning, operation and maintenance of the OCGT unit(s);
- (f) pipework, pipe runs and pipe racks;
- (g) fire-fighting equipment, buildings and distribution pipework; and
- (h) chemical storage facilities, other minor infrastructure and auxiliaries/services.

Work No. 5 – a new surface water drainage system comprising pond(s) and/or a tank or similar including connection to an existing surface water drainage system on the West Burton Power Station Site.

Work No. 6 – gas supply pipeline connection works for the transport of natural gas to Work No. 1 from an existing gas receiving facility within West Burton B comprising -

Work No. 6A - on or below ground high pressure steel pipeline of up to 500 millimetres (nominal bore) in diameter and up to 150 metres in length including controls and instrumentation; and

Work No. 6B - an extension to the existing West Burton B gas receiving facility comprising –

- (i) an offtake connection;
- (ii) gas compressor (if required);
- (iii) above and below ground valves, flanges and pipework;
- (iv) an above or below ground remotely operated valve;
- (v) an above or below ground remotely operated valve bypass;
- (vi) an above or below ground pressurisation bridle;
- (vii) instrumentation and electrical kiosks; and
- (viii) telemetry equipment kiosks and communications equipment.

Work No. 7 – water supply and pipeline from Work No. 1 to an existing water supply within West Burton B.

Work No. 8 – low voltage electrical, control, metering and other cables and associated switchgear and ancillary equipment and cabinets required to connect Work Nos 1-6 with West Burton B.

Associated development within the meaning of section 115(2) of the 2008 Act in connection with Work Nos. 1 - 8 comprising—

Work No. 9 – a rail offloading area from the existing rail loop ‘merry-go-round’ on the West Burton Power Station site.

Work No. 10 – a Landscaping and Biodiversity Management and Enhancement Area.

And to the extent that it does not otherwise form part of any such works, further associated development within the meaning of section 115(2) of the 2008 Act comprising such other works or operations as may be necessary or expedient for the purpose of or in connection with the construction, operation and maintenance of the works in this Schedule whether or not shown on the plans and falling within the scope of the works assessed in the environmental statement comprising—

- (a) vehicle parking and cycle storage facilities;
- (b) construction laydown areas and contractor facilities including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (c) internal access roads, roadways and footpaths;
- (d) noise attenuation features;
- (e) landscaping, fencing and security provisions; and
- (f) lighting columns and lighting.

## SCHEDULE 2

### REQUIREMENTS

Article 2, 3

#### **Interpretation**

**1.**—(1) In this Schedule—

“commercial use” means that the commissioning of the authorised development has been completed and it is generating electricity on a commercial basis;

“commissioning” means the process of assuring that all systems and components of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with the design objectives, specifications and operational requirements of the undertaker;

“local residents” means the residents living within the administrative areas of Nottinghamshire and Lincolnshire;

“local organisations” means organisations based or with their main activities within the administrative areas of Nottinghamshire and Lincolnshire; and

“stage” of the authorised development means any part or parts of Works Nos. 1 to 10.

(2) Where any requirement requires the authorised development to be carried out in accordance with matters including a plan, document, or details approved by the relevant planning authority, those matters are to be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.

(3) Where an approval or agreement is required under the terms of a requirement or a document referred to in a requirement, or any requirement specifies “unless otherwise approved” or “unless otherwise agreed” by the relevant planning authority, such approval or agreement may only be given in relation to changes where it has been demonstrated to the satisfaction of the relevant planning authority that the subject matter of the approval or agreement sought is unlikely to give rise to any greater environmental effects from those assessed in the environmental statement.

### **Commencement of the authorised development**

2.—(1) The authorised development must not be commenced after the expiration of 7 (seven) years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority 14 (fourteen) days’ notice of its intention to commence the authorised development.

### **Notice of commencement and completion of commissioning**

3.—(1) Notice of the intended commissioning of the authorised development must be given to the relevant planning authority, Nottinghamshire County Council, Lincolnshire County Council and West Lindsey District Council prior to such commencement and in any event not less than 7 (seven) days from the date that commissioning is commenced.

(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within seven days from the date that commissioning is completed.

### **Notice of commencement of commercial use**

4. Notice of the intended commencement of commercial use of the authorised development must be given to the relevant planning authority prior to such commencement and in any event not less than 7 (seven) days from the date that commercial use is commenced.

