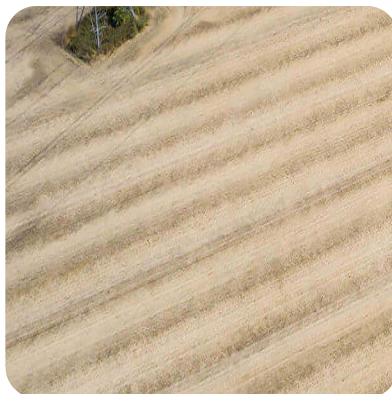
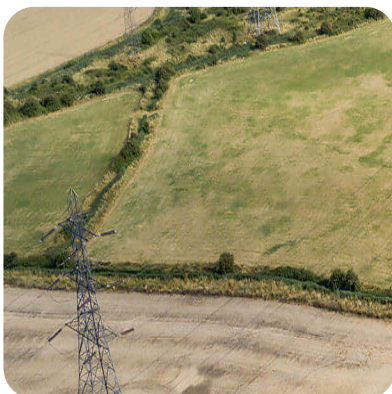


## Thurrock Flexible Generation Plant

Written Summary of Oral submissions: ISH4 Draft DCO (26 July 2021)



## 1 APPLICANT'S UPDATE

- 1.1 The Applicant confirmed that the only update from the table of amendments to the dDCO submitted at deadline 6, is that Thurrock Council has subsequently advised that it objected to Article 12(3) relating to the disapplication of provisions of the New Roads and Street Works Act 1991.

## 2 MAIN DISCUSSION POINTS

### 2.1 Articles

#### Article 8

- 2.2 The Applicant advised that it has no objection in principle to notifying PoTLL when transferring the benefit of the DCO under this Article. However, it considered that this would be more appropriate to include in the protective provisions as has been done for other parties.
- 2.3 The Applicant also considers that the Secretary of State (SoS) should decide who to consult under Article 8. The SoS is capable of deciding who the affected parties are and it is not for the Applicant to prescribe who should be consulted. The Applicant also noted that apart from PoTLL, no other party has asked to be consulted in advance of seeking consent from the SoS under this Article.
- 2.4 The Applicant is happy to amend Article 8(7) to refer to fourteen days as opposed to five working days.

#### Article 10

- 2.5 The Applicant confirmed that commons byelaws in Article 10(1)(a) are being disapplied as they relate to a wider area than simply Walton Common which includes areas where works are required, for example along the edge of Fort Road. The byelaws will be re-applied to the exchange common land area.
- 2.6 The Applicant considers that Article 10(4) as currently drafted is more in line with the powers contained in section 120 of the Planning Act 2008. This section does not permit a DCO to prescribe how legislation should be interpreted and to specify what is meant by non-compliance. The current drafting is general as the Applicant does not have a full understanding of what is needed from the requirements. The Applicant agreed to discuss with PoTLL to determine whether the drafting of Article 10(4) can be more specific. ***Following the hearing the Applicant has noted the ExA's drafting in the schedule of proposed amends and has adopted that drafting in version 8 of the dDCO.***

#### Article 15

- 2.7 The Applicant is aware that discussions have taken place on other DCOs regarding the definition of completion of development. ***Following the hearing the Applicant has noted the ExA's drafting in the schedule of proposed amends and has adopted that drafting in version 8 of the dDCO.***

#### Article 19-22

- 2.8 The Applicant notes RWE's suggestion that these articles should refer to notice to treat as opposed to notice of entry. ***The Applicant has considered this and its impact on the DCO in practice and has made the requested change in version 8 of the dDCO.***

#### Articles 28-29

The Applicant agreed to submit further drafting at deadline 7 addressing the concern that temporary possession powers could be used to build an access which is not the selected alternative. ***This has been included in version 8 following agreement of that wording with RWE.***

#### Article 33

- 2.9 The Applicant confirmed that Article 33(2) is included to transfer rights immediately to the exchange common land once the existing common land is de-registered. ***Following the hearing the Applicant has noted the ExA's drafting in the schedule of proposed amends and has deleted this paragraph in version 8 of the dDCO.***

