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William Summerlin
Statera Energy Limited
1st Floor, 145 Kensington Church Street
London
W8 7LP

07 March 2023

Dear Mr Summerlin,

**PLANNING ACT 2008
PROPOSED NON-MATERIAL CHANGE TO THURROCK FLEXIBLE GENERATION PLANT
DEVELOPMENT CONSENT ORDER 2022 – S.I. 2022/157**

1. I am directed by the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) to advise you that consideration has been given to the Application (“the Application”) which was made by Thurrock Power Limited (“the Applicant”) on 18 October 2022 for changes which are not material to be made to the Thurrock Flexible Generation Plant Development Consent Order 2022 (“the Order”) under section 153 of, and Schedule 6 to, the Planning Act 2008. This letter is the notification of the Secretary of State’s decision in accordance with regulation 8 of the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended) (“the 2011 Regulations”).
2. The original application for development consent under the Planning Act 2008 was granted consent on 16 February 2022 and gave development consent for the Thurrock Flexible Generation Plant including a Gas fired electricity generation of up to 620MW of gross electrical output, battery storage facility with a net rated electrical output of up to 150MW for four hours, electrical and gas connection infrastructure, access roads, water supply, creation of common land, ecological mitigation and other infrastructure associated with the development.
3. The Applicant is seeking consent for a change to the Order to secure changes to the generation output and duration of the battery storage element of the facility to enable the plant to deliver a battery storage facility with any combination of net rated electrical output and duration that delivers an electrical capacity of up to 600MWh. The applicant requires flexibility in the combination of capacity and duration that it can deliver (while being restricted to the same overall capacity of 600MWh) to best enable it to deliver the optimum combination of capacity and duration of the facility. This would require a change to the drafting of Work no. 1B which describes the battery storage facility output and duration.

Summary of the Secretary of State's decision

4. The Secretary of State has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make non-material changes ("NMCs") to the Order to authorise the changes as detailed in the Application and to make two changes of his own to the Order. This letter is notification of the Secretary of State's decision in accordance with regulation 8 of the 2011 Regulations.
5. The Secretary of State has given consideration to whether the Application is for a material or non-material change. In doing so, he has had regard to paragraph 2(2) of Schedule 6 to the Planning Act 2008 which requires the Secretary of State to consider the effect of the change on the Order as originally made.
6. There is no statutory definition of what constitutes a 'material' or 'non-material' amendment for the purposes of Schedule 6 to the Planning Act 2008 and Part 1 of the 2011 Regulations.
7. So far as decisions on whether a proposed change is material or non-material, guidance has been produced by the Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities ("DLUHC")), the "Planning Act 2008: Guidance on Changes to Development Consent Orders" (December 2015) ("the Guidance")¹, which makes the following points:
 - (a) given the range of infrastructure projects that are consented through the Planning Act 2008, and the variety of changes that could possibly be proposed for a single project, the Guidance cannot, and does not attempt to, prescribe whether any particular types of change would be material or non-material;
 - (b) however, there may be certain characteristics that indicate that a change to a consent is more likely to be treated as a material change. Four examples are given in the Guidance as a starting point for assessing the materiality of a proposed change, namely:
 - (1) whether an update would be required to the Environmental Statement ("ES") (from that at the time the Order was made) to take account of new, or materially different, likely significant effects on the environment;
 - (2) whether there would be a need for a Habitats Regulations Assessment ("HRA"), or a need for a new or additional licence in respect of European Protected Species ("EPS");
 - (3) whether the proposed change would entail compulsory acquisition of any land that was not authorised through the Order; and
 - (4) whether the proposed change would have a potential impact on local people and business (for example, in relation to visual amenity from changes to the size and height of buildings; impacts on the natural and historic environment; and impacts arising from additional traffic).
 - (c) although the above characteristics indicate that a change to a consent is more likely to be treated as a material change, these only form a starting point for assessing the materiality of a change. Each case must depend on thorough consideration of its own circumstances.
8. The Secretary of State has considered the change proposed by the Applicant against the four matters given in (1), (2), (3) and (4) above:

¹ <https://www.gov.uk/government/publications/changes-to-development-consent-orders>

