

Dear Sirs

**EN010092: Thurrock Flexible Generation Plant**

**Procedural Deadline 6 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.

**1. Comments on Deadline 5 Submissions**

**1.1 Version 6 of the Draft Development Consent Order submitted for Deadline 5**

1.1.1 RWE welcomes the amendments which have been made by the Applicant to articles 19 and 22 to ensure that the powers can only be exercised over one of the two options for access forming part of Work No. 12.

1.1.2 However, RWE considers that the reference to a notice of entry under s11 of the 1965 Act should be to a notice to treat under section 5 of the 1965 Act. This is on the basis that it is the Notice to Treat which comprises the exercise of compulsory acquisition powers, from which certain consequences flow, including compensatable effects, therefore the Applicant should not have the power to serve a Notice to Treat in respect of both route options.

1.1.3 Further, as is set out below, it is considered that a similar restriction is required in articles 28 and 29 to prevent temporary possession powers being exercised over both options.

**1.2 The Applicant's Deadline 5 Comments on RWE's Deadline 4 Submissions**

The Applicant has made a number of new points in its response to RWE's deadline 4 submissions which RWE wishes to respond to.

1.3 *Paragraph 2.7- 'The Applicant notes that while stating that their land is operational and held for the purposes of their undertaking, RWE is also submitting that the causeway would impede Freeport development. Freeport development is fundamentally incompatible with this land being necessary for energy generation as part of RWE's undertaking. RWE's submissions are contradictory on this point. It is unclear how it can be argued that this land is necessary for RWE's generation undertaking in the absence of an objection to the Freeport aspiration.'*

1.3.1 RWE is in principle supportive of the Freeport's emerging proposals and of exploiting the frontage of the river in line with the Freeport's aims. These seek to create innovation hubs which boost global trade, attract inward investment and increase prosperity in the surrounding area by generating employment opportunities.

1.3.2 Furthermore, there could be opportunities for energy generation as part of the freeport proposals, as indicated in Thurrock Council's Cabinet report dated 13 January 2021 which backed the Thames Freeport Bid to Government. Paragraphs 3.3-3.5 of that report summarised the case for the Thames Freeport as follows:

1.3.2.1 *"There is opportunity for further growth, with additional private and public investment in infrastructure, land ready for investors, and regional clusters in advanced manufacturing, transport and logistics and clean energy and circular economy."*

- 1.3.2.2 *A Thames Freeport has the scale, connectivity and potential to compete on a global scale for international investment.*
    - 1.3.2.3 *The Thames Freeport also promotes investment in modern, productive, clean technologies to support local regeneration, skills development, workforce attraction and retention, employment opportunities and a net zero transition."*
  - 1.3.3 RWE is in discussions with PoTLL with regards to the opportunities and implications of the Freeport for its landholding. Whilst these could include a potential sale of parts of its landholding, RWE must protect its position with regards to all potential options for the development and use of its operational land, whether or not the port development comes forward. Against this context, the Applicant's proposed compulsory acquisition of land and rights over land owned by RWE risks serious detriment to RWE's ability to carry on its undertaking on its operational land.
  - 1.3.4 The Applicant's suggestion that RWE should object to the Freeport aspiration because RWE objects to the Applicant's DCO is therefore inappropriate. The Applicant is seeking compulsory acquisition powers over RWE's land. In contrast, RWE discussions with PoTLL are taking place on a voluntary and mutual basis.
- 1.4 Paragraph 3.2- *"RWE will retain considerable direct access to the foreshore on land already within their ownership which could serve exactly the same function (as part of access to cooling water) as plot 04/02. The Applicant will also seek to minimise the size of the affected plot at detailed design reducing the loss of foreshore access land"*.
  - 1.4.1 RWE has previously developed plans for an application for the Tilbury Energy Centre, a proposed CCGT plant with a generating capacity of up to 25000MW. The station was proposed to be once through cooled using water from the Thames estuary Whilst this application was withdrawn, it is illustrative of the type of development which RWE may bring forward in the future.
  - 1.4.2 At the appendix to these submissions are extracts from the scoping report for the Tilbury Energy Centre which was submitted to PINS. This describes the need for cooling infrastructure, the extent to which such cooling infrastructure extends into the River Thames and along the river frontage. The area required for such infrastructure overlaps significantly the area included by the Applicant for the causeway, and RWE could not, as the Applicant suggests, use other land for this purpose.
- 2. **ExA Additional Written Questions dated 9 July**
  - 2.1 Whilst the ExA did not expressly ask any questions of RWE, RWE would like to comment as follows on a number of the additional written questions raised of others in relation to version 6 of the dDCO:
    - 2.1.1 *Question 3.1.1: Does the Applicant intend to limit the exercise of CA powers in relation to Work Nos 10, 11 and 15 to ensure only one AIL access is brought into use? If so, please signpost where/how this is secured in the dDCO? If not, please explain.*

RWE reiterates its position as set out in previous submissions that compulsory powers should only be sought over the alternative AIL route as comprised in the accepted material change application, and that it is not necessary or justified to retain compulsory acquisition powers over the original causeway route in the dDCO. There can be no compelling case in the public interest for the retention of both options. The Applicant's dDCO now contains all the necessary powers to enable it to implement the alternative AIL route, which is the route that has the support of interested parties including RWE and PoTLL.

