Riverside Energy Park

Applicant's Closing Statement

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Contents

1 Closing submissions on behalf of the Applicant

Introduction

1.1 This document draws together the Applicant's submissions made to the Examining Authority **("ExA")** during the course of the Examination. This document sets out the Applicant's case in the context of the requirements of section 104 of the Planning Act 2008 ("PA 2008") and provides cross references to where its submissions have been made in more detail.

1.2 It is provided to ensure that the ExA, and ultimately the Secretary of State, are clear on the Applicant's position in relation to these matters and the remaining points of dispute that arise from them.

1.3 This Closing Statement does not make new points but instead draws on, and refers to, submissions made by the Applicant in its application for the proposed Riverside Energy Park ("**REP**") and throughout the course of the Examination. It is hoped that this Statement will aid the ExA and the Secretary of State in the reporting and decision-making process.

1.4 In doing so, this document, re-states the benefits of REP, REP's compliance with, and delivery of, policy objectives in the National Policy Statements ("**NPS**") and points the ExA and the Secretary of State to the evidence which is considered relevant to the application of section 104 of the PA 2008.

Section 104(2) PA 2008: Having regard to important and relevant matters

1.5 Section 104(2) of the PA 2008 lists matters the Secretary of State must have regard to in deciding applications for orders granting development consent. These matters include any Local Impact Report submitted. Local Impact Reports were submitted at Deadline 2 as follows:

- London Borough of Bexley ("**LBB**") (REP2-082);
- Kent County Council and Dartford Borough Council (REP2-079);
- London Borough of Havering (REP2-083); and
- Greater London Authority ("**GLA**") (REP2-075).

1.6 These Local Impact Reports must be read in conjunction with the Statements of Common Ground ("SoCG") that the Applicant has entered into and which have been developed over the course of the Examination as evidence has been presented and tested:

- LBB entered into a Statement of Common Ground on 3 October 2019 which confirms that there are no matters of disagreement between the parties. Indeed, the SoCG confirms that LBB unconditionally supports the Application.

- Kent County Council entered into a Statement of Common Ground on 19 September 2019 which confirms there are no matters of disagreement between the parties.

- Dartford Borough Council entered into a Statement of Common Ground on 4 June 2019 which confirms that there are no matters of disagreement between the parties.

1.7 London Borough of Havering's concerns relate to air quality impacts within its area. These concerns were first raised in its Local Impact Report and then again in its response to second written questions (RE6-009). The Applicant's response is set out in the **Applicant's response to Air Quality Matters** (**8.02.70, REP7a-002**). The issues raised by the London Borough of Havering relate to the significance of predicted impacts on air emissions, in particular Nickel and Chromium VI. The Applicant disagrees with the conclusions reached by the London Borough of Havering for the reasons set out in the aforementioned document. The disagreement relates to differences in professional opinion on the significance of the impacts reported.

1.8 The Applicant is close to agreeing a SoCG with the GLA and it is hoped that a signed SoCG with the GLA will be submitted to the Examination before its close. The draft SoCG currently in discussion between the GLA, TfL and the Applicant confirms agreement with 26 of the 33 proposed Requirements, but the GLA proposes amendments to the remaining 7:

- **Requirement 13** (Construction Traffic Management Plan ("CTMP")) – the GLA agrees with the need for the Requirement, but has two outstanding points:

  (a) the GLA considers that the Applicant should fund additional buses to maintain frequency and capacity during the installation of the Electrical Connection. The Applicant does not consider that there is any justification to fund additional buses as a result of the installation of the Electrical Connection. The Applicant has mitigated the impact on buses by choosing the final Electrical Connection route option that is before the ExA and, in any event, the works are temporary in nature and will move along the highway. The Applicant has also received an Electrical Connection Offer in respect of the Electrical Connection from UKPN, a statutory undertaker. Finally, the Applicant has agreed to carry out junction appraisals as part of the CTMP, which will inform the mitigation in the CTMP at the time of the construction works. The CTMP must be approved by

the relevant planning authority, the LBB, and the mitigation proposed in the CTMP as approved by the LBB will be funded by the Applicant.

(b) the CTMP should expressly state that the Applicant will maximise the use of the River during construction. The Applicant is committed to utilising the River but has to balance this commitment with the fact that the jetty is an operational jetty with waste being delivered to the existing RRRF facility at certain times. The Applicant will, therefore, look at opportunities that can co-exist with the existing RRRF operations. These opportunities will then be presented in the CTMP for the LBB to approve. The Applicant has emphasised this commitment to reviewing the use of the river during construction in the **Outline CTMP** submitted at Deadline 8a (**6.3 Appendix L to B1, REP8a-011**).

- **Requirement 14** (Heavy commercial vehicle movements delivering waste) – the GLA agrees with this Requirement but wish for suppliers to REP to commit to use Euro VI vehicles. The Applicant does not consider this to be a planning policy matter and has no control over the procurement of vehicles by waste suppliers.

- **Requirement 16** (Waste hierarchy scheme) – the GLA agrees with the principle of the Requirement but considers the Requirement should be amended to include contractual measures to secure maximum limits on recyclable material content; setting the baseline to at least 65% recycling; and bi-annual waste composition analysis instead of annual. The Applicant considers that REP is just one element of the overall waste management infrastructure network in London and that it is not reasonable or appropriate to place the burden of increased recycling activities on facilities such as REP. The Applicant's position is that this is a matter for the regulator, the Environment Agency, rather than the Applicant and the planning system.