- (1) The Secretary of State notes that the information supplied supports the Applicant's conclusions that there are no new, or materially different, likely significant effects from those assessed in the Environmental Statement. In light of the analysis supplied by the Applicant and responses to the consultation that have raised no concerns regarding environmental issues, the Secretary of State has, therefore, concluded that no update is required to the Environmental Statement as a result of the proposed amendment to the Order.
 - (2) In respect of the HRA, the Secretary of State has considered the nature and impact of the change proposed and is satisfied that there is not likely to be a significant effect on any protected sites either alone or in combination with any other plans or projects as a result of the proposed change and therefore an Appropriate Assessment is not required. He is also satisfied that the proposed change does not bring about the need for a new or additional licence in respect of EPS as the amendments sought are not anticipated to give rise to any new or different effects from an ecological perspective than those assessed for the original application.
 - (3) In respect of compulsory acquisition, the Secretary of State notes that the proposed changes do not require any additional compulsory purchase of land.
 - (4) In respect of impacts on local people and businesses, the Secretary of State notes that no changes are anticipated by the Applicant to the impacts already assessed in the Environmental Statement.
9. The Secretary of State therefore concludes that none of the specific indicators referred to in the guidance, or other relevant considerations, suggests that the changes considered in this letter is a material change.
10. The Secretary of State is therefore satisfied that the changes considered in this letter are not material and should be dealt with under the procedures for NMCs.

Consultation and responses

11. In accordance with the requirements of regulation 7 of the 2011 Regulations specified parties, such as the local planning authority, were notified by email on 19 October 2022.
12. The Applicant publicised the Application in accordance with regulation 6 of the 2011 Regulations, the Application was also published for two successive weeks in the local press (The Thurrock Gazette and The Gravesend Messenger), and copies of the regulation 6 notice and the Application were made publicly available on the Planning Inspectorate's ("PINS") website, such that there was an opportunity for anyone not notified to also submit representations to the Planning Inspectorate;
13. Representations were received from the Environment Agency, Gravesham Borough Council, Historic England, National Grid, Natural England and Thurrock Council. No comments were received from the Health and Safety Executive, Condoovers Scout Activity Centre, Essex County Fire and Rescue Service, Essex Police and Crime Commissioner, Public Health England, National Rail Infrastructure Ltd, UK Power Networks, or Kent Down AONB. Further, no comments were received from individuals.

Environment Agency

14. The Environment Agency had no objection and no comments to make.

Gravesham Borough Council

15. Gravesham BC had no comments to make on this application.

Historic England

16. Historic England did not wish to comment on this non-material change.

National Grid

17. National Grid had no comments or representations to make.

Natural England

18. Natural England had no comments on the application, but noted that should the proposal be amended in any way which significantly affects its impact on the natural environment then in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again.

Thurrock Council

19. Thurrock Council had no objections to the proposed non-material change.

Environmental Impact Assessment

20. The Secretary of State has considered whether the Application would give rise to any new significant or materially different effects when compared to the effects set out in the Environmental Statement for the development authorised by the Order.
21. The Secretary of State is satisfied that the information provided by the Applicant is sufficient to allow him to make a determination on the Application.
22. The Secretary of State has considered all relevant information provided and the comments of consultees. The Secretary of State agrees with the Applicant's conclusions that there will not be any new or materially different likely significant effects when compared to the effects set out in the Environmental Statement for the development authorised by the Order and as such considers that there is no requirement to update the Environmental Statement.
23. As there are no new significant environmental impacts as a result of the proposed change, the Secretary of State does not consider that there is any need for consultation on likely significant transboundary effects in accordance with regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

Habitats

24. The Secretary of State has considered the relevant and important policies in respect of the United Kingdom's obligations as set out in the Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations"). The Habitats Regulations require the Secretary of State to consider whether the Development would be likely, either alone or in combination with other plans and projects, to have a significant effect on a protected site, as defined in the Habitats Regulations. If likely significant effects cannot be ruled out, then an Appropriate Assessment must be undertaken by the Secretary of State, pursuant to regulation 63(1) of the Habitats Regulations, to address potential adverse effects on site integrity. The Secretary of State may only agree to the Application if he has ascertained that it will not adversely affect the integrity of the protected sites within the National Site Network.
25. The Secretary of State has considered the information submitted in the Application and the comments of consultees and is satisfied that the proposals do not alter the conclusions set out in the Applicant's Environmental Statement and the Habitats Regulations Assessment for the Order and the Application will not have a likely significant effect on any protected sites within the National Site Network and no Appropriate Assessment is therefore required.

