

Thurrock Flexible Generation Plant DCO

Joint position statement on access issues between Thurrock Power Limited, Port of Tilbury London Limited and RWE Generation (UK) Plc.

1 INTRODUCTION

- 1.1 Further to the submissions by the parties at deadlines 2 and 3, which included discussion of and representations about potential alternatives for access for abnormal loads via the proposed causeway, this position statement has been prepared and agreed by the named parties (the parties) to set out the shared understanding of the access position and to update the Examining Authority on the ongoing discussions ahead of the issue specific hearing on Transportation and Traffic (including matters relating to the proposed causeway) on 27 April 2021.
- 1.1 In this statement, “the Plan” means the plan annexed to this statement titled ‘Thurrock Flexible Generation Plant Access routes’ and showing the proposed access routes as a series of coloured line segments within a red line which includes the additions proposed in the change request submitted on 20 April 2021.

2 BACKGROUND

- 2.1 The DCO application as made by the Applicant includes a construction access route through RWE and PoTLL land to the public highway.
- 2.2 RWE and PoTLL object to:
- (a) the construction and use of the causeway (work no 10); and
 - (b) the compulsory acquisition of rights of access over their land.
- 2.3 The parties have been in discussion regarding the resolution of these objections. The preferred resolution now sought by PoTLL and RWE is:
- (a) Amendment of the AIL delivery route to come through the Port of Tilbury (referred to below as Tilbury1) as opposed to Tilbury2 and deletion of the causeway (Work No 10) and changes to the access route at the boundary of the Port and RWE’s landholding to avoid a height restriction;
 - (b) Removal of the sections of Work 12 (access) which are required to allow access to the causeway (being part of plot 04/01 and all of plot 04/02) from the Order limits and Order land; and
 - (c) Deletion of powers of compulsory acquisition over PoTLL and RWE land with access being taken and controlled under a voluntary agreement.
- 2.4 The Applicant has not agreed to all of this proposal, as detailed further below.
- 2.5 The parties are in active negotiation of agreements between the Applicant and PoTLL and the Applicant and RWE which will, taken together, provide for 3 things:
- (a) Legal easement to provide for use of the alternative route for AILs (the AIL Easement);
 - (b) Legal easement to provide for use of the route proposed in the DCO for ‘normal’ construction traffic and operational traffic (the Main Access Easement);
 - (c) Delivery to the Port, storage at the Port and onward passage of the AILs from the port (the AIL Handling Arrangements).
- 2.6 PoTLL’s position is that these matters will be agreed subject to the Applicant bringing forward removal of the causeway and related powers from the dDCO.

- 2.7 RWE's position on paragraphs 2.5 (a) and (b) above are that these matters will be agreed subject to the Applicant bringing forward removal of the causeway, access to it, and related powers from the dDCO. RWE makes no comment on paragraph 2.5 (c).
- 2.8 The discussions are taking place on a 3 way basis, but it is intended that there will be two agreements which work together where they need to.
- 2.9 In parallel there are ongoing negotiations in relation to protective provisions in different scenarios. There are also discussions about what should happen in relation to the DCO process and drafting in different scenarios. This Statement does not seek to address every variation.

3 ALTERNATIVE AIL ACCESS PROPOSAL CHANGE REQUEST

- 3.1 The Applicant has notified a change request to add the additional land for a terrestrial access for AILs delivered to the Port to the ExA on 20 April 2021. That change request does not include any request for deletion of the causeway or access to it or the removal of compulsory acquisition proposals and powers over PoTLL and RWE's land.
- 3.2 The alternative AIL access now proposed would use the Tilbury1 docks for delivery of AILs by ship as part of the existing Port operations. From the Port, a short length of public highway (Fort Road) would be used. Before Fort Road rises to pass over the Port's internal road and private rail sidings, a new junction would be formed to the east connecting Fort Road to the already proposed construction access route to the east of the Fort Road overbridge (shown as a green line and marked 'New Fort Road Access' on the Plan). This new stretch of road is necessary as the AILs could not pass under the Fort Road overbridge to access the Port's internal road.
- 3.3 Once on the Port road, the AIL access would follow the existing construction access route, using the Port's road, through PoTLL's land until the boundary with RWE land along the route shown by an orange line and marked 'Existing Access Route' until it passes over the rail siding and approaches the National Grid substation. At this point, overhead electrical lines cross the route and there would be insufficient clearance to safely transport the AILs under them. A change to the route to add a new southern section bypassing this constraint is therefore required and proposed. This new southern section lies to the south-west of the National Grid substation and is shown by a pink line marked 'New Road'.