- **Requirement 21** (Community benefits) – the GLA requests a commitment to the London living wage within this Requirement, in line with the Mayor's Good Work Standard. The Applicant does not consider this to be a planning policy matter.

- **Requirement 24** (Combined Heat and Power) - the GLA agrees in principle with this requirement but seeks that the CHP review is undertaken every two years, rather than every three years. The Applicant considers three years to be a reasonable time period, which is agreed with the LBB. The Applicant also understands that the GLA may have some additional drafting amendments to this Requirement, but has not shared those amendments with the Applicant prior to Deadline 8b. The Applicant is disappointed in this

approach as it could have considered any further changes that the GLA had prior to Deadline 8b.

- **Requirement 25** (Use of compost material and gas from Work No 1B) – the GLA agrees in principle with this requirement but seeks that the Anaerobic Digestion review is undertaken annually, rather than every two years. The Applicant considers two years to be a reasonable time period, which is agreed with the LBB.

- **Requirement 32** (Tonnage cap) – the GLA seeks a cap of 655,000 tonnes per calendar year. The Applicant has proposed a cap of 805,920 tonnes per calendar year, which is the throughput assessed in the **Environmental Statement** (**6.1**)and which demonstrates no significant adverse effects.

1.9 Sections 104(a) and 104(2)(c) provide that the Secretary of State must have regard to any NPS which has effect in relation to the proposed development and any other matters prescribed in relation to the proposed development. These matters are covered in the remainder of this submission.

1.10 Finally, section 104(2)(d) provides that the Secretary of State must have regard to any other matters which she thinks are both important and relevant. These may include the proposed development's compliance with local planning policy and the National Planning Policy Framework ("**NPPF**"). The Applicant's position in terms of policy compliance in this respect is set out in its **Planning Statement** (**7.1, APP-102**) and the **Statement of Reasons**, **Appendix A** (**4.1, REP2-008**).

Section 104(3): Deciding the application in accordance with the NPS

1.11 Section 104(3) of the PA 2008 provides that the application must be decided in accordance with any relevant NPSs, except to the extent that one or more of subsections (4) to (8) applies. In section 5.3 of the **Planning Statement** (**7.1, APP-102**), the Applicant has considered and set out the conformity of REP against the assessment principles, generic impacts and assessment and technology specific considerations of the relevant NPSs (Overarching NPS for Energy (EN-1), the NPS for Renewable Energy Infrastructure (EN-3) and the NPS for Electricity Networks Infrastructure (EN-5)).

1.12 The Secretary of State in her decision letter for the Abergelli Power Gas Fired Generating Station Order 2019, makes clear at paragraph 5.9 that "*the energy NPSs continue to form the basis for decision-making under the Planning Act 2008*."

1.13 Further documents submitted during the Examination demonstrating REP's compliance with the relevant Energy NPSs include:

- The **Project and its Benefits Report** ("**PBR**") (**7.2, APP-103**) and the **Supplementary Report to the Project and its Benefits Report** (**7.2.1, REP2-045**).

  (a) Part 2 of the PBR demonstrates how REP will help meet the urgent need identified in EN-1 for new (and particularly low carbon) energy projects to be brought forward as soon as possible and how in this regard REP is policy compliant;

  (b) Part 3 of the PBR demonstrates that REP will deliver renewable energy, have a positive carbon outcome and will also be CHP enabled. It therefore meets the relevant policies in EN-1 and EN-3;

  (c) REP will deliver a sustainable waste management solution, which will accord with the waste hierarchy and as such demonstrates compliance with EN-3; and

  (d) Part 5 sets out how REP meets the design criteria in EN-1, delivering not only an aesthetically pleasing development but also one that has designed to be multi-functional and sustainable.

- The **Combined Heat and Power (CHP) Assessment** (**5.4, APP-035**) and **Supplementary CHP Report** (**5.4.1, REP2-012**) directly responds to the policy requirements in EN-1 and EN-3 for REP to be CHP ready, and explain how REP exceeds those requirements by being CHP enabled - REP will be constructed to a level of readiness where the plant is fully capable of exporting heat, and is synonymous with being 'CHP from the outset'. In addition, the final draft Development Consent Order ("**dDCO**") put forward by the Applicant at Deadline 8b contains the following commitments on CHP:

  (a) Schedule 1 makes clear that the steam turbine incorporates at least 30 megawatts heat off-take for district heating (Work Number 1A(v) and Work Number 2(b));

  (b) **Requirement 2(2)** states that no part of Work No. 1A and Work No. 3 may commence until a plan has been submitted to and approved by the relevant planning authority demonstrating that within Work No. 1A and Work No. 3 there is sufficient space to support a heat export system capable of providing at least 30 megawatts heat off–take for district heating;

  (c) **Requirement 24** provides for a review of CHP opportunities which has been developed in line with comments received from the GLA and is agreed with the LBB:

    (i) Work No. 1A (and, if applicable, Work No. 2(b)) and Work No. 3 must be constructed to produce combined heat and power through the provision of steam pass–outs and the

preservation of space for the future provision of water pressurisation, heating and pumping systems;

(ii) Work No. 1A must not start commissioning until the Applicant has established a working group pursuant to terms of reference to be approved under the Requirement;

(iii) Prior to the date of final commissioning of Work No. 1A the undertaker must submit to the relevant planning authority for its approval a CHP review updating the CHP statement. The CHP review must be carried out by an approved CHP consultant from a list approved by the working group;

(iv) The Applicant must take such actions (which are technically and commercially viable) as are included within the timescales specified in the approved CHP review and where the working group identifies the likely connection point at the site boundary for any district heating, the Applicant is to safeguard a pipework route from Work No. 3 to that point; and

(v) The Applicant is to carry out the CHP review every three years until heat is exported, following which the review takes place every five years.

