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Our ref: JB13/PM08/47016.3

Your ref: EN010092

16 October 2020

Dear Sir,

Thurrock Flexible Generation Plant DCO Application
Planning Inspectorate reference: EN010092

Thurrock Power Limited (“TPL”), the Applicant for the Thurrock Flexible Generation Plant DCO, notes the submission dated 06 October 2020 made to the Examining Authority by the Port of Tilbury London Limited (“PoTLL”) following the issue of the Rule 6. Given that this submission raises issues which the Applicant considers would affect the discussion of the proposed examination timetable at the preliminary meeting, the Applicant submits this response to the points raised by PoTLL ahead of that meeting.

Summary

- 1 The Applicant accepts that PoTLL needs to protect its position pending the agreement of commercial terms with TPL. It has done that with its Relevant Representation. The Applicant is disappointed by the attempt to needlessly delay the start of the Examination. The Applicant wishes to stress that it has had an entirely constructive dialogue with PoTLL going back to 2017. PoTLL has been clear throughout that it is agreeable in principle to construction and operational traffic using the port, subject to commercial terms and agreeing practical arrangements. PoTLL put forward its proposed commercial terms in early August 2020 and has instructed solicitors (Birketts) to negotiate an access agreement. Discussions are ongoing. Accordingly, the Applicant is surprised at the suggestion of possible serious detriment to the port’s undertaking. It has always been common ground that it is necessary to agree scheduling arrangements to ensure the TPL traffic does not adversely impact on other port activities (remembering that some TPL traffic may be moving balance of plant delivered by ship to the Port i.e. normal port business).
- 2 The critique of the Environmental Statement is rejected and is misplaced. It is entirely appropriate that the issues raised by PoTLL in relation to the port are dealt with in the Examination through Interested Party submissions and responses and ExA questions and responses. This exchange of information is ‘environmental information’ under the Regulations precisely to avoid the kind of delay proposed by the Applicant. In this connection it is inevitably the case that the Port understands its operations (and can alter them at any time) in a way that the Applicant cannot and is not expected to by the EIA Regulations.
- 3 The Navigation Risk Assessment is almost completed. Its scope was agreed with PoTLL and PoTLL has been sent a draft of the Assessment for comment. It will be submitted to the Planning Inspectorate before Part 2 of the Preliminary Meeting on 4 November.
- 4 The Applicant was in any event preparing Protective Provisions in the light of PoTLL’s Relevant Representations. These have been submitted today to PoTLL. Accordingly, no direction is required for these to be provided.

Environmental Statement

The Applicant rejects PoTLL's assertion that the ES submitted with the DCO application is inadequate. The Applicant sets out in this letter why the ES is adequate and therefore why the Examination should not be delayed in order to seek information which is unnecessary to meet the procedural requirements.

The Applicant further submits that there is no issue raised by PoTLL which cannot be properly dealt with through Examination and that a direction seeking further environmental information is unnecessary and disproportionate.

Navigational Risk Assessment.

The Applicant does not accept that the request by interested parties for a navigational risk assessment to be produced automatically means that it should have been included in the ES or that non-inclusion renders the ES inadequate within the meaning of the EIA regulations.

The ES does not, as asserted by PoTLL, "fail" to accord with the scoping opinion. Regulation 14(3) of the EIA Regulations states that an Environmental Statement must be based on the most recent scoping opinion adopted "***so far as the proposed development remains materially the same***". As is set out in section 2.1.2 of the Scoping Opinion, the description of the development at the time scoping was carried out did not include a causeway and the only feature below MHWS was a "Potential cooling water pipeline to the River Thames, around 2.5km in length". The marine aspects of the project have materially changed as this cooling water infrastructure has been removed and a causeway added. The Scoping Opinion in regard to marine elements must therefore be read with the application of the fact that, for marine elements, it is out of date and the development has materially changed in this regard.

Further and in any case, the Scoping Opinion does not require a standalone navigational risk assessment of the type now sought, it only requires that navigation to be assessed under other topics. Paragraph 4.3.11 of that opinion provides that "*The Traffic and Transport chapter of the ES should include an assessment of impacts resulting from transportation of construction materials/ abnormal loads to the site via water, if this option is pursued. This should include an assessment of any impacts to navigation (e.g. lighting) which are likely to result in significant effects*".

APP-130 (A7.8: Concept Design of Causeway for Delivery of Abnormal Indivisible Loads) explains on page 6 that by design the causeway and beached vessel are located outside and at a safe distance from the navigation channel. This is reflected in paragraph 2.10.4 of APP-045 (ES Volume 2, Chapter 2: Project Description). Accordingly, no significant effects were considered likely and no further assessment in the EIA was required.