4 REMOVAL OF CAUSEWAY FROM DCO

- 4.1 PoTLL and RWE consider that, should the change request be accepted for examination, then the causeway should also be removed by the Applicant as the Applicant would be in the same position as at present in terms of putting forward a proposal for the delivery of AILs to the power plant site and therefore the Applicant would no longer need the causeway and the access to it as an alternative (including Work Nos 10, 11, 12(b), 12(d) and part of 12(a)).
- 4.2 Applicant's position: The Applicant does not agree for the following reasons: At present the scheme seeks access rights underpinned by compulsory powers to access a causeway which, subject to protective provisions for the PLA and all powers sought being consented, it can use as necessary to deliver its AILs. In short, the DCO provides a complete solution to delivery of the AILs. Furthermore, the causeway proposal was consulted on in advance and has been the subject of extensive engagement with the PLA, MMO, Natural England and other parties. A range of issues has been discussed and resolved, for example with the PLA. In the Applicant's view PoTLL and RWE's concerns can readily be addressed. This means that the alternative AIL route is in a very different position at this time to the causeway route. In addition, the Applicant does not have an equivalent level of legal comfort as regards its ability to deliver the AILs into the port as it does with the causeway. This is why the AIL Handling Arrangements are part of the current negotiations.

- 4.3 The Applicant is not prepared to withdraw the causeway solution from the application at this time. It is prepared to keep this position under review assuming the change request is accepted and depending on (a) whether the agreements referred to above have been concluded with PoTLL and RWE and (b) how smoothly or otherwise the change is progressing through the Examination process thereafter. A future change could either involve removing the CA powers for the causeway access (thereby making it impossible to use the causeway, rendering constructing it pointless) or to remove the causeway and related access altogether from the DCO. The former is more straightforward procedurally.
- 4.4 PoTLL's position: PoTLL considers that if the change application is accepted by the ExA, the Applicant would be in the same situation as it is currently, as it would have as a proposition all works and land powers required to facilitate the movements of AILs within the dDCO and there would be no need for the causeway or related powers sought by the Applicant.

In respect of the 'legal certainty' of being able to use the Port to initially unload the AILs, PoTLL notes that it is subject to a duty under section 6 of the Port of London Act 1968 to be "*open to all persons for the shipping and unshipping of goods*" subject to the payment of PoTLL's applicable dues. As such, whilst not in the dDCO, these statutory duties can be relied upon by the Applicant for legal certainty that they would be able to use Tilbury1 to unload AILs.

Furthermore, particularly in the context that the change has already been brought forward as a material change by the Applicant, but in any event, it is considered that bringing forward a change which responds to the concerns of stakeholders and reduces compulsory acquisition, as well as removing the issues that gave rise to representations and concerns of the PLA, MMO and Natural England, by removing the infrastructure that causes now unnecessary effects, could only be considered as a positive thing and is not a reason why such a proposal should not be brought forward.

- 4.5 RWE agrees with the position of PoTLL in paragraph 4.4 above, save that it makes no comment in relation to the Port of London Act 1968.
- 4.6 PoTLL and RWE consider that even if the change is not accepted into the Examination, the causeway, access to it and related powers should be excluded from the DCO. The Applicant disagrees for reasons already explained in its Deadline 3 submission.