- 2.1.2 *Question 3.3.2: Articles 28 and 29 - The ExA notes the Applicant's changes to Articles 19 and 21 in version 6 of the dDCO [REP5-003] which are intended to limit the use of CA powers in respect of Work No. 12. Please respond to PoTLL's suggestion that similar wording should be included in Articles 28 and 29.*

Subject to the point made in paragraph 1.1.2 above, RWE welcomes the Applicant's proposed revisions to Articles 19 and 21 of version 6 of the dDCO as a means of restricting the ability to exercise compulsory purchase powers over the two alternative access options for Work No. 12, the selection of which is affected by the 'ground heave' in that area. RWE agrees with PoTLL that similar wording should be included in Articles 28 and 29 to restrict the exercise of temporary possession powers to only one route option. Once a decision has been made on the appropriate access route to be used, either Work No. 12(c) or Work no 12(d), to be confirmed in accordance with requirement 10, no compulsory powers (permanent or temporary) should be exercised over the route which is no longer required.

- 2.1.3 *Question 3.3.3 – Requirement 18- In light of the inclusion of Work No 15 (Alternative AIL access), and noting the concerns expressed by IPs in relation to the potential impact on plans for the Thames Freeport, please provide further justification for the 5 year review period included in Requirement 18.*

RWE does not consider that the Applicant has provided any such justification. As explained in its previous submissions, it considers that a 5 year review period is excessive and will sterilise the development of RWE's land for an unacceptable period of time. Notwithstanding RWE's primary position that the causeway should be removed from the dDCO, RWE's supports the revised proposal by PoTLL in its Deadline 5A submission that this period should be revised to one year from the date that the DCO comes into force.

- 2.1.4 *Question 3.3.4- Please explain why the Applicant considers the alternative AIL access does not currently meets the criteria for a suitable alternative as defined in Requirement 18.*

*Question 3.3.9- Please state whether the Applicant considers the dDCO contains all of the powers necessary for the creation of the alternative AIL access. If not, please explain.*

RWE's understanding is that all relevant powers for the alternative AIL access have been included in the updated dDCO. The Applicant has provided no explanation to the contrary. Furthermore, it would have been illogical for the Applicant to make the application for the AIL alternative access route change without including all necessary powers to deliver it, and without having determined that the alternative is 'environmentally acceptable, permanent, feasible and economic' so as to be meet the criteria in Requirement 18. It follows that the original AIL route using the causeway should be excluded from the DCO.

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

Yours faithfully,

**Eversheds Sutherland (International) LLP**

## **APPENDIX**

### **EXTRACTS OF SCOPING REPORT FOR THE TILBURY ENERGY CENTRE**

# **Environmental Impact Assessment Scoping Report – Tilbury Energy Centre**

Submitted to the Planning Inspectorate under Regulation 10 of  
The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017



PINS REF: EN010089

RWE REF: TEC/SR/Version 1

April 2018

## 4.8 Cooling Water

- 83 Thermal power stations require cooling water as part of the power generation process. Water from the Thames estuary will be passed through fine screens to protect against the ingress of fish, eels and other species. It will be pumped into the power station for condensing and cooling and will become slightly warmer as a result. The warmed water will be returned to the estuary.
- 84 Cooling water infrastructure will be required in the River Thames and it may comprise of above ground pipework, a concrete caisson, onshore or offshore pumps and new tunnels or a combination of all three. In-river screening at the cooling water intake is proposed.
- 85 The former Tilbury B Power Station included cooling water intake structures and intake tunnels connected to a pumping facility, as well as a cooling water discharge tunnel which linked the power station to the Thames estuary as shown on Figure 8. If existing infrastructure, for example cooling water tunnels and caissons, cannot be re-used then RWE Generation propose to leave it in-situ.
- 86 Construction and maintenance dredging will be required and their impacts will be assessed accordingly.
- 87 RWE Generation will require appropriate land rights to carry out, operate and maintain the works.