The Designer's Hazard Assessment at Appendix D of APP-130 considers the potential risk from hazard category "*The causeway and/or beached barge may be a hazard to safe navigation, resulting in collision by passing shipping*". It recommends consultation with the PLA, incorporation of any navigation aids required by the PLA, and scores the risk as being in the lowest category. Consultation with the PLA has been undertaken and is ongoing, as set out below. In terms of navigation safety aids, the ES identified in paragraph 2.8.4 of APP-045 that a battery-powered navigation safety light on the causeway was likely to be required.

As set out in its submission for Procedural deadline A, in an effort to assist the Examination, the Applicant is already progressing a navigational risk assessment in response to the requests from various interested parties. The scope of that assessment was discussed with the relevant interested parties including PoTLL. Port of Tilbury's deputy harbourmaster met with the Applicant's consultants on 5 October 2020 to discuss the assessment and no concerns around methodology were raised.

The Applicant is therefore surprised to see that the submission made to the Examining Authority states that “PoTLL already has some concerns as to the proposed risk assessment methodology”¹. This is at odds with the information being provided by PoTLL in discussions on the assessment.

The Applicant intends to submit the navigational risk assessment to the Planning Inspectorate by the Preliminary Meeting Part 2 on 4 November.

Traffic and use of private roads in T2

The traffic assessment within the ES has been undertaken in accordance with all relevant guidance. Further discussion of this is provided at Appendix A. In summary, this guidance directs applicants to assess impacts on the capacity and safety of the public highway / road network, alongside consideration of sustainable transport and other environmental effects such as noise and air quality where relevant. No guidance advises how traffic on private roads should be assessed. It is best practice to assess the public highway traffic and transport environmental effects of development proposals in accordance with the methodology set out within the IEA (1993) guidance², while the traffic and transport considerations off the public highway are managed via suitable operating procedures and management. As set out below, the Applicant has been and continues to engage with PoTLL about effective management of traffic on private roads within the PoTLL site as part of the ongoing commercial negotiations, which has included a joint site visit on 29th September 2020 to look at the interaction with the port railway and other issues.

The Applicant has provided all of the information it can on the use of the private road; without considerable input from the Port itself on its own operation there is no data which the Applicant can use to undertake further assessment. The only person in a position to provide any further information to allow any further work to be carried out is PoTLL. Furthermore, it would be open to PoTLL to alter its arrangements at any time. Issues relating to interaction with the port operations are clearly best considered in the context of the Examination in the usual way.

The Applicant is surprised at the submission that its proposed use of the Port roads by 82 heavy vehicles a day (164 two-way movements) at peak would cause serious detriment to the Port undertaking, particularly in the context that the access from the Port to public highway was designed to take 2,977 vehicles³ a day. Even if operating at peak assessed capacity (which the Port is not), the Applicant’s contribution to the traffic within the Port is accordingly considered to be minor/negligible.

The Applicant has already discussed with Port officers how vehicle movements can be managed through the Port and for example, how the need to avoid queuing during use of the rail chord could be secured. The Applicant was, at the time the submission of 6 October was made, already in the process of drafting protective provisions for PoTLL based on those discussions. That draft has been provided to PoTLL today. A procedural decision directing the Applicant to do this work is therefore unnecessary.

The Applicant has been in discussion with PoTLL regarding the principle of using the private roads since 2018, having made initial contact to introduce the TPL project in 2017. Throughout those discussions the response has been that the required use can be accommodated subject to agreeing commercial terms, and scheduling procedures and discussion on those terms has been progressing. This is reflected in its section 42 consultation response to the Applicant of 11 November 2019 (by Vincent & Gorbings on behalf of PoTLL). At no time has PoTLL advised that allowing access would be seriously detrimental to its statutory undertaking, indeed it is unclear to the Applicant why commercial discussions would even have been engaged in if that was the case. Furthermore, it should be noted that some of the construction traffic may involve normal port business if the port is used for the arrival by ship of balance of plant for the generating station.

The Applicant has been aware that PoTLL has been focussed on the delivery of T2 and that the needs of its project have understandably been a secondary issue for PoTLL. Commercial terms

1 Paragraph 26

2 ‘Guidelines for the Environmental Assessment of Road Traffic’ (Institute of Environmental Assessment (IEA), 1993)

3 AADT, figures from T2 DCO application

were proposed by PoTLL in early August 2020 and PoTLL has instructed solicitors (Birketts) to prepare an access agreement. Those negotiations are ongoing.

The Applicant submits that this is not an ES point, but rather an objection to the seeking of compulsory powers, and the related question of protective provisions, which can be properly and appropriately dealt with in the Examination, not through further ES information.