- The **Carbon Assessment** (**8.02.08, REP2-059**) and the **Maximum Throughput Carbon Assessment Note** (**8.02.85, REP8-026**) demonstrate the carbon benefits of REP. The GLA raised concerns that the assessment was based on a nominal throughput of 655,000 tonnes per annum ("**tpa"**) rather than the maximum throughput of 805,920 tpa. The **Maximum Throughput Carbon Assessment Note** (**8.02.85, REP8-026**) demonstrates that if the throughput of the plant is increased then the carbon benefits also increase.

- The **Applicant's response to First Written Questions** (**8.02.04, REP2-055**) sets out the position in relation to the application of EN-1 and EN-3 in respect of all elements of REP.

Section 104(7): The planning balance

1.14 Section 104(3) of the PA 2008 provides that the Secretary of State must decide the Application in accordance with any relevant NPS, except to the extent that one or more of the subsections in section 104 apply. These include, at sub-section (7), if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits. In order to determine whether section 104(7) is engaged, and whether the proposed development should be decided in accordance with the relevant NPS, the planning balance of the proposed development therefore has to be considered.

1.15 The context for consideration of that planning balance for REP is set out primarily in section 6 of the **Planning Statement** (**7.1, APP-102**) and in summary provides:

- NPSs EN-1 and EN-3 establish the urgent need for new electricity generation including renewable energy generation. Therefore, the ExA and the SoS are told that the need for REP has been demonstrated;
- NPS EN-1 requires that substantial weight be given to the contribution that REP would make towards satisfying the identified need;
- there is a presumption in favour of granting consent for REP; and
- the ExA and the Secretary of State then have to balance REP's adverse impacts against its benefits (as per EN-1 paragraph 4.1.3). The benefits of REP include the substantial weight that must be given to its contribution to satisfying the identified need.

1.16 Submissions made during the course of the Examination relevant to the legislative and policy requirements with respect to the balancing exercise to be undertaken are set out in **Section 3.4** of the **Applicant's response to GLA Deadline 4 submission** (**8.02.46, REP5-017**). The GLA responded to this in its Deadline 7 Submission (REP7-021) and the Applicant responded to this submission at Deadline 8 in **Section 4.3** of its **Applicant's response to the GLA's Deadline 7 and 7a Submissions** (**8.02.78, REP8-019**).

1.17 The Applicant does not suggest that the NPSs establish an unassailable needs case for energy generation. Rather its position is that section 104(3) of the PA 2008 requires the Secretary of State to determine the application for development consent in accordance with the NPSs unless one of the exceptions in subsections (4) to (8) applies. Section 104(7) of the PA 2008 is one of those exceptions, where the Secretary of State finds that the adverse impacts of a development outweighs its benefits in which case the presumption in favour of granting development consent set out in NPS EN-1 does not apply. The Applicant sets out the balancing exercise required by section 104(7) of the PA 2008 below and the Applicant considers that the potential adverse impacts of REP **do not** outweigh the benefits that have been identified. As such, section 104(7) of the PA 2008 is not engaged in respect of REP and therefore the Application must be determined in accordance with the relevant NPSs and the presumption in favour of granting development consent applies.

1.18 The factors to be taken into account in the balancing exercise pursuant to section 104(7) are:

- **REP's contribution to the urgent need identified in the Energy NPSs for electricity generation**. This contribution is explained in

section 2 of the **PBR** (**7.2, APP-103**). This factor is to be provided substantial weight.

- **Other benefits of REP**:

  (a) Analysis undertaken by the Applicant (see, for example, the **PBR** and **Appendix A** to the **PBR** (the **Applicant's London Waste Strategy Assessment** (**7.2, APP-103**) and **Paragraph 2.1.12** of the **Applicant's response to the Greater London Authority's Deadline 3 Submission** (**8.02.35, REP4-014**)) has shown that London will not meet its policy ambitions of obtaining net self sufficiency. Even when London's waste reduction and recycling targets are met, there is still a need for ~900,000 tpa residual waste management capacity within London. REP will make a major contribution to meeting that demand and diverting waste from landfill. Further, there is no reason why REP should take waste only from London. The Applicant has demonstrated that there is a forecast need for over 1 million tonnes of residual waste management capacity required across the waste planning authorities adjacent to London (**Paragraph 2.1.23** of the **Applicant's response to the Greater London Authority's Deadline 3 Submission** (**8.02.35, REP4-014**)). REP is therefore vital to meet residual waste capacity need. REP's strategic location on the River Thames makes it ideally located not only to serve London, but also the South East and use the river to transport material taking trucks off the roads.