5 SUMMARY OF POSITION BETWEEN THURROCK POWER LIMITED AND PORT OF TILBURY LONDON LIMITED

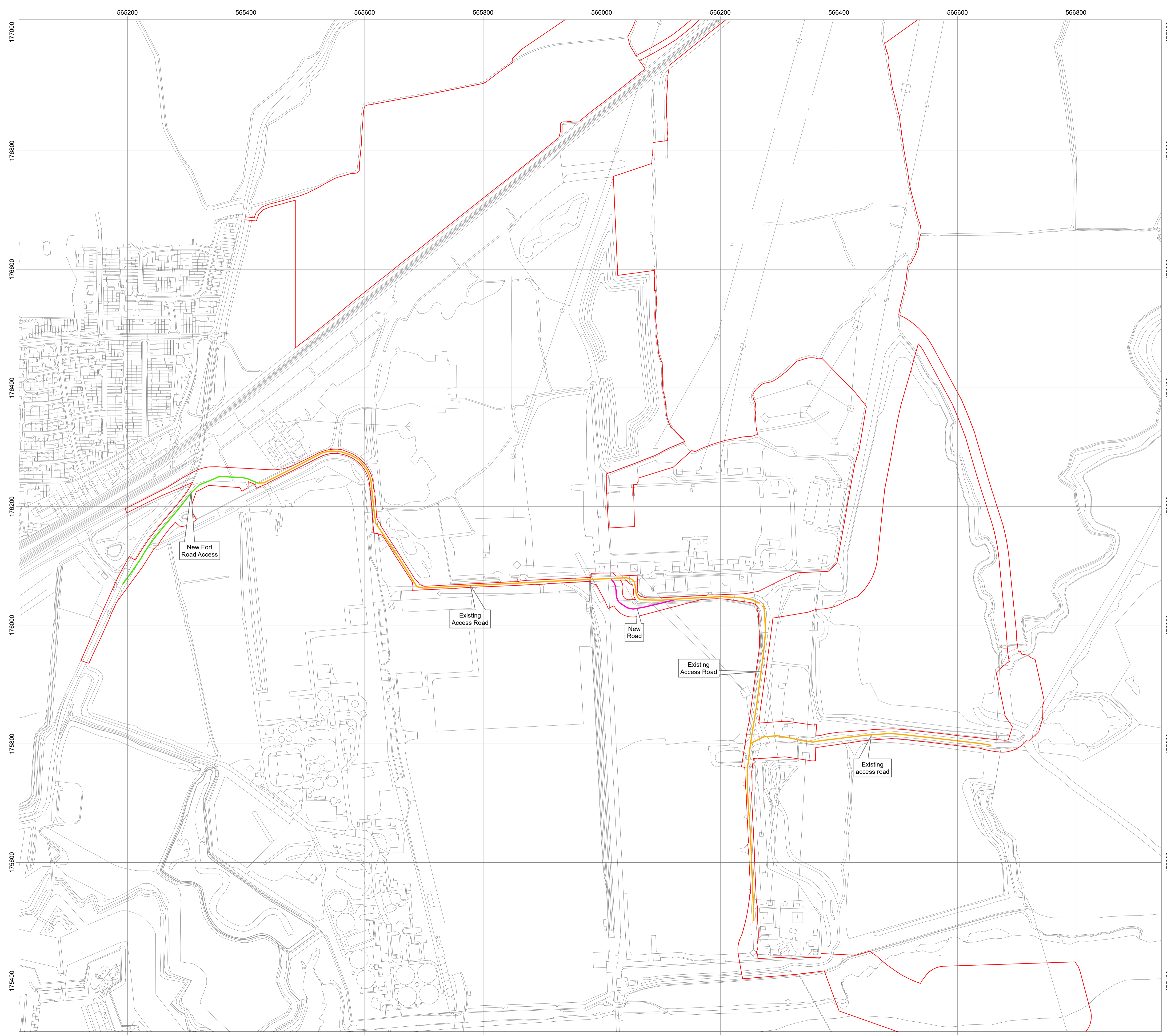
Topic / area	Agreed	Not Agreed
Principle of access	The principle of terrestrial access for 'normal' construction and operational vehicles through Tilbury is accepted by PoTLL on route shown with an orange line and marked existing Access Road on the Plan subject to appropriate control by means of a legal agreement.	The controls on such access. (They are under discussion.) That the acceptability of this access is subject to all provision for the causeway being removed from the dDCO.
Protective provisions	That provisions in favour of PoTLL will be included in the dDCO	Drafting of those provisions. (They are under discussion.)
PoTLL Tilbury 2 DCO LEMP	That should the change request be accepted, there would be works to landscaping and planting	The required dDCO drafting (under discussion)