Construction Worker Traffic

The construction worker traffic assessment is based on workers being bused to site from collection points and a park and ride. The points PoTLL makes on delivery of this are points for the Examination where the Applicant fully expects to be required to satisfy the Examining Authority on proposed approach. The Applicant does not accept that this information needs to be included in the ES as the Rochdale parameter for the consent sought and environmental impact envelope assessed is that the majority of workers arrive at site by bus; any impacts from the worker car parking are impacts of that parking use which requires a consent and are assessed in that consenting process, not the DCO.

As a brief update, the Applicant has identified a site for parking, an agreement in principle has been reached with the landowner and a planning application for parking use has been made. The Applicant will provide further information on this in the Examination.

Construction Waste

The 'Construction Waste' section (pages 22-23) of ES Volume 2, Chapter 2: Project Description (APP-045) provides information about potential construction waste arisings. It notes that the project will largely be assembled from components that have been pre-manufactured off-site, such as the gas engines, substation components, batteries and gas pipeline sections, with construction waste from assembling and installing these components on-site therefore being minimal.

The Project Description explains that the largest potential construction waste volume would be any soil that could not be accommodated in the cut/fill balance and that the potential environmental impact of transporting this to a re-use or disposal location, should that be required, has been assessed. In practice any such off-site transport impact is unlikely as partial raising of site levels using excavated soil is needed and the site is also immediately adjacent to a major land-raising operation that exists for disposal of construction spoil arisings.

The potential impact of waste sediment that is dredged for the causeway and berthing pocket construction has also been assessed, whether for re-use in saltmarsh creation or dispersed by water injection dredging.

The Applicant has set out good-practice measures for managing and minimising other minor construction waste arisings in a number of sections of the Outline Code of Construction Practice (APP-142). These reflect specific mitigation commitments identified in the environmental assessments for construction impacts, such as appropriate storage of waste to avoid dust impacts or watercourse contamination.

There is no inadequacy in the ES.

Minerals

Paragraph 3.4.1 in ES Volume 3, Chapter 8 (APP-057) states that the development does not affect any extant minerals operations or any areas currently identified by Thurrock Council as being safeguarded for minerals. The Applicant can also confirm that the development does not lie within or affect any safeguarded minerals site identified by Essex County Council.

The Applicant estimates that in the order of 1,000m³ of aggregates would be required for concrete mixing. The proposed development includes a direct, off-highway road link to the Tilbury2 'CMAT' (Construction Materials and Aggregates Terminal), which would be a potential choice for aggregates supply and has a designed capacity of 1.6 million tonnes per annum, or more than a

thousand times greater than the amount required for this project. Similarly, Essex County Council, Southend-on-Sea Borough Council and Thurrock Council's Local Aggregate Assessment⁴ describes aggregate production and sales in Essex as being measured in the millions of tonnes per annum. It is clear in this context that the proposed development's aggregates demand would be a negligible fraction of available supply with no potential for environmental impacts from aggregates extraction.

There is no inadequacy in the ES.

Heritage

The Applicant is in direct communication with Historic England and is progressing a SoCG with them which will address the issues raised in their relevant representation.

The main development site has not been subject to intrusive investigation as it is common land and such investigation would interfere with the exercise of rights of common. It is also crossed by electrical wires with pylon footings situated in the site which further limits what land could be investigated. The lack of intrusive investigation is not an omission or oversight but is due to a deliberate balancing between interfering with rights of common in an area where desk-based study shows limited justification for such interference prior to consent, and the ability to secure monitoring and recording during construction when the commons rights will have been relocated allowing investigation without interfering with use of common land.

The Applicant has undertaken valuable non-intrusive and low-impact investigation that was possible within the common land, commissioning both a geophysical survey and a geoarchaeological deposit model based on geotechnical borehole investigations, the latter on the recommendation of Historic England and Essex County Council during consultation. These surveys and existing published information are considered to have provided sufficient information to inform the assessment of potential environmental impacts and to guide the scope and approach of further investigation to be undertaken prior to construction. An Outline Written Scheme of Archaeological Investigation has been prepared (APP-147) detailing the further intrusive investigation that would be carried out.

The Applicant submits that this is a proper matter for discussion in the Examination when the case for seeking to secure investigation by requirement can be fully discussed, it is not an issue which renders the ES inadequate.

Avocets

The Applicant notes that Natural England wish to engage further on avocets but does not accept that this means the ES is inadequate. As PoTLL notes in its submission, the Natural England comments were made in the HRA context, Natural England have not made any submission that the ES is inadequate.

For all of the reasons set out in this letter, the Applicant submits that there is no inadequacy with the ES which requires a direction for further information or any delay to Examination. Rather

Conclusion

PoTLL has raised issues which can and should be properly considered through the Examination process. The Examining Authority is accordingly respectfully requested to refuse all of PoTLL's requests.