  The need for REP's contribution to residual waste management infrastructure has been considered exhaustively during the examination. Reference is made to where the need for this capacity is considered, in the **Applicant's Response to First Written Questions 1.0.15** (**8.02.04, REP2-055**), **Oral summary from the Issue Specific Hearing on Environmental Matters** (**8.02.19, REP3-027**), the **Applicants responses to Written Representations** (see response to GLA's WR4) (**8.02.14, REP3-022**), the **Applicants response to Greater London Authority Deadline 3 Submission** (see section 2) (**8.02.35, REP4-014**), **Applicants response to GLA Deadline 4 Submission** (**8.02.46, REP5-017**) and the **Applicant's response to Greater London Authority Deadline 5 and 6 Submissions** (**8.02.67, REP7-015**). All submissions demonstrate a need for the energy recovery facility (ERF) at REP. Within the London Waste Strategy Assessment (LWSA, Appendix A of the **PBR** (**7.2, APP-103**)), a number of scenarios are considered, all of which are reliant on the data contained in the adopted and draft London Plans and the London Environment Strategy. By contrast, the GLA has not produced any evidence to substantiate its assertion that no new energy recovery infrastructure is required in London. The LWSA

demonstrates that REP will not disadvantage recycling in London and that it is a very necessary part of the infrastructure required to achieve the waste management, energy supply and circular economy priorities set out in the relevant strategies and plans. Through all this analysis the Applicant has demonstrated that even when London meets its waste reduction and recycling targets, there is a need for ~ 900,000 tpa of residual waste management capacity within London.

(b) By delivering residual waste management capacity in London it will not only be contributing to the policy requirement to meet net self sufficiency in terms of processing waste, but it will also contribute to achieving the waste hierarchy. The ERF element of REP is a residual waste facility and therefore it is not designed to supplant facilities which recycle or reuse waste, but it will enable residual waste to be processed through the energy recovery facility, creating energy and preventing it going to landfill. REP's compliance with the waste hierarchy has been enshrined in the terms of the final draft dDCO by the inclusion of **Requirement 16**, which requires compliance with a waste hierarchy scheme.

(c) REP is located adjacent to an existing jetty which is already used by the Riverside Resource Recovery Facility. REP will therefore make full use of this jetty and it will enable increased river transport for delivering both waste to be treated and the subsequent recovery of secondary materials. The Applicant's commitment to increased river transport has been demonstrated through the Applicant's agreement with the LBB of a waste tonnage cap. **Requirement 14(2)** of the final dDCO restricts the volume of waste delivered by road to Work No. 1A during commissioning and the operational period to 130,000 tonnes per calendar year, save in the event of a jetty outage.

(d) REP would deliver an integrated energy solution, fuelled by renewable/low carbon energy resources:

(i) The Applicant has carried out a **Carbon Assessment** (**8.02.08, REP2-059**) which demonstrates that the benefit of the REP Energy Recovery Facility ("ERF") compared to landfill when processing the nominal throughput of 655,000 tonnes per calendar year is approximately 209,000 tonnes of CO2-equivalent per year (electricity only). If heat is exported, this benefit increases to 230,000 t CO2e. The **Maximum Throughput Carbon Assessment Note** (**8.02.85, REP8-026**) considers the carbon savings when operating at its tonnage cap (at 805,920 tonnes per calendar as secured under **Requirement 32** of the dDCO). It shows that the carbon saving is greater at 229,512 tCO2e/annum (electricity

only). The **Maximum Throughput Carbon Assessment** (**8.02.85, REP8-026**) also demonstrates a carbon benefit at 805,920 tonnes per calendar year at a lower calorific value. In addition, REP includes an Anaerobic Digestion facility and solar photovoltaic technology further enhancing its carbon credentials. It is therefore clear that REP will deliver carbon improvements and that it meets policy in this regard.

(ii) Even with substantial change across the power sector, increased efficiencies in energy supply, and a dramatic decrease in greenhouse gas emissions associated with the UK's former reliance on coal, there remains an urgent and significant demand for more renewable/low carbon electricity supply, and preferably plant that can also deliver heat. '*To minimise risks to energy security and resilience, the Government therefore believes it is prudent to plan for a minimum of 59 GW of new electricity capacity by 2025*' (NPS EN-1, paragraph 3.3.23). REP is a demonstrated solution. It is a decentralised electricity generating station funded by private investment. It will accept a range of residual waste materials (a reliable supply of fuel) from which to recover both renewable/low carbon energy and secondary materials. It therefore will add to the renewable/low carbon energy supply rather than displace other facilities which fall into this category. If it is to displace any electricity supply options then it will be the older gas powered stations that do not meet policy objectives (see **Paragraph 3.1.19** of the **Carbon Assessment** (**8.02.08, REP2-059**).

(iii) REP also includes a facility for battery storage, so that energy recovered on site can be stored on site. This enables the recovered energy to be stored and released as needed, providing a continuous flow of renewable/low carbon energy supply during periods of high demand, or when wind or solar is unavailable. Battery storage increases operational performance and reliability, providing an enhanced balance between supply and demand for electricity and enabling greater efficiency in electricity supply, thus preserving security of supply. This benefits the entire power supply network from generation, transmission and distribution to all users.