### **Detailed design**

5.—(1) In relation to Work No. 1, Work No. 2 and Work No. 4, no development must commence until details of the following, where relevant for that Work, have been submitted to and, after consultation with the Lead Local Flood Authority, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings;
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes and pedestrian facilities and routes; and
- (e) surface water management.

(2) Work No. 1, Work No. 2 and Work No. 4 unless otherwise agreed with the relevant planning authority must be carried out in accordance with the approved details.

(3) Unless otherwise agreed with the relevant planning authority if a single OCGT is installed the details approved by the relevant planning authority under paragraph (1) must be in accordance with table 1.

**Table 1**

**Main Dimensions for Single OCGT**

| <i>Component</i>   | <i>Maximum length (m)</i> | <i>Maximum width (m)</i> | <i>Maximum height (mAOD)</i> |
|--|---------------------------|--------------------------|------------------------------|
| Minimum final ground height (mAOD)   | +7.1m                     |                          |                              |
| Maximum final ground height (mAOD)   | +14m                      |                          |                              |
| Single Gas Turbine, Exhaust gas diffuser, Generator and Air inlet filter (Work No. 1(a))   | 50                        | 20                       | 41                           |
| Gas Turbine building (if required) (Work No. 1(a))   | 36                        | 12                       | 33                           |
| Stack(s) (Work No. 1(a))   | 10m diameter              |                          | 59                           |
| Auxiliary closed loop cooling equipment (Work No. 1(c))  | 30                        | 15                       | 26                           |
| Workshop, Stores, Control, Administration and Welfare Buildings (Work No. 4(c))  | 40                        | 30                       | 24                           |
| Raw Water / Fire Water Storage tank (Work No. 4(d))  | 15m diameter              |                          | 21                           |
| Gas receiving areas, gas treatment facilities, compression station and other auxiliary control cabinets and equipment (Work No. 2) | 60                        | 45                       | 21                           |

(4) Unless otherwise agreed with the relevant planning authority if up to 5 (five) gas turbines are installed the details approved by the relevant planning authority under paragraph (1) must be in accordance with table 2.

**Table 2**

**Main Dimensions for Up to 5 Gas Turbines**

| <i>Component</i>                                      | <i>Maximum length (m)</i> | <i>Maximum width (m)</i> | <i>Maximum height (mAOD)</i> |
|---|---------------------------|--------------------------|------------------------------|
| Minimum final ground height (mAOD)                    | +7.1m                     |                          |                              |
| Maximum final ground height (mAOD)                    | +14m                      |                          |                              |
| Each Single Gas Turbine and Generator (Work No. 1(a)) | 35                        | 12                       | 29                           |
| Each Stack (Work No. 1(a))                            | 5m diameter               |                          | 59                           |
| Banking Compound Area (Work No. 1)                    | 52                        | 48                       | 22                           |



|  |              |    |    |
|--|--------------|----|----|
| Workshop, Stores, Control, Administration and Welfare Buildings (Work No. 4(c))  | 40           | 30 | 24 |
| Raw Water / Fire Water Storage Tank (Work No. 4(d))  | 15m diameter |    | 21 |
| Gas receiving areas, gas treatment facilities, compression station and other auxiliary control cabinets and equipment (Work No. 2) | 60           | 45 | 21 |

### **Landscaping and biodiversity management and enhancement**

6.—(1) In relation to Work No. 1, Work No. 2 and Work No. 4, no development must be commenced until a landscaping and biodiversity management and enhancement plan, where relevant for that Work, has been submitted to and, after consultation with the Environment Agency, Natural England, Lincolnshire County Council, Nottinghamshire County Council and West Lindsey District Council, approved by the relevant planning authority.

(2) The plan submitted and approved must include details of—

- (a) measures to protect, manage and enhance existing shrub and tree planting that is to be retained;
- (b) biodiversity and habitat mitigation and impact avoidance;
- (c) an implementation timetable; and
- (d) maintenance and management, including a landscaping maintenance plan incorporating measures to protect, manage and enhance all shrub and tree planting.

(3) The plan submitted and approved must be in accordance with the landscaping and biodiversity management and enhancement plan unless otherwise agreed with the relevant planning authority.

