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8 November 2018

**PINS Reference: EN010091**

**Examination Deadline 2 (“D2”)**

The Drax Power (Generating Stations) Order

Dear Ms Gregory,

Please find enclosed documentation for Examination Deadline 2 from Drax Power Limited ("Drax") for a Development Consent Order ("DCO") in respect of the Drax Repower Project ("the Proposed Scheme"). This Deadline is the second of nine Deadlines for the Examination set out within the Rule 8 Letter published on 11 October 2018.

I set out below the documents submitted at this Deadline 2.

### [Full List of Submission Documents for Deadline 2](#)

Submission documents for Deadline 2 of the Examination include:

#### Updated Application Documents

- 1.2 Application Guide
- 2.1 Site Location Plan
- 2.2 Land Plans
- 2.3A Works Plans

- 2.3B Indicative Works Associated with Unit X
- 2.3C Indicative Works Associated with Unit Y
- 2.4 Access and Rights of Way Plans
- 2.5A Two Unit Option Indicative Plant Layout
- 2.5B One Unit Option Indicative Plant Layout
- 2.6C Indicative Above Ground Gas Installation Elevations
- 3.1 Draft Development Consent Order (clean and track changed versions)
- 4.2 Funding Statement
- 4.3 Book of Reference (clean and track changed versions)
- 4.4 Compulsory Acquisition Schedule
- 5.8 Other Consents and Licences
- 6.2.5.1 Environmental Statement – Volume 2 – Appendix 5.1 – Outline Construction Worker Travel Plan
- 6.2.5.2 Environmental Statement – Volume 2 – Appendix 5.2 – Outline Construction Traffic Management Plan
- 6.2.9.10 Environmental Statement – Volume 2 – Appendix 9.10 – Biodiversity Net Gain Assessment
- 6.4 Environmental Statement Commitments Register
- 6.5 Outline Construction Environmental Management Plan
- 6.7 Outline Landscape and Biodiversity Strategy
- 6.8 Flood Risk Assessment

#### Additional Examination Documents

- 8.1.6 Statement of Common Ground with Highways England (agreed draft)
- 8.1.8 Statement of Common Ground with the Health and Safety Executive
- 8.2.2 Schedule of Changes for Deadline 2
- 8.4.4 Supplemental Environmental Information – Bat Activity Survey
- 8.4.6 Outline Public Rights of Way Management Plan
- 8.4.7 Landscape and Visual Amenity Effects – Appropriateness of Mitigation
- 8.5.2 Accompanied Site Inspection – Suggested Locations and Justifications (updated, Rev 002)

- 8.5.3 Applicant's Response to First Written Questions
- 8.5.4 Schedule of Negotiations
- 8.5.5 Removal of Stage 0 Mitigation Review
- 8.5.6 Plans Identifying Additional Land
- 8.5.7 Additional Land Application
- 8.5.8 Statement of Reasons in Relation to Additional Land

The reasons for the submission of these documents are set out below.

### Non-Material Amendment – Removal of Stage 0 from the DCO Application

A number of application documents have been revised in relation to a non-material amendment that is proposed at this Deadline.

As the Examining Authority is aware, the Proposed Scheme includes Site Reconfiguration Works, which are referred to as "Stage 0" in the DCO Application. As set out in the Environmental Statement (in particular, section 3.3 of Chapter 3 "Site and Project Description" (Examination Library Reference APP-071)), the Planning Statement (see paragraphs 2.3.17 – 2.3.19) (Examination Library Reference APP-062) and the Explanatory Memorandum to the DCO (see paragraphs 1.19, 4.3.3, 4.3.4, 5.16.2, 5.16.26) (Examination Library Reference APP-021), the Applicant's position has always been that it would seek development consent for Stage 0, as part of the Proposed Scheme, and in parallel would pursue approval of the Stage 0 works via an application to Selby District Council ("SDC") under the Town and Country Planning Act 1990 (the TCPA permission, planning reference 2018/0154/FULM). The option of consenting the Stage 0 works under the Planning Act 2008 or under the Town and Country Planning Act 1990 is permissible given the Stage 0 works constitute "associated development", and therefore there is no requirement for the Stage 0 works to be consented via a DCO.

The TCPA permission was granted by SDC on 24 May 2018, shortly prior to submission of the DCO Application. The Applicant is now implementing the TCPA permission. Accordingly, the Applicant proposes to amend its DCO Application so that it no longer seeks consent for the Stage 0 works, and requests that the Examining Authority accepts such amendment as a non-material amendment.

The Applicant has had regard to the Planning Inspectorate's Advice Note 16 '*How to request a change that may be material*'. Paragraph 2.1 of the Advice Note states that there is no legal definition of what is material, but the tests to apply are whether the change is substantial, or whether the development now being proposed is not in substance that which was originally applied for.

The Applicant submits that the changes proposed are not substantial and the development now being proposed is substantially the same as that which was originally applied for. As stated above, the Application documents made it clear that the Stage 0 works may be constructed pursuant to

the TCPA permission. Furthermore, the Stage 0 works do not constitute the Nationally Significant Infrastructure Project (“NSIP”), but are associated development to the NSIP, being the generating stations (gas fired and battery storage).