(iv) The Applicant is committed to delivering all aspects of REP, and this is secured via **Requirement 23** of the final dDCO which requires the Applicant to submit a phasing programme setting out the commencement of construction, the anticipated start of commissioning and the anticipated date of final commissioning for each of

Work Nos. 1A (the ERF), 1B (the Anaerobic Digestion facility), 1C (solar), and 1D (the battery). The requirement provides that Work No. 1B must commence construction in the same phase as Work No. 1A and the anticipated date of final commissioning of Work No. 1C and Work No. 1D must be as soon as reasonably practicable.

(e) The Applicant has set out in its **Combined Heat and Power Assessment** (**5.4, APP-035**) and the **Combined Heat and Power Supplementary Report** (**5.4.1, REP2-012**) the policy context which demands heat offtake from REP. The Applicant has consistently demonstrated throughout the Examination that REP meets this policy context and relies on the commitments secured in the dDCO set out at **Paragraph 1.13(g)** above in this regard. The GLA has made submissions that the Applicant has not carried out a sufficiently robust analysis of heat supply opportunities and that if REP does not operate in CHP mode that the ERF would be a carbon producer. The Applicant has set out its response to these criticisms, most recently in section 2.5 to the **Applicant's Response to the Greater London Authority's Deadline 5 Submissions** (**8.02.67, REP7-015**). In addition the Applicant has carried out the pre-application phase of securing financial assistance in the Heat Network Investment Programme ("**HNIP**"). The HNIP has confirmed that a district heating scheme from both REP and the existing Riverside Resource Recovery Facility is sufficiently developed such that the Applicant can now make a full application to HNIP.

(f) The Anaerobic Digestion facility will accept local green and food wastes providing for their optimum treatment to recover energy and a secondary material, the digestate. Even whilst Government seeks to remain technology neutral, it recognises that anaerobic digestion is the best technology to deal with food and green waste. The Anaerobic Digestion facility has been designed to respond to local demand, primarily from LBB, providing a cost effective and efficient in-Borough solution for the authority and other customers' green and garden wastes, so meeting the Mayor's challenge to increase municipal waste recycling. The Applicant has committed, through **Requirement 25** of the final dDCO, to recycling both the compost material and the gas that is produced from processing food waste.

(g) Secondary materials will also be recovered from the ERF, with incinerator bottom ash ("**IBA**") transported off-site by river, save in the event of a jetty outage (as secured in **Requirement 14(5)** of the final dDCO). The IBA produced from a typical municipal waste incinerator represents about 20-30% of the input waste. Recycling the IBA avoids its disposal to landfill and recovers metals and secondary aggregates. Metals are recovered and recycled from the process. The secondary aggregate is

generally used as a road sub base, a bulk filler for construction and in cement bound materials. These secondary materials will be sold on the open market and reduce the need for virgin materials and the reliance on primary aggregates extracted from quarries. In addition, air pollution control residue (APCR) is recycled and converted into carbon negative secondary aggregates used in the construction sector. The process adopted for APCR recycling has recently been recognised in a United Nations Environment Report (Carbon8 Aggregates recognised by the United Nations (July 2018))[1] and acknowledged as making "*a demonstrable contribution to the developing European circular economy*".

(h) REP presents a range of complementary technologies, which have been brought together to deliver policy priorities of reducing carbon emissions and increasing renewable/energy supply. The ERF has been designed to operate with back up power from the Solar Photovoltaic Panels and the Battery Storage providing resilience both on and off site.

(i) REP delivers good design, as required by section 4.5 of NPS EN-1, enabling it to deliver the priorities of the NPSs and the London Plan. This is demonstrated from the start, through the site choice: using a strategic location promoted in policy; optimising the existing waste management use; delivering CHP potential for a substantial local demand in a heat priority area; maximising the use of river transport. It is a highly functional and well proven site, in terms of its location, how it operates, and how it integrates with the surrounding communities.

(j) Finally, **Section 14.9** of the **ES** (**6.1**) advises that a minimum number of 75 full time equivalent workers would be required to operate REP (see **Paragraphs 14.9.12-14.9.13** of the **ES** (**6.1**), contributing £7.2 million GVA to the wider economy (see paragraph 14.9.18 of the **ES**, Document Reference 6.1). In addition, construction activity at the REP site is expected to support approximately 837 temporary construction jobs, contributing £93.3 million GVA to the economy (see **Paragraph 14.9.3** of the **ES**, (**6.1**)).

- **Assessed impacts of REP**:

  The Applicant has carried out a full Environmental Impact Assessment as required by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. This EIA

[1] http://wedocs.unep.org/bitstream/handle/20.500.11822/7735/unep_geo_regional_assessments_europe_16-07513_hires.pdf?sequence=1&isAllowed=y

adhered to the Scoping Opinion, produced in consultation with key stakeholders, published by the Secretary of State.