(4) The plan must be implemented prior to commissioning and maintained as approved unless otherwise agreed with the relevant planning authority.

(5) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

### **External lighting**

7.—(1) In relation to Work No. 1, no development must commence until a scheme for all external lighting to be installed during construction, where relevant to that Work, has been submitted to and approved by the relevant planning authority.

(2) No part of Work No. 1 must be commissioned until a scheme for all permanent external lighting to be installed has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to paragraphs (1) and (2) of this requirement must accord with the principles of the lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction and operation of the authorised development.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Means of enclosure**

8.—(1) No stage of the authorised development must commence until details of any proposed temporary means of enclosure (including a programme for the removal of all temporary means of

enclosure) where relevant to that stage have been submitted to and approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction of the authorised development.

(3) Pre-commencement activities which involve temporary means of enclosure may take place only in accordance with a specific written scheme of investigation which has been submitted to and approved by the relevant planning authority.

(4) No stage of the authorised development must be brought into commercial use until details of any proposed permanent means of enclosure, have, for that stage, been submitted to and approved by the relevant planning authority.

(5) No stage of the authorised development may be brought into commercial use until any approved permanent means of enclosure has been completed.

(6) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(7) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

### **Surface and foul water drainage**

**9.**—(1) In relation to Work No. 1, Work No. 2 and Work No. 4, no development must commence until, where relevant for that Work, details of temporary surface and foul water drainage systems, including means of pollution control, have been submitted to and, after consultation with the Environment Agency, Lead Local Flood Authority and relevant internal drainage board, approved in writing by the relevant planning authority.

(2) Details of the permanent surface and foul water drainage systems, including a programme for their implementation, must be submitted to and, after consultation with the Lead Local Flood Authority in relation to the permanent surface water drainage system, Environment Agency and relevant internal drainage board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(3) The details submitted and approved pursuant to paragraphs (1) and (2) of this requirement must be in accordance with the outline drainage strategy.

(4) The schemes must be implemented as approved and maintained throughout the construction and operation of the authorised development unless otherwise agreed with the relevant planning authority.

### **Flood risk mitigation**

**10.**—(1) No stage of the authorised development must commence until for that stage a scheme for mitigation of flood risk during construction has been submitted to, and after consultation with the Environment Agency and relevant internal drainage board, approved in writing by the relevant planning authority.

(2) Details of the permanent flood risk mitigation works, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and relevant internal drainage board, approved in writing by the relevant planning authority prior to the start of construction of any part of those works.

(3) The details submitted and approved pursuant to paragraphs (1) and (2) of this requirement must be in accordance with the principles set out in the flood risk assessment that forms part of the environmental statement.

(4) The schemes must be implemented as approved and maintained throughout the construction and operation of the authorised development unless otherwise agreed with the relevant local planning authority.

## **Contaminated land and groundwater**

**11.**—(1) No stage of the authorised development must commence until a scheme to deal with the contamination of land including groundwater which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that stage, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the principles set out in chapter 11 of the environmental statement and must be included in the construction environmental management plan submitted pursuant to requirement 15.

(3) The scheme must include a risk assessment and if necessary a site investigation to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a materials management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(4) Pre-construction remedial work and pre-commencement activities which involve remedial works in respect of any contamination or adverse ground conditions may take place only in accordance with a specific written scheme which has been submitted to and approved by the relevant planning authority.

(5) The authorised development, including any remediation, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

## **Unexpected contamination**

**12.**—(1) If, during any stage of the authorised development, contamination not identified or addressed within the scheme approved under requirement 11 is found to be present within the Order limits, no further development in the vicinity of the contamination may be carried out until a written scheme to deal with the associated risks has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) The scheme must include an investigation and assessment report prepared by a specialist consultant notified in advance to the relevant planning authority, the purpose of which is to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on site.

(3) No remedial work identified in accordance with paragraph (2) may be carried out until the scheme has been approved.

(4) The scheme and management plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

## **Archaeology**

**13.**—(1) No stage of the authorised development must commence until a written scheme of investigation for that stage has been submitted to and, after consultation with Historic England and Nottinghamshire County Council in its capacity as the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with the outline written scheme of investigation.