No additional land or works are being proposed. Instead, the Order limits and Order land are being reduced and part of the authorised development removed as it is no longer required (under this Application). There will be no new or different likely significant environmental effects as the Environmental Statement assessed the likely significant effects of Stage 0 on its own, and then it assessed Stages 1, 2 and 3 against a baseline which assumed the completion of the Stage 0 works under either the DCO or the TCPA permission (as explained at section 3.3 of Chapter section 3.3 of Chapter 3 Site and Project Description (Examination Library Reference APP-071)).

Given the ES assesses Stage 1 (and subsequent stages) on the assumption that the Stage 0 works, and its associated mitigation, have been completed, it is necessary to confirm that the mitigation measures associated with Stage 0 in the DCO Application are equally secured under planning permission 2018/0154/FULM. This is to ensure that once the Stage 0 works are completed pursuant to the TCPA permission, the "Stage 0 baseline" as assumed in the ES remains the same.

In support of the non-material amendment application, the Applicant has prepared the enclosed Removal of Stage 0 Mitigation Review (Applicant’s document reference 8.5.5) for submission at this Deadline. The Mitigation Review sets out the environmental mitigation measures proposed under the DCO Application and how they relate to the mitigation measures sought by way of planning conditions under the TCPA permission granted by SDC. The Mitigation Review demonstrates that the mitigation measures associated with Stage 0 in the DCO Application are equally secured under the TCPA permission, and where they are not, that this has no bearing on the "Stage 0 baseline" as assumed in the ES (i.e. the position following completion of Stage 0).

The Applicant has considered whether, without re-consultation on the requested change(s), any of those entitled to be consulted or who were consulted on the original application (including persons who are not an Interested Party in the Examination) would be deprived of the opportunity to make any representations on the changed application. Given the nature of the proposed changes, and that the consultation material used for the statutory consultation (see in particular the Non-Technical Summary to the Preliminary Environmental Information Report at paragraph 3.4.3 and 3.4.4 (Examination Library Reference APP-137), the consultation leaflet at Appendix 6.2 to the Consultation Report, paragraph 3.1.13 of the Project Overview Report at Appendix 6.4 of the Consultation Report, and the Exhibition Boards at Appendix 6.5 of the Consultation Report (Appendix 6 to the Consultation Report is Examination Library Reference APP-032)) and the DCO Application made clear that the Stage 0 works would be carried out either pursuant to the proposed DCO or the TCPA permission, the Applicant considers that there are no persons who would be affected by the proposed changes who would be deprived of the opportunity to make representations on the changes. In any event, the planning application for Stage 0 has been subjected to its own consultation and determination process prior to the grant of the TCPA permission and by making this non-material change application at Deadline 2, other parties have an opportunity to comment.

The Applicant has discussed the removal of Stage 0 with SDC. SDC has no objection to this and it is confirmed in the agreed draft Statement of Common Ground entered into by the Applicant, SDC and North Yorkshire County Council (“NYCC”) (Examination Library Reference REP1-006) that:

- a) the Applicant has discharged all pre-commencement conditions and lawfully implemented the TCPA permission;
- b) the completion of the Site Reconfiguration Works pursuant to the TCPA permission will establish the same baseline for Stage 1 as set out in the assessment in the Environmental Statement submitted with the DCO Application; and
- c) the removal of Stage 0 from the DCO Application has no implications for Stages 1, 2, 3 and 4 of the Proposed Scheme.

The Applicant has considered what changes to documents submitted to the Examining Authority are required as a result of removing Stage 0 from the DCO Application, and therefore has submitted revised application documents at this Deadline. Some of the documents have also been updated for other reasons unconnected to the removal of Stage 0, and the enclosed Schedule of Changes (document reference 8.2.2) sets out all revised or updated documents being submitted at this Deadline 2, and briefly notes the reasons for the changes.

The Removal of Stage 0 Mitigation Review Document (document reference 8.5.5) is provided to accompany the above request for the non-material amendment, setting out the environmental mitigation measures proposed under the DCO Application, and how they relate to the mitigation measures sought by way of planning conditions under planning permission 2018/0154/FULM.

### Draft Development Consent Order

The updated draft DCO reflects the removal of Stage 0 as well as a number of other changes that are set out in the Schedule of Changes (document reference 8.2.2).

### Plans

The updated Site Location Plan, Land Plans, Works Plans and Indicative Layout Plans are submitted to reflect the removal of Stage 0 from the DCO.

In addition, a number of other changes have been made to some of these plans which are set out in the Schedule of Changes (document reference 8.2.2). In particular, the Land Plans have been updated to reflect a number of changes in plot sizes (all within the Order limit), for example in relation to updated landscaping design as set out in the updated Outline Landscape and Biodiversity Strategy. Further, the updated Land Plans reflect an additional Application for Compulsory Acquisition of Land (document reference 8.5.7) (see below for details).

The Access and Rights of Way Plans have been updated in response to changes to the accesses into Development Parcel A.

The Indicative Above Ground Gas Installation Elevations have been updated to reflect minor changes to the location of the AGI and road.