Turning to the particular assessed impacts identified in the Application:

(a) **Townscape and Visual Impact.** The Applicant has undertaken a full assessment of the effects of REP on Townscape and Visual Impact Assessment ("**TVIA**") during construction, operation, maintenance and decommissioning. The conclusion is that, due to the introduction of a new building, residual significant effects are identified. Moderate Adverse Impacts have been identified on Townscape Receptors (character only) and on some Visual Receptors during construction and decommissioning and on Townscape Receptors and some Visual Receptors during operation and maintenance. The TVIA impact is due to the introduction of a new building form which is unavoidable, but has been minimised so far as possible by prioritising good design from the outset which included minimising massing through adoption of a stepped building design. This is secured by ensuring the final design of REP is in accordance with the design principles, which are secured by **Requirement 2** of the final dDCO. Through the design principles and **Requirement 2**, the LBB concludes at paragraph 11.9 of its Local Impact Report that whilst the "*final design of the scheme is not known at this stage…it is anticipated that a high quality of design can be achieved...*"

(b) **Air Quality**. The Applicant has undertaken a full assessment of the effects of REP on air quality during construction, operation and decommissioning. The assessment undertaken has not identified that there will be any significant adverse effects during any stage of REP's life cycle. The Applicant has most recently responded to comments on air quality in its Deadline 7a submission which demonstrates effects are not significant (**8.02.70, REP7a-002**) and also includes a peer of review of the air quality assessment undertaken. In addition the Applicant has:

(i) made an application for an Environmental Permit which includes emission limits lower than the conservative emission limits assumed for the EIA. The Environmental Permit application has been made on the basis of NOx emissions of 75mg/Nm3 for Work Number 1A (the ERF) whereas the EIA assessed 120 mg/Nm3 for Work Number 1A;

(ii) committed to fund ambient air quality monitoring. This is secured via a section 106 agreement, the agreed draft of which has been submitted to the Examination. The

completed agreement will be submitted to the Secretary of State as soon as it is completed.

(iii) committed to stringent emission limits for the AD plant and this is secured by **Requirement 15** of the **dDCO**. These limits are able to be met by the deployment of technology such as Selective Catalytic Reduction abatement technology within the Anaerobic Digestion plant.

It is the conclusions of the Applicant's expert consultants through evidenced reasoning, and the LBB following the submissions made by the Applicant during the Examination, that there will not be a significant adverse effect on Air Quality as a result of REP.

(c) **Biodiversity.** The Applicant has also carried out an assessment of the effects of REP on terrestrial biodiversity. The assessment, which followed the biodiversity hierarchy, identified a need for compensation following the loss of habitats of ecological value within the REP site. This will be delivered through the Outline Biodiversity Landscape Mitigation Strategy ("**OBLMS**") and final Biodiversity Landscape Management Scheme ("**BLMS**") which is secured by dDCO **Requirement 5**. The Applicant has supplemented that assessment as follows during the Examination:

(i) A **Biodiversity Diversity Accounting Report** (**8.02.09, REP2-060**) was submitted at Deadline 2;

(ii) The **Applicant's response to First Written Questions**, which included questions in respect of biodiversity (**8.02.04, REP2-055**);

(iii) **Biodiversity Offset Delivery Framework** (**8.02.25, REP3-031**) was also submitted at Deadline 3;

(iv) On 1 August 2019 the ExA issued additional written questions, which included questions on biodiversity. The Applicant responded to these at Deadline 6 (**8.02.60, REP6-002**);

(v) **Environment Bank Site Selection for Biodiversity Offsetting Report** (**8.02.71, REP7-019**);

(vi) On 30 August the ExA issued a Rule 17 letter which included further questions on biodiversity matters. The Applicant's response to the ExA's Rule 17 Letter on 30 August 2019 was submitted at Deadline 7a (**8.02.74, REP7a-004**);

(vii) The Applicant's summary for the Issue Specific Hearing on the dDCO dated 19 September 2019 was submitted at Deadline 8; and

(viii) **OBLMS** (**7.6, REP8-012**) submitted at Deadline 8.

In particular, the **Biodiversity Offsetting Report** (**8.02.71, REP7-019**):

(ix) provides the ExA and the Secretary of State with the likely maximum amount of biodiversity units (54.39) and linear units (3.97) that are required to deliver the compensation and the minimum 10% net gain;

(x) estimates that a maximum land area of 12.5 ha will be required to compensate for this likely worst case amount of 54.39 biodiversity units; and

(xi) estimates that a maximum land area of 0.9 km of linear habitat will be required to compensate for this likely worst case amount of 3.97 linear units.

Further, the Applicant has agreed with LBB that the priority order in terms of identifying sites to meet this requirement will be as follows:

(xii) sites within the LBB will be prioritised, provided suitable and sufficient land is available;

(xiii) from the list of LBB sites identified, those owned by the LBB and which are able to provide the compensation will be reviewed;

(xiv) if there are no suitable LBB owned sites, sites within LBB that are not owned by LBB will be reviewed and those sites closest to the REP site and able to provide the offset will be prioritised; and

(xv) if no sites within LBB are able to provide the offset, sites outside the LBB will be reviewed.

On the basis of the above the Applicant has already identified 15 sites, 10 of which are within the administrative area of LBB and 5 are in the ownership of LBB. These sites far exceed the amount of land required for the biodiversity off setting. The Applicant and LBB have agreed to work together to bring forward the required sites. They are working to secure a legal agreement to ensure delivery of the necessary sites for the end of 2019.

Requirement 5 of the final dDCO secures the BLMS and crucially no part of the development can be commenced until it has been submitted and approved by LBB.

The Applicant considers that the mitigation framework that it has put in place shows that the Applicant will be able to deliver the compensation required by the EIA and as a consequence there will be no significant effects on habitats. The LBB are in agreement with the Applicant that with the provision of the biodiversity off-setting prioritised in the London Borough of Bexley including for the 10% net gain there would not be a significant adverse effect in terms of biodiversity as a result of the REP (see **Paragraphs 2.7.20-29** of the **Statement of Common Ground between the Applicant and London Borough of Bexley**).