(3) The scheme must identify any areas where further archaeological investigations and/or design mitigation are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) Pre-construction archaeological investigations and pre-commencement activities which include intensive ground works may take place only in accordance with a specific written scheme of investigations which has been submitted to and approved by the relevant planning authority.

(5) Any archaeological investigations implemented must be carried out—

(a) in accordance with the approved scheme; and

- (b) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.

### **Protected species**

**14.—**(1) No stage of the authorised development must commence until further survey work for that stage has been carried out to establish whether any protected species is present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part must commence until, after consultation with Natural England and the Environment Agency, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority.

(3) The authorised development must be implemented in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

### **Construction environmental management plan**

**15.—**(1) No stage of the authorised development must commence until a construction environmental management plan has been submitted to and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction environmental management plan and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil and waste management plan;
- (d) a sediment control plan;
- (e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions; and
- (f) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

### **Protection of highway surfaces**

**16.—**(1) No stage of the authorised development must commence until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction of the authorised development have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

### **Construction traffic and routing management plan**

**17.—**(1) No stage of the authorised development must commence until a written construction traffic and routing management plan has been submitted to and, after consultation with Highways

England, the highway authority, Lincolnshire County Council and West Lindsey District Council and approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the principles set out in the framework construction transport management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) the construction programme; and
- (d) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority in consultation with Highways England and the highway authority.

### **Travel plan - construction staff**

**18.**—(1) No stage of the authorised development must commence until a written travel plan for construction staff has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction workers' travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction site(s); and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within three months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

### **Construction hours**

**19.**—(1) Subject to sub-paragraph (2) construction work relating to the authorised development, including the delivery or removal of materials, plant and machinery, must not take place on bank holidays and otherwise outside the hours of—

- (a) 0700 and 1900 hours on Monday to Friday; and
- (b) 0800 and 1800 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit to be agreed with the relevant planning authority at the Order limits;

- (b) relate to continuous construction activities where prior notification has been given to the relevant planning authority;
  - (c) are carried out with the prior approval of the relevant planning authority; or
  - (d) are associated with an emergency.
- (3) The restrictions in sub-paragraph (1) do not apply to the delivery of abnormal indivisible loads, where this is—
- (a) associated with an emergency; or
  - (b) carried out with the prior approval of the relevant planning authority.
- (4) Sub-paragraph (1) does not preclude:
- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0730 to 0800 and a shut-down period from 1800 to 1830 on a Saturday; or
  - (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.
- (5) Any request for the prior approval of the relevant planning authority under sub-paragraphs (2)(b) or (3)(b) must be made at least 48 hours in advance of start of the proposed activity.
- (6) In this requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

#### **Control of noise - construction**

**20.**—(1) No stage of the authorised development must commence until a scheme for the monitoring and control of noise during the construction of the authorised development has been submitted to and approved by the relevant planning authority.

- (2) The scheme submitted and approved must specify—
- (a) each location from which noise is to be monitored;
  - (b) the method and frequency of noise measurement;
  - (c) the maximum permitted levels of noise at each monitoring location during the daytime;
  - (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
  - (e) the noise control measures to be employed.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

#### **Control of noise - operation**

**21.**—(1) No stage of the authorised development must be brought into commercial use until a scheme for noise management including monitoring during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(2) Noise from the operation of the authorised development must be no greater than 5dB above background levels measured following commissioning of the authorised development at any residential property in existence at the date of this Order.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

#### **Piling and penetrative foundation design**

**22.**—(1) No piling works for the construction of the authorised development must commence until for that stage a written piling and penetrative foundation design method statement, informed by a

risk assessment has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

### **Restoration of land used temporarily for construction**

**23.**—(1) The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub- paragraph (1); and
- (b) the landscaping and biodiversity management and enhancement plan approved in accordance with requirement 6.

### **Local liaison committee**

**24.**—(1) The authorised development must not commence until the undertaker has established a committee to liaise with local residents and local organisations about matters relating to the authorised development (a ‘local liaison committee’).

(2) The local liaison committee must include representatives of the undertaker.

(3) The undertaker must invite the relevant planning authority, Lincolnshire County Council, Nottinghamshire County Council, West Lindsey District Council, and other relevant interest groups as agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(4) The undertaker must provide a full secretariat service and supply an appropriate venue.

