

Dear Sirs

EN010092: Thurrock Flexible Generation Plant

Procedural Deadline 5A Submission on behalf of RWE Generation (UK) Plc

We are acting for RWE Generation (UK) Plc ("RWE") in relation to the application for Development Consent for the above project.

Written Representation on Material Change

RWE's Written Representation in relation to the material change which has been accepted into the Examination accompanies this letter.

Notification of Wish to Speak at Hearings

RWE would like to notify the Examining Authority of its wish to speak at the Compulsory Acquisition Hearing and the Hearing on the draft Development Consent Order on 26 July.

Whilst it is hoped that agreement for the land rights required to facilitate the scheme as comprised in the material change (without the causeway AIL alternative and its access) will have been completed by that date, together with protective provisions agreed, RWE must reserve its position in the meantime.

RWE will keep the Examining Authority updated on the progress of negotiations with the Applicant.

Please do not hesitate to contact us if you require anything further.

Yours faithfully,

Eversheds Sutherland (International) LLP

PLANNING ACT 2008

INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010

THURROCK FELEXIBLE GENERATION PLANT DCO

DEADLINE 5A

WRITTEN REPRESENTATIONS ON THE ACCEPTED MATERIAL CHANGE

RWE GENERATION UK PLC

2 JULY 2021

1. **Summary**

- 1.1 RWE own the former Tilbury B Power Station site and are an Interested Party in relation to the Proposed Development.
- 1.2 The Applicant has applied for a material change to the application for the Proposed Development ("the Material Change") which has been accepted into the Examination.
- 1.3 RWE are an electricity licence holder and the Site is operational land. Whilst the power station has been demolished, the land is suitable for future power development.
- 1.4 As part of the Material Change, the Applicant is seeking the compulsory acquisition of land and powers over the Site.
- 1.5 RWE is generally supportive of the Material Change but objects to the inclusion of compulsory acquisition powers over its land and to the retention of the causeway and associated powers in the draft DCO.

2. **Introduction**

- 2.1 These written representations are made on behalf of RWE Generation UK Plc ("RWE") in relation to the material change which has been accepted into the Examination of the proposed Thurrock Flexible Generation Plant ("the Material Change").
- 2.2 RWE has already submitted a relevant representation in relation to the Material Change and these written representations supplement and build on this representation as well as the other representations submitted by RWE into the Examination.

3. **RWE**

- 3.1 RWE is an Interested Party by virtue of its retained property and operational interest on the Tilbury Power Station site (the "Site") which adjoins the Proposed Development.
- 3.2 RWE is a deemed statutory undertaker for the purposes of Section 127(8)(a) of the Planning Act 2008. That section defines "statutory undertaker" by reference to section 8 of the Acquisition of Land Act 1981 (the "1981 Act") and expressly includes authorities, bodies and undertakers which are "deemed to be statutory undertakers for the purposes of that Act, by virtue of another enactment".
- 3.3 The Electricity Act 1989 ("the 1989 Act") clarifies at paragraph 2(2) of Schedule 16 that a licence holder who is entitled to exercise any power conferred by Schedule 3 of the 1989 Act shall be deemed to be a statutory undertaker (and his undertaking a statutory undertaking) for the purposes of the 1981 Act. RWE holds an electricity generation licence under section 6(1)(a) of the 1989 and this licence includes compulsory acquisition powers by way of incorporation of Standard Condition 14 of the Electricity Generation Licence: Standard Conditions (attached, also on: <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions>).
- 3.4 RWE therefore falls within paragraph 2(2) of Schedule 16 to the 1989 Act and is deemed to be a statutory undertaker for the purposes of the 1981 Act. As a result, RWE is a deemed statutory undertaker pursuant to section 127(8)(a) of the Planning Act 2008.
- 3.5 Further, as RWE have rights over and apparatus in the Site, section 138 of the Planning Act 2008 applies which means that the Secretary of State must be satisfied that the extinguishment of the right or removal of apparatus is necessary for the purpose of carrying out the Proposed Development for it to be included in the Order.

4. Impact on the Site

- 4.1 The Material Change impacts a number of plots which are owned or occupied by RWE as set out below:
- 4.1.1 Plot 01/33 occupier in respect to apparatus
 - 4.1.2 Plot 01/34 owner and occupier
 - 4.1.3 Plot 01/35 occupier in respect of apparatus
 - 4.1.4 Plot 01/37 owner and occupier
 - 4.1.5 Plot 05/04 – occupier in respect of apparatus.
- 4.2 Please note that the plots listed here represent solely those added by the Material Change. RWE maintains its objection to powers of compulsory acquisition over its land generally as set out in the Written Representation for the Application [REP2-095].
- 4.3 RWE has set out in its previous representations the strategic importance of the Site for energy related development.
- 4.4 RWE and the Applicant agree that the Site is operational land for the purposes of the Planning Act 2008.

5. RWE Position on Material Change

- 5.1 In the original application for the proposed development, the Applicant included a construction access route through land owned by RWE and Port of Tilbury London Limited ("PoTLL") including the construction and use of a causeway and the compulsory acquisition of rights over access over the land. RWE objected to this proposal.
- 5.2 The Material Change introduces an additional AIL delivery route and adds the land required for this terrestrial access route to the application.
- 5.3 As has been set out in the Joint Position Statement between the Applicant, RWE and the Port of Tilbury London Limited ("PoTLL") (Document AS-038), RWE are supportive of the change to the application to provide the route for Abnormal Indivisible Loads ("AIL"), and of the need for the inclusion of further land in the Order limits to reflect the works required to facilitate this change.
- 5.4 However, as part of the change, the Applicant seeks compulsory powers for the creation of new rights over land which RWE either own or occupy as set out in section 4 above.
- 5.5 RWE objects to the use of compulsory powers over its land. This reflects the same position which RWE have taken to the powers of acquisition over its land included in the original DCO Application.
- 5.6 RWE further notes that the Material Change does not include a deletion of the causeway or access to it or the removal of compulsory acquisition powers over RWE's land (plots 04/01 and 04/02) in relation to the same. RWE notes the Applicant's position on this as set out in the Joint Position Statement.
- 5.7 RWE's position remains that the acceptance of the change request means that the draft DCO contains all the works and land powers proposed to facilitate the movement of AILs and therefore it is no longer necessary or appropriate for the Applicant to retain the causeway or the related powers sought in the draft DCO.
- 5.8 The change made by the Applicant responds to the concerns of a number of stakeholders. There is no reason why this route cannot be taken forward on its own and it is unnecessary for the causeway option to be retained in the draft DCO. Further, the retention of both options in the draft DCO, both of which include powers of compulsory acquisition, creates

uncertainty for RWE and sterilises two sections of RWE's site therefore restricting any future development unnecessarily.

- 5.9 There can be no compelling case in the public interest for the authorisation of compulsory acquisition powers over both alternative AIL routes and therefore the inclusion of these powers does not meet the required tests for compulsory acquisition.

6. **General Update on Negotiations**

- 6.1 RWE continues to progress negotiations with the Applicant in respect of protective provisions to ensure suitable protection for RWE's undertaking including its land, rights and apparatus at the Site and an update on these negotiations was provided at Deadline 5.
- 6.2 RWE is also continuing to negotiate with the Applicant in respect of an agreement for the land rights required to facilitate the Proposed Development including the Material Change.
- 6.3 RWE will keep the Examining Authority updated in relation to these negotiations.