General Considerations

Equality Act 2010

26. The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; sex and sexual orientation; gender reassignment; disability; marriage and civil partnership;² pregnancy and maternity; religion or belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
27. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010 and is satisfied that there is no evidence that granting the changes considered in this letter will affect adversely the achievement of those objectives.

Human Rights Act 1998

28. The Secretary of State has considered the potential for the proposed changes to the Development to infringe upon human rights in relation to the European Convention on Human Rights. The Secretary of State considers that the grant of the changes considered in this letter would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

29. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent. The Secretary of State is of the view that the Application considers biodiversity sufficiently to accord with this duty.

Secretary of State's conclusions and decision

30. The Secretary of State has considered the ongoing need for the development. The Secretary of State notes that the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy (EN-3) both set out that for the UK to meet its energy and climate change objectives, there is continuing need for new electricity generating plants of the type proposed by the Applicant. The Secretary of State considers, therefore, that the ongoing need for the project is established given the contribution it will make to securing energy supply. On 27 June 2019, following advice from the Committee on Climate Change, the UK Government announced a new carbon reduction 'net zero' target for 2050 which resulted in an amendment to the Climate Change Act 2008 (the target for the net UK carbon account for 2050 changed from 80% to 100% below the 1990 baseline).
31. The Secretary of State notes that the energy National Policy Statements continue to form the basis for decision-making under the Planning Act 2008. The Energy White Paper, Powering our Net Zero Future, was published on 14 December 2020. It announced a review of the suite of energy National Policy Statements but confirmed that the current National Policy Statements were not being suspended in the meantime. The relevant energy National Policy Statements therefore remain the basis for the Secretary of State's consideration of the Application. The Secretary of State considers, therefore, that the ongoing need for the

² In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

Development is established and that granting the non-material change would not be incompatible with the amendment to the Climate Change Act 2008.

32. The Secretary of State is satisfied that the Applicant's information demonstrates that the proposed changes will not result in changes to the impact conclusions of the Thurrock Flexible Generation Plant Development ES.
33. The Secretary of State has considered the nature of the proposed changes, noting that the proposed changes to the Development would not result in any further environmental impacts and will remain within the parameters consented by the Order.
34. For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the proposed changes to the Order with the amendments set out. The Secretary of State is satisfied that the changes requested by the Applicant are not material changes to the Order and has decided under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a NMC to the Order to authorise the changes detailed in the Application.

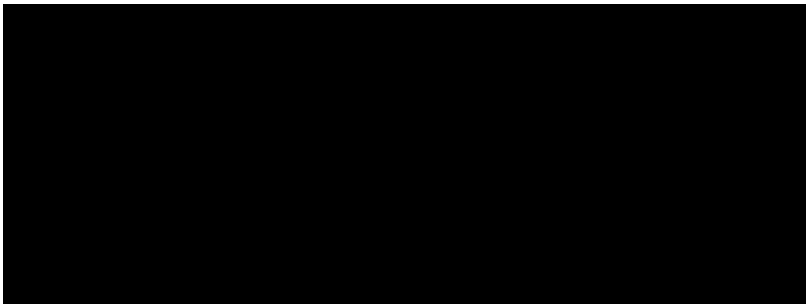
Challenge to decision

35. The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

Publicity for decision

36. The Secretary of State's decision on this Application is being notified as required by regulation 8 of the 2011 Regulations.

Yours sincerely,



David Wagstaff
Deputy Director, Energy Infrastructure Planning Delivery

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 (5) of the Planning Act 2008, a decision under paragraph 2(1) of Schedule 6 to the Planning Act 2008 to make a change to an Order granting development consent can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The Amending Order as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<https://infrastructure.planninginspectorate.gov.uk/projects/south-east/thurrock-flexible-generation-plant/>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655)