## 4.9 Services

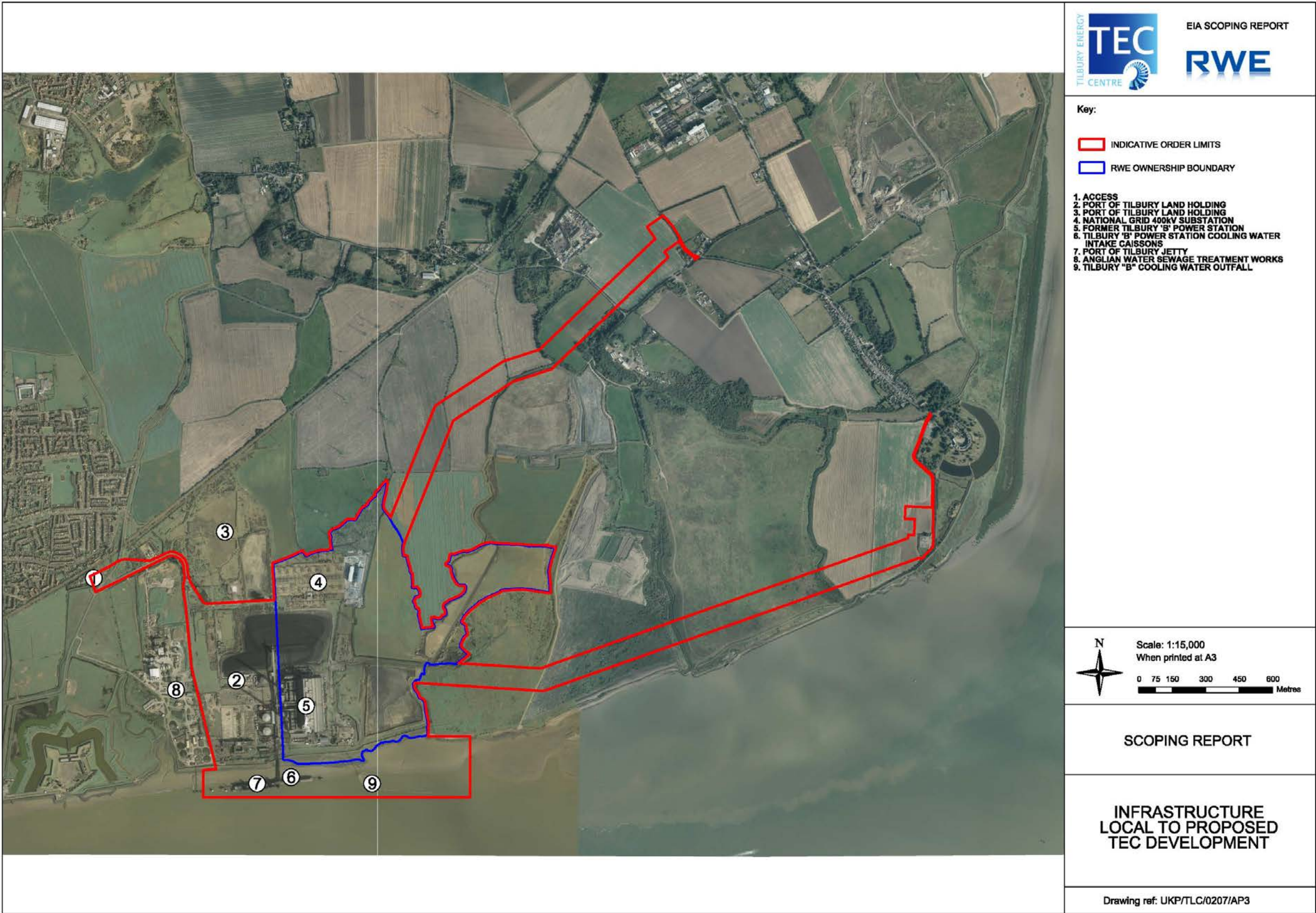
- 88 RWE Generation retains the rights to lay, operate and maintain services following the line of the service road into the site.
- 89 RWE Generation also retains the right to install a foul sewer connection through the Port of Tilbury's land to the adjacent Anglian Water Sewage Treatment Works.
- 90 Tilbury2 is currently proposing to interfere with these rights. These existing rights are fundamental to the development and operation of the TEC.
- 91 RWE Generation will seek to preserve these existing rights through the DCO.

## 4.10 Plant Life and Decommissioning

- 92 Typically, the operational lifespan of a CCGT is 25 years. The assessment of environmental impacts will not be time limited.
- 93 Once a decision is made to cease generation at Tilbury, the proposed development will be decommissioned.
- 94 Decommissioning of the TEC is scoped out of the EIA given the absence of information available at this stage regarding timescales and decommissioning methods.



Figure 8 - Surrounding Land Uses



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