#### Article 12(3)

- 2.10 The Applicant will request the provisions listed in Article 12(3) to be disapplied. Some of the provisions listed make no sense in the context of this DCO and the Project is constrained by the redline boundary.
- 2.11 The Applicant noted that this article is proposed under s120 of the Planning Act 2008 and is not prescribed consent for which the agreement of the Council to disapplication is required. Further, the Applicant submitted that disapplication assists both parties as it makes it clear that powers which are incompatible the DCO do not apply to the authorised development. The Applicant gave the example of section 56A (power to give directions as to placing of apparatus). In principle, this section allows an authority to direct that apparatus which is proposed to be placed in one street, is to be placed in another. The only apparatus to be placed in a street under this order is the gas pipeline and that is constrained by the DCO, the Applicant would not have consent to place that in a different street. A direction under this section would therefore threaten the delivery of the scheme by preventing the Applicant from complying with the DCO and having to seek further consents for these works to be relocated in other streets – that is fundamentally opposed to the ethos of the DCO as a consenting regime
- 2.12 The Applicant considers that the Council as highway authority retain all necessary controls over works in streets through the requirements and the protective provisions. ***Following the hearing the Applicant and Council have again discussed article 12(3) and the Applicant was advised by the Council on 5 August that following that discussion, it is not objecting to this article; this has been documented in the SoCG.***
- 2.13 **Schedule 2 (Requirements)**
- 2.14 The concept causeway design has not been listed in Article 41; the Applicant confirmed that this would be added.
- 2.15 The definitions in Schedule 2 will also be reviewed and updated to ensure consistency between abbreviations and writing out in full.
- 2.16 The Applicant confirmed that Requirement 12(7) of Schedule 2 has been repeated in the deemed marine licence as different bodies were asking for them in different places. The Applicant agrees it would be better placed in the deemed marine licence and has effected that change in version 8 of the dDCO.
- 2.17 The Applicant considers the time limit in Requirement 18(1) should be longer than the 12 months suggested by PoTLL and RWE. The 12 month period is too short and would interfere with the detailed design of the project. By including a requirement to review so soon after the DCO is granted would mean that any design work would need to be stopped which would interfere with the Applicant's ability to bring the development forward in its desired timescales. The Applicant confirmed they would need to re-do work for this review including looking at the highways alternative. As has been previously submitted, the Applicant does not accept that its development poses any impediment to the delivery of a Freeport as dealing with existing infrastructure and rights on a development site is entirely normal. The Applicant would not be the only rights holder over the land and providing

accommodation for affected undertakers is necessary for almost every major project. The ability to provide a suitable alternative is within the Port's 'business as usual' operations.

2.18 The Applicant has been looking at AIL routes since 2017. There is no alternative other than the use of Tilbury Port for unloading (T1) and transport through the port (T2) as no deliverable alternative highway route from another Port exists due to height restrictions.

2.19 The Applicant confirmed it responded in deadline 6 to concerns raised by PoTLL at deadline 5a about including PoTLL in Requirement 18(2). The Applicant is unclear about what consultation means in the context of Requirement 18(2) and believes this is not the role of PoTLL.

2.20 The Applicant confirmed it is willing to include RWE as a consultee in Requirement 18(3).

**2.21 Schedule 8 (Deemed marine licence)**

2.22 The Applicant confirmed there is a reason for the discrepancy between the parameters figures in 3(2)(a) and (b). These figures are within the envelope assessed in the Environmental Statement. They relate to aspects which make no difference to the project in practical, design, environmental or assessment terms but allow for changes in ground levels, finished heights relative to those variations in level and similar minor points of detail. ***The plus/minus figures have been deleted in version 8 of the dDCO to leave only maximum parameters.***

**2.23 Schedule 9 (Protective provisions)**

2.24 The Applicant confirmed there was no definition of 'apparatus' in Part 1 of Schedule 9 as this definition was included in the article 2 of the DCO.