(d) **Transport.** The Applicant has assessed the effects of transport movements as a result of the construction, operation and decommissioning of REP and with mitigation measures adopted it will not result in significant adverse effects on the highway network. This is reported in document **REP2-017**. The ExA has received representations from interested parties during the course of the Examination and in particular from LBB and TfL. In order to reach consensus on the conclusions of the environmental statement the Applicant has made further submissions to the Examination, including:

(i) Oral Summary for the Issue Specific Hearing on the dDCO submitted for Deadline 8;

(ii) Updates to the outline Construction Traffic Management Plan ("**CTMP**") to reflect discussions between the Applicant and LBB and TfL. The most recent outline CTMP (Rev 6) was submitted at Deadline 8a; and

(iii) **Jetty Outage Review** (**8.02.31, REP3-036**) and the **Supplementary Note to the Temporary Jetty Outage Review** (**8.02.86, REP8-027**).

Requirement 13 secures the outline CTMP, which is agreed with the LBB, and **Requirement 31** secures a delivery and servicing plan, which is agreed with both LBB and the GLA. Road transport movements have been restricted under **Requirement 14** (in respect of operational waste deliveries) to 75 heavy commercial vehicles in and 75 heavy commercial vehicles out in respect of both Work No. 1A and Work No. 1B (save in the event of a jetty outage). This restriction is agreed with both the GLA and the LBB.

The GLA continues to seek a contribution from the Applicant to cover the costs of additional bus services and diverting existing

bus services to mitigate the adverse effects of the construction of REP. The Applicant does not accept that such a contribution is reasonable or justified against the policy tests and it set out its position in this regard in the **Oral Summaries for the Issue Specific Hearing on draft DCO ISH3 (19 September 2019) (8.02.77, REP8-018).** The key points are:

(i) The Applicant has sought to reduce the level of interaction with buses so far as possible by designing a electrical connection to Littlebrook Substation that interacts with as few bus routes as could be achieved;

(ii) The **CTMP** (**6.3 Appendix L to B1, REP8a-011**) sets out a suite of mitigation measures to manage the remaining interaction that the electrical connection has with bus routes. These are set out in section 10 of that document. One of the specific measures committed to in the CTMP is junction appraisals. The scope and extent of the 'junction appraisals' will be agreed with the relevant authorities prior to submission of the CTMPs. It is anticipated that the following junctions will be subject to 'junction appraisals' as required by **Requirement 13** of the DCO:

The junctions of the A206/A2016 with:

o Bexley Road and James Watt Way;

o Perry Street and Howbury Lane; and

o Crayford Way.

In addition to the above the Applicant submits that it has to be recognised that the electrical works are for a temporary period only and therefore the effect on any given bus route will be for a temporary period.

It is not unusual for street works to be undertaken by statutory undertakers, which will in fact be the case here as the Applicant has a connection offer with UK Power Networks who will carry out the electrical connection works. In such circumstances the statutory undertakers are not required to pay a contribution to fund adjustments to the bus service network – and there is no justification for the Applicant to do so either.

1.19 During the Examination, representations were made in respect of the effect of REP on public health. Those representations are strongly refuted and are discussed further in the **Post Hearing Note on Public Health and Evidence** (**8.02.27, REP3-033**).

1.20 The Applicant considers that the benefits of REP are significant and are not outweighed by the above adverse impacts which are limited in

nature. As such, section 104(7) PA 2008 is not engaged in this case, and the Application must be decided in accordance with the relevant NPSs.

Section 104(4)-(6): Decision that results in a breach of international obligation or UK enactment, or would be unlawful

1.21 With respect to section 104(4) of the PA 2008, deciding the Application in accordance with the relevant NPSs would not lead to the UK being in breach of any of its international obligations. The Applicant has made submissions during the Examination in this respect, in particular it has commented upon the evolution of government policy on climate change in **Section 3.4** of the **Applicant's response to GLA Deadline 4 Submission** (**8.02.46, REP5-017**). The Applicant argues that given the carbon benefits identified in the **Carbon Assessment (8.02.08, REP2-059**) and subsequent submissions to the Examination that it is clear that REP will not lead to the UK being in breach of any of its international obligations. It is also clear that a single project, supported by the NPSs, cannot in itself result in a breach of international or domestic obligations on carbon emissions. Therefore, section 104(4), is not engaged. The Applicant does not consider that the GLA disputes this position on the basis of its subsequent response submitted at Deadline 7 (REP7-021).

1.22 With respect to sections 104(5) and (6), deciding the Application in accordance with the relevant NPSs would not lead to the Secretary of State being in breach of any duty imposed on her by an enactment, nor would it be unlawful by virtue of an enactment.

1.23 The Applicant notes paragraph 5.9 of the Secretary of State's decision letter in respect of the Abergelli Power Gas Fired Generating Station Order 2019: "*She considers therefore that… despite the amendment to the Climate Change Act 2008, there have been no subsequent changes to legislation or policy and that the energy NPSs continue to form the basis for decision-making under the Planning Act 2008, approval of the application would not itself be incompatible with the Welsh Government's declaration of 29 April 2019 nor the amendment to the Climate Change Act."*

Compulsory acquisition – compliance with section 122 of the Planning Act 2008

1.24 The Applicant is seeking powers of compulsory acquisition as set out in its Application. Section 122 of the PA 2008 tells the Secretary of State that she may only make an order which includes powers of compulsory acquisition if she is satisfied that the conditions in section 122 (2) and (3) are met. These tests are supplemented by *Planning Act 2008: guidance related to procedures for the compulsory acquisition of land*.