It is noted that for completeness, full sets of each of the above plans have been submitted for this Deadline, although not all sheets required amendments. The revision number and revision dates for each sheet sets out the latest revision that has been made to each sheet. The Schedule of Changes details which sheets have been updated in each case.

### Land Documents – Additional Land Application

This submission is accompanied by an Additional Land Application (document reference 8.5.7). The changes sought are as a consequence of one of the following reasons:

- A discrepancy between land shown as being needed for the gas receiving facility (Work Number 5) on the works plans, and the land to be permanently acquired for that purpose on the land plans. Following a further feasibility study, it was confirmed that a larger area of land for Work Number 5, shown on the works plans, was required, and as a result, the area of land to be acquired for the gas receiving facility is sought to be increased. This affects plots 9 and 12.
- Refinement of the alignment of the Gas Pipeline (Work Number 7) and to ensure consistency with the work plans. This affects plots 26, 27, 32 and 33.
- A discrepancy between the land plans and the area of planting identified in the outline Landscape and Biodiversity Strategy (Examination Library Reference APP-135). As a result, a greater area over which rights are sought is required for planting mitigation than shown on land plans. This affects plots 55, 58, 60, 61, 66 and 67.
- The need to ensure retention of existing trees which serve to provide screening mitigation of the gas receiving facility (Work Number 5). This affects plots 11, 12, 25 and 26.
- Equipment installation in connection with the above ground installation (Work Number 6). The equipment to be installed is an oil separator and attenuation tank (to be installed below ground). The area above the oil separator and attenuation tank cannot be farmed or used in any meaningful way by the current owner and is therefore to be permanently acquired. This affects plots 62 and 65.

The changes only affect land already included within the Order land, and do not result in any newly affected persons.

Regulation 5 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 requires that the applicant, Drax, must send certain information to the Examining Authority as part of its application. In accordance with this Regulation, accompanying this Deadline 2 are:

- an updated Book of Reference (document reference 4.3) and Compulsory Acquisition Schedule (document reference 4.4). This has also been updated to take into account the removal of Stage 0;
- a Supplemental Statement of Reasons (document reference 8.5.8);
- Updated Land Plans and plans identifying the additional land; (document references 2.2 and 8.5.6 respectively); and

- an updated Funding Statement (document reference 4.2)

## Environmental Documents

The Outline Construction Worker Travel Plan, Outline Construction Traffic Management Plan, Outline Construction Environmental Management Plan, Environmental Commitments Register and Outline Landscape and Biodiversity Strategy have been updated following further discussions with relevant consultees including the Local Planning Authorities, Highways England and Newland Parish Council. The removal of Stage 0 from the DCO Application is also reflected in these documents.

The Biodiversity Net Gain Assessment has been updated to reflect the changes to the Outline Landscape and Biodiversity Strategy and other updated documents including the Access and Rights of Way Plans.

The document “Landscape and Visual Amenity Effects – Appropriateness of Proposed Mitigation” (document reference 8.4.7) is submitted as a result of ongoing discussions with the Local Planning Authorities on the sufficiency of mitigation in respect of landscape and visual effects identified in the Environmental Statement as a result of the Proposed Development. The paper is submitted alongside the revised Outline Landscape and Biodiversity Strategy.

The Outline Public Rights of Way Management Plan (PRoW) is submitted at Deadline 2 to describe where PRoW will be affected by the Proposed Scheme and how the PRoW will be managed to ensure they are safe to use and disruption to users is minimised during construction. This is submitted in response to the Examining Authority’s Written Question ref. TT 1.7(ii).

With respect to the Bat Activity Survey report, this is supplementary information, supplementing the Environmental Statement submitted with the Application. The report describes the further bat survey works that has been completed since submission of the Application and confirms the conclusions in the Environmental Statement.

## Statements of Common Ground

In addition to the above listed Statements of Common Ground (SoCG) with the Health and Safety Executive (signed) and Highways England (agreed draft), SoCGs are currently being progressed by Drax with the following parties:

- North Yorkshire County Council and Selby District Council;
- Environment Agency;
- Yorkshire Wildlife Trust;
- Selby Area Internal Drainage Board;
- Newland Parish Council.

The abovementioned SoCGs will set out the areas of agreement, and any areas of disagreement between the Parties. In line with the Rule 8 Letter, the final signed versions of the SoCGs will be submitted by Thursday 21 March 2019 (Deadline 8).



## Other Documents

The Applicant's Responses to the Examining Authority's Written Questions (document reference 8.5.3) have been submitted in line with the deadline given in the Rule 8 letter.

The Accompanied Site Visit – Suggested Locations and Justifications document (document reference 8.5.2) has been updated to reflect a request from the Examining Authority to include a stop at the Above Ground Installation.

The Other Consents and Licences document (document reference 5.8) has been updated to reflect the latest status of a number of applications for other consents or licences.

The Schedule of Changes for Deadline 2 (document reference 8.2.2) sets out key changes to updated submission documents. The revision numbers for each document are set out in the updated Application Guide (document reference 1.2).

Please do not hesitate to contact me should you have any queries regarding the enclosed submissions.

Yours sincerely



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