2.25 The Applicant confirmed that protective provisions have been agreed with the following parties:

- (a) Anglian Water;
- (b) Environment Agency;
- (c) Port of London Authority;
- (d) Highways England Company Limited.

2.26 The Applicant provided a brief update on the progress of agreeing protective provisions with the following parties:

- (a) National Grid: The level of insurance is agreed but the parties still need to agree whether both acceptable insurance and acceptable security will be required in the protective provisions.
- (b) Network Rail: There has been no change since the update document was provided at deadline 6. There are a few outstanding points to be agreed between the parties.
- (c) Thurrock Council: The Applicant is waiting for comments from Thurrock Council and understands that this is currently with Thurrock Council's highways team to review.

Port of Tilbury London Limited

2.27 The Applicant confirmed that protective provisions with PoTLL have not been agreed and differences remain between the parties. The Applicant noted that the protective provisions requested by PoTLL sought an inappropriate degree of control over the development and this was a real cause for concern for the Applicant.

- 2.28 The Applicant explained it was concerned that PoTLL were seeking a level of control over the project which does not strike an acceptable balance between the interests of the Applicant and PoTLL.
- 2.29 The Applicant made submissions relating to the following suggested provisions suggested by PoTLL:
- (a) Para 3(1): The Applicant consider this provision goes beyond what is reasonable and that it is not normal to control the extent of the development itself. The Applicant does not consider that citing precedent for this provision is an adequate explanation for the inclusion of this provision. The Applicant also noted that PoTLL already need to be consulted in respect of the detailed design and CTMP in accordance with the requirements in Schedule 2. Following the hearing an amended version of this paragraph has been discussed but remains not agreed pending the conclusion of a voluntary agreement.
  - (b) Para 3(4): The Applicant does not consider that Articles 20 and 23 should be disapplied as the Applicant may need to seek consent if something it does not know about comes up. The Applicant does not intend to interfere with anybody else's right of access over this route.
  - (c) Para 4(1): In principle, the Applicant does not object to this provision and is happy for PoTLL to see plans of any proposals on land within their ownership. The Applicant does not agree with the definition of plans provided by PoTLL as this includes plans that are subject to approval from the Port of London Authority. The Applicant noted that the Port of London Authority will need to consult with PoTLL when providing approval.
  - (d) Para 5(1): The Applicant does not accept that the causeway poses a risk of accumulation and erosion within the jurisdiction of PoTLL. The Applicant also considers that any issues will be picked up by monitoring undertaken by the Port of London Authority which would be addressed by remediation if necessary. In addition reference to navigation to and from the causeway should not be included as it relates to the jurisdiction of the Port of London Authority. The Applicant and PoTLL have had further discussion on this point following the hearing and the Applicant has agreed to accept the principle only if disputes are resolved by means of expert determination not arbitration. This has been updated in the protective provisions.
- 2.30 The Applicant confirmed it will discuss the protective provisions with PoTLL in order to try and come up with an agreed set of wording but noted that the parties were far apart on several aspects of the protective provisions. ***Some progress has been made but these provisions remain not agreed. A detailed update is provided in the Applicant's summary of positions and note on the status of protective provisions submitted at deadline 7.***

RWE Generation UK Limited

- 2.31 The Applicant noted there has been some amendments to the protective provisions which RWE have not had much time to consider. This includes amendments relating to reasonable consent.
- 2.32 The Applicant confirmed that the parties needed to agree what unreasonably withheld means as the Applicant had concerns regarding the issue of the causeway and the level of objection that could be raised by RWE. The Applicant clarified that this was to ensure a deliverable DCO which would require the ability to deliver AILs to the site.
- 2.33 The Applicant also raised concerns that RWE's protective provision was on the basis of being a landowner as opposed to a statutory undertaker. This is due to a definition which includes any land owned by RWE.

- 2.34 The Applicant confirmed that discussion would continue with RWE to agree a way forward which will assist the Examining Authority. ***Some progress has been made but these provisions remain not agreed. A detailed update is provided in the Applicant's summary of positions and note on the status of protective provisions submitted at deadline 7.***