1.25 The condition in section 122(2) is that the land (subject to the application for powers of compulsory acquisition) is required for the development to which the development consent relates or is required to facilitate or is incidental to that development.

1.26 The condition in section 123(3) is that there is a compelling case in the public interest for the land to be acquired compulsorily.

1.27 The Applicant set out in its **Statement of Reasons** (**4.1, REP2-008**) why it considers that the application for development consent meets both the conditions in sections 122(2) and (3).

1.28 The Applicant respectfully submits that the conditions in sections 123(2) and (3) are still met at the end of the Examination. The Applicant has made significant progress in coming to agreement with many of the persons affected by the application for powers of compulsory acquisition. The **Land Negotiation Summary** (**8.02.22, REP8-015**) shows that the only objections that remain outstanding at Deadline 8 are as follows:

- Network Rail Infrastructure Limited – Protective provisions have now been agreed, which prevent the Applicant from acquiring a railway interest without the consent of Network Rail. In the Applicant's view, there is no reason why Network Rail cannot withdraw its objection.

- Ingrebourne Valley Limited – The Applicant has now agreed with Ingrebourne that it will proceed with an Option Agreement to acquire the easement by voluntary agreement.

- Southern Gas Networks Plc – As far as the Applicant is aware, the protective provisions included in the final dDCO submitted at Deadline 8b are agreed with Southern Gas Networks (the Applicant has agreed to Southern Gas Network's amendments).

Section 127/Section 138 of the Planning Act 2008

1.29 Section 127 of the PA 2008 applies to statutory undertakers land where:

- the land has been acquired by statutory undertakers for the purposes of its undertaking;

- a representation has been made and has not been withdrawn; and

- as a result of the representation the Secretary of State is satisfied that the land is used for the purposes of carrying out the statutory undertakers undertaking or an interest is held for that purpose.

1.30 Where the above conditions are met the Secretary of State may only grant development consent to include powers of compulsory acquisition over statutory undertakers land to the extent that she is satisfied that there will be no serious detriment to the carrying out of the undertaking.

1.31 The Applicant considers the only statutory undertakers that remain subject to section 127 of the PA 2008 are Network Rail Infrastructure Limited and Southern Gas Networks. We set out below why we consider that the Secretary of State can be satisfied that the condition in Section 127(3) of the PA 2008 has been met.

1.32 Network Rail Infrastructure Limited – Network Rail Infrastructure Limited has confirmed to the Applicant that the Protective Provisions included in the dDCO submitted for Deadline 8a (and which are included in Deadline 8b) are agreed. The Applicant considers that with the protective provisions in place, which have been agreed with Network Rail, that there is no possibility that REP will cause a serious detriment to Network Rail's undertaking and as such the Secretary of State can make the DCO. The Applicant will work to try and obtain this formal confirmation from Network Rail before the end of the Examination.

1.33 Southern Gas Networks – As far as the Applicant is aware, the protective provisions included in the final dDCO submitted at Deadline 8b are agreed with Southern Gas Networks (the Applicant has agreed to Southern Gas Network's amendments). Consequently, there is no possibility that REP will cause a serious detriment to Southern Gas Networks undertaking and as such the Secretary of State can make the DCO. The Applicant will work to try and obtain this formal confirmation from Southern Gas Networks before the end of the Examination.

1.34 Section 138 of the PA 2008 applies if an order granting development consent authorises the acquisition of land and there subsists a relevant right or there is on, under or over the land relevant apparatus. Definitions of relevant rights and apparatus are included in sub sections (2) and (3). Subsection 4 specifies that the Secretary of State must be satisfied that the extinguishment of the relevant right, or the removal of the relevant apparatus is necessary for the purposes of carrying out the development.

1.35 The Applicant has set out its position in respect of the relevant statutory undertakers in the **Land Negotiation Summary** (**8.02.22, REP8-015**) submitted at Deadline 8. It concludes that the Secretary of State can be satisfied that the extinguishment of the relevant right, or the removal of the relevant apparatus is necessary for the purposes of carrying out the development. Further, protective provisions have been included in the dDCO for the benefit of all statutory undertakers, providing protection for their undertakings, such that the Secretary of State is able to conclude that there will be no serious detriment to the carrying out of the undertakings.

1.36 Therefore, the requirements of section 127 and 138 of the PA 2008 have been met for the purposes of REP.

Conclusion

1.37 The Applicant submits that the Application is in accordance with NPSs EN-1, EN-3 and EN-5 for the reasons set out in this closing submission and in the materials submitted to the Examination. The Applicant does not consider that any of the exceptions in section 104(4)-(8) of the PA 2008 applies and therefore the Application should be determined in accordance with section 104(3) of the PA 2008.

1.38 Consideration has been given to the exception in section 104(7) of the PA 2008 and the Applicant considers that the benefits of REP outweigh the potential adverse impacts of REP.

1.39 The Applicant submits that REP can therefore be approved in accordance with the relevant energy NPSs, and the DCO made in line with the dDCO submitted by the Applicant at Deadline 8b.