(5) The local liaison committee must meet every quarter, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed in writing by the majority of the members of the local liaison committee.

(6) During the operation of the authorised development, the local liaison committee must meet once a year unless otherwise agreed in writing by the majority of the members of the local liaison committee.

### **Employment, skills and training plan**

**25.**—(1) No part of the authorised development must commence until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction of the authorised development has been submitted to and, after consultation with Lincolnshire County Council and Nottinghamshire County Council, approved by the relevant planning authority.

(2) The approved plan must be implemented and maintained during the construction of the authorised development unless otherwise agreed by the relevant planning authority.

### **Decommissioning**

**26.**—(1) Within 12 (twelve) months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

- (3) The plan submitted and approved must include details of—
- (a) the buildings to be demolished;
  - (b) the means of removal of the materials resulting from the decommissioning works;
  - (c) the phasing of the demolition and removal works;
  - (d) any restoration works to restore land shown within the Order limits to a condition agreed with the relevant planning authority;
  - (e) the phasing of any restoration works; and
  - (f) a timetable for the implementation of the scheme.
- (4) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

## SCHEDULE 3

Article 18

### PROCEDURE FOR DISCHARGE OF REQUIREMENTS

#### **Applications made under Requirements**

**1.**—(1) Where an application has been made to the discharging authority for any consent, agreement or approval required under a requirement the discharging authority must give notice to the undertaker of its decision on the application including the reasons before the end of the decision period.

(2) For the purposes of paragraph (1), the decision period is—

- (a) where no further information is requested under paragraph (2), 8 (eight) weeks from the day immediately following that on which the application is received by the discharging authority or the day on which the fee under paragraph 3(1) is received, whichever is the later;
- (b) where further information is requested under paragraph (2), 8 (eight) weeks from the day immediately following that on which further information has been supplied by the undertaker under paragraph (2);
- (c) such longer period as may be agreed by the undertaker and the discharging authority in writing before the end of the period in sub-paragraph (a) or (b).

#### **Further information**

**2.**—(1) In relation to any application to which this Schedule applies, the discharging authority may request further information from the undertaker where it is necessary to enable it to consider the application.

(2) If the discharging authority considers such further information necessary, it must, within 7 (seven) business days of receipt of the application, notify the undertaker in writing specifying the further information required.

#### **Fees**

**3.**—(1) Where an application is made to the discharging authority for agreement or approval in respect of a requirement the fee contained in regulation 16(1)(b) of the Town and Country Planning (fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a)(as maybe amended from time to time) is to apply and must be paid to the discharging authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within 8 (eight) weeks of the discharging authority either rejecting the application as invalidly made or failing to determine

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(a) S.I. 2012/2920 as amended by S.I. 2013/2153 and S.I. 2014/357 and S.I. 2014/2026, and S.I. 2017/1314.



the application within the decision period as determined under paragraph (1), unless within that period the undertaker agrees, in writing, that the fee may be retained by the discharging authority and credited in respect of a future application.

## Appeals

4.—(1) The undertaker may appeal in the event that—

- (a) the discharging authority refuses an application for any agreement or approval required by a requirement or grants it subject to conditions;
- (b) the discharging authority does not give notice of its decision to the undertaker within the decision period as determined in paragraph 1(2);
- (c) on receipt of a request for further information pursuant to paragraph (2) the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information, which the undertaker considers, is not necessary for consideration of the application.

(2) The appeal process is as follows—

- (a) the undertaker must submit to the Secretary of State a copy of the application submitted to the discharging authority and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”);
- (b) the undertaker must on the same day provide copies of the appeal documentation to the discharging authority;
- (c) as soon as is practicable after receiving the appeal documentation, but in any event within 10 (ten) business days of receiving the appeal documentation, the Secretary of State must appoint a person (“the appointed person”) and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent;
- (d) the discharging authority must submit written representations to the appointed person in respect of the appeal within 20 (twenty) business days of the date on which the appeal parties are notified of the appointment of a person under paragraph (c) and must ensure that copies of its written representations are sent to the undertaker on the day on which they are submitted to the appointed person;
- (e) the appeal parties must make any counter-submissions to the appointed person within 10 (ten) business days of receipt of written representations pursuant to paragraph (d) above.

The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within thirty business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (e).