Yours faithfully,
Julian Boswall
Partner
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⁴ Update in September 2014:

https://www.thurrock.gov.uk/sites/default/files/assets/documents/essex_local_aggregate_assessment_201409.pdf

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Appendix A – Discussion of Transport Assessment Guidance

Chapter 10 of the ES and the Transport Assessment assess the transport impacts of the proposal in line with their respective guidance documents and best practices. Chapter 10 was prepared in accordance with 'Guidelines for the Environmental Assessment of Road Traffic' (Institute of Environmental Assessment (IEA), 1993). Paragraph 1.10 of this document confirms its application and states:

'The Guidelines are for the assessment of the environmental impact of road traffic associated with major new developments, irrespective of whether the sites are to be subject to formal Environmental Statements or not The Guidelines are only designed to be applied to off-site traffic impacts, although on-site impacts will also need to be considered as part of the overall assessment'.

On-site impacts are recognised in this paragraph and is further recognised in paragraph 1.7 which states:

'For many projects, most of the detrimental environmental effects usually result from "on-site" operations. Good design, operating procedures and mitigating techniques can reduce the impact of the development on the local environment; e.g. smoke filters on chimneys, earth mounds to reduce the noise and visual impact, water sprays to reduce dust from quarries, etc.'

Paragraph 1.7 goes on to state:

'As traffic is largely external to the site, and generally brings the impacts closer to people, it is much more difficult to provide fully effective mitigation. Often the end result is that, once all the on-site mitigation and control systems have been put in place, off-site traffic remains the greatest unresolved environmental issue'.

Given this, it is best practice to assess the off-site traffic and transport environmental effects of development proposals in accordance with the methodology set out within the IEA guidance, whilst the on-site traffic and transport considerations are via suitable operating procedures and on-site management.

In terms of the Transport Assessment, this was prepared in accordance with 'Planning Practice Guidance: Travel Plans, Transport Assessments and Statements' (PPG) (MHCLG, 2014) and the Department for Transport (2013) publication Circular 02/2013: 'The Strategic Road Network and the Delivery of Sustainable Development'.

The Department for Transport Circular sets out their requirements for assessing the impact of development upon the Strategic Road Network and thus has a requirement to assess only the off-site impacts.

PPG is the successor to 'Guidance on Transport Assessment' (GTA) (Department for Transport, 2007), which is the Transport Assessment methodology document referenced in National Policy Statement for Energy EN-1. As the successor to GTA, PPG is thus the relevant guidance document on which to prepare a Transport Assessment.

Paragraph 005 of PPG describes a Transport Assessment as:

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'Transport Assessments and Transport Statements primarily focus on evaluating the potential transport impacts of a development proposal. ... The Transport Assessment or Transport Statement may propose mitigation measures where these are necessary to avoid unacceptable or "severe" impacts. ...

Transport Assessments and Statements can be used to establish whether the residual transport impacts of a proposed development are likely to be "severe", which may be a reason for refusal, in accordance with the National Planning Policy Framework'.

PPG does not prescribe the precise content or requirements of Transport Assessments and it states that their scope and level of detail will vary from site to site. Paragraph 015 of PPG provides guidance of what information should be included in Transport Assessments and in terms of assessment and impact, it lists:

- *'an assessment of trips from all directly relevant committed development in the area (ie development that there is a reasonable degree of certainty will proceed within the next 3 years);*
- *an analysis of the injury accident records on the public highway in the vicinity of the site access for the most recent 3-year period, or 5-year period if the proposed site has been identified as within a high accident area;*
- *an assessment of the likely associated environmental impacts of transport related to the development, particularly in relation to proximity to environmentally sensitive areas (such as air quality management areas or noise sensitive areas); and*
- *measures to mitigate the residual impacts of development (such as improvements to the public transport network, introducing walking and cycling facilities, physical improvements to existing roads'.*

Although National Policy Statements provide policy for Nationally Significant Infrastructure Projects, PPG refers to the National Planning Policy Framework (NPPF). Notwithstanding that, as set out above, PPG is the relevant guidance document on which to prepare a Transport Assessment for Nationally Significant Infrastructure Projects.

As above, PPG states that a Transport Assessment may propose mitigation measures where these are necessary to avoid unacceptable or severe impacts. Reference can be made to NPPF to assist with the definition of 'unacceptable' and 'severe'. Paragraph 109 of NPPF is replicated below, which sets out that mitigation relates to the public highway / road network:

'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe'.

Given this, it is best practice for a Transport Assessment to consider the transport aspects of development proposals and assess the transport impacts upon the public highway / road network (alongside considerations on sustainable modes of transport).