	undertaken by PoTLL in accordance with the Tilbury2 DCO LEMP. That the Thurrock Power DCO will provide that any work carried out in accordance with it is not a breach of the T2 DCO requirements.	
Compulsory acquisition of rights over T2 land	-	PoTLL objects to the proposed compulsory acquisition of access rights over its land.
Principle of the causeway	-	The principle of the causeway as part of the scheme, related powers and acceptability is not agreed.
Consideration of alternatives for AILs	-	That the Applicant should have considered the terrestrial route (as proposed in the change request) as an alternative in the ES.
Effect of the causeway and access rights on the RWE site	The RWE site should be considered as having significant potential for uses that directly benefit from the riverside location	That redevelopment of this site would be restricted or prevented by the presence of the causeway and/or access rights.
Potential (new) AIL route	That the new route (shown as a green line and marked 'New Fort Road Access' on the Plan) would not create any new or significant adverse effects on the Port.	That the introduction of the new route should lead to the causeway; (Work No 10), Work No. 11 (related flood defence works) and those parts of Work No. 12 associated with access to the causeway (i.e. the north-south route to the existing road)) being removed from the DCO. Further discussions are required as to those parts of Work No. 12(a) east of the existing road; and Work No. 12(d).
	That the new route can be constructed without unacceptably affecting Tilbury 2's landscaping or drainage pond.	
	The addition of new PoTLL land to the Order limits through the change request is agreed in principle subject to the compulsory acquisition powers in respect of PoTLL's interests being removed from the DCO once an Agreement is confirmed.	That the acceptability of including this land is subject to all provision for the causeway being removed from the dDCO.
Preliminary navigational risk	Agreed subject to the securing of mitigation in the dDCO	Drafting of the dDCO in regard to securing the pNRA mitigation measures (under discussion)

assessment for the causeway		
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6 SUMMARY OF POSITION BETWEEN THURROCK POWER LIMITED AND RWE

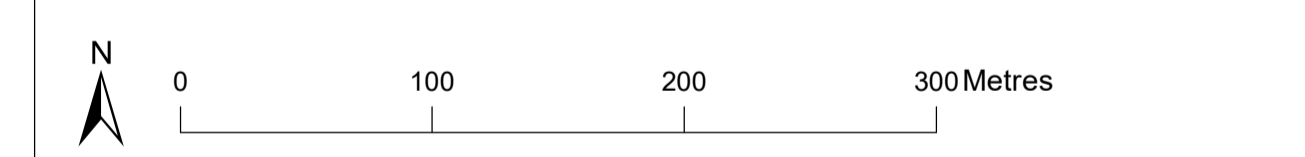
Topic / area	Agreed	Not Agreed
Principle of access	The principle of access over RWE's land is agreed subject to appropriate controls in a legal agreement for the land rights and subject to appropriate protective provisions in the dDCO	
Protective provisions	That provisions in favour of RWE will be included in the dDCO	Drafting of those provisions. (They are under negotiation.)
Compulsory acquisition of rights over RWE land	-	RWE objects to the proposed compulsory acquisition of access rights over its land.
Principle of the causeway	-	The principle of the causeway and related powers, including access to it, as part of the scheme and its acceptability is not agreed.
Consideration of alternatives for AILs	-	That the Applicant should have considered the terrestrial route (as proposed in the change request) as an alternative in the ES.
Change request	The addition of new RWE land to the south-west of the National Grid substation and shown by a pink line marked 'New Road' on the Plan to the Order limits through the change request is agreed in principle, subject to the compulsory acquisition powers in respect of RWE's interests being removed from the dDCO once an Agreement is confirmed	That the acceptability of including this land is subject to all provision for the causeway, access to it and related powers being removed from the dDCO. That the introduction of the new route should lead to the causeway; (Work No 10), Work No. 11 (related flood defence works) and those parts of Work No. 12 associated with access to the causeway (i.e. the north-south route to the existing road) being removed from the dDCO Further discussions are required as to those parts of Work No. 12(a) east of the existing road; and Work No. 12(d).
Effect of the causeway and access rights on the RWE site	The RWE site should therefore be considered as having significant potential for uses that directly benefit from the riverside location	That redevelopment of this site would be restricted or prevented by the presence of the causeway and/or access rights.



Legend

- Order Limits
- Existing Access Road
- Thurrock FGP - New Fort Road Access
- Thurrock FGP - New Road

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 Projection: BNG



Rev	Date	Remark

Thurrock Flexible Generation Plant Access routes