If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(3) Any further information required pursuant to sub-paragraph 0 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matter contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 10 (ten) business days of that date.

(4) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the discharging authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(5) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

(6) The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(7) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(8) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of the relevant requirement in Schedule 2 as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

(9) Save where a direction is given pursuant to sub-paragraph (10) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person must be met by the undertaker.

(10) On application by the discharging authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance or any circular or guidance which may from time to time replace it.

## SCHEDULE 4

Article 16

### PROTECTIVE PROVISIONS

#### PART 1

##### Protection for electricity, gas and sewerage undertakers

1. The provisions of this Part have effect for the protection of affected undertakers unless otherwise agreed in writing between the undertaker and the affected undertaker in question.

2. In this Part—

“affected undertaker” means—

- (a) a licence holder within the meaning of Part 1 of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) a water undertaker(b); and
- (d) a sewerage undertaker(c).

for the area of the authorised development, and in relation to any apparatus, means the affected undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus”—

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(a) 1986 c.44.

(b) “Water undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

(c) “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978.

- (e) in the case of an affected undertaker that is a licence holder within the meaning of section 6 of the 1989 Act, means electric lines or electrical plant (as defined in the Act), belonging to or maintained by the affected undertaker;
- (f) in the case of an affected undertaker, that is a gas transporter within the meaning on Part 1 of the Gas Act 1986, means any mains, pipes or other apparatus belonging to or maintained by the affected undertaker for the purposes of gas supply;
- (g) in the case of an affected undertaker that is a water undertaker, means mains, pipes or other apparatus belonging to or maintained by the affected undertaker for the purposes of water supply; and
- (h) in the case of an affected undertaker that is a sewerage undertaker—
  - (i) means—
    - (aa) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and
    - (bb) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act(a) or an agreement to adopt made under section 104 of that Act(b); and
  - (ii) includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works and in each case includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;
  - (iii) “functions” includes powers and duties;
  - (iv) “in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or on land.

**3.** This Part does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by Part 3 of the 1991 Act (street works in England and Wales).

**4.** Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**5.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, the apparatus must not be removed under this Part, and any right of an affected undertaker to maintain that apparatus in the land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford the facilities and rights referred to in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

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(a) Section 102(4) was amended by the Water Act 2003 and Water Act 2014 (c.21).  
 (b) Section 104 was amended by the Water Act 2014.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 22 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 22, and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part.

(6) Despite anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—**(1) Where, in accordance with this Part, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 22 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**7.—**(1) Not less than 28 days before commencing the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under that sub-paragraph, the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) The works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the affected undertaker is entitled to watch and inspect the execution of the works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and the undertaker having done so the provisions of this paragraph must apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of the works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**8.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by the affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any works referred to in paragraph 5(2).

(2) The value of any apparatus removed under this Part, that value being calculated after removal, must be deducted from any sum payable under sub-paragraph (1).

(3) If in accordance with this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 22 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**9.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

(a) bear and pay the cost reasonably incurred by the affected undertaker in making good the damage or restoring the service or supply; and

(b) make reasonable compensation to the affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker by reason or in consequence of the damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**10.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 2

### Protection for operators of electronic communications code networks

**11.** The provisions of this Part have effect for the protection of an operator unless otherwise agreed in writing between the undertaker and the operator.

**12.** In this Part—

**13.** “2003 Act” means the Communications Act 2003(a);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system must be construed in accordance with paragraph 1(3A) of the code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act(b); and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“operator” means the operator of an electronic communications code network.

**14.—(1)** Subject to sub-paragraphs (2) to (4), if as the result of the authorised development its construction, or any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must—
- (c) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;
- (d) make reasonable compensation to an operator for loss sustained by it; and
- (e) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

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(a) 2003 c.21.

(b) Section 106 was amended by the Digital Economy Act 2017 (c.30).

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 36 (arbitration).

**15.** This Part does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 of the 1991 Act (street works in England and Wales); or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**16.** Nothing in this Part effects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises EDF Energy (Thermal Generation) Limited (referred to in this Order as the undertaker) to construct, operate, use and maintain a gas fired electricity generating station.

A copy of the Order plans and documents mentioned in this Order and certified in accordance with article 20 of this Order (certification of plans etc.) may be inspected free of charge during working hours at [ ].