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To the Applicant

Your Ref:

Our Ref: EN010114

Date: 9 February 2022

Dear Sir/ Madam

The Planning Act 2008 – section 89

Application by Keadby Generation Limited for an Order Granting Development Consent for the Keadby 3 Low Carbon Gas Power Station Project

Notice by Applicant of intention to submit a request for changes to the application

Thank you for your letter dated 1 February 2022 [[REP2-013](#)] giving notice of Keadby Generation Limited's intention to submit a request for changes to the application. It has been published on the project webpage of the National Infrastructure Planning website and can be found using the above link. Your letter refers to the Applicant's document entitled 'Notification of Proposed Application for a Change' [[REP2-014](#)], submitted with the Deadline 2 submissions, that sets out:

- the Applicant's Proposed Development Changes, including a description of, and justification for, the changes;
- potential changes the Applicant considers will be required to the environmental assessments, including an overview of further work being undertaken by them to assess how the changes could affect the environmental assessments reported in the Development Consent Order (DCO) Application;
- the Applicant's proposed consultation approach;
- the Applicant's indicative timescales for introducing the changes; and
- the additional material the Applicant intends to submit as part of the Material Change Application.

The letter purports to be notification of a change request in accordance with Step 1 of the recommended procedure in the Planning Inspectorate's '[Advice Note 16: How to request a change that might be material](#)' (AN16). The Applicant's document entitled

'Notification of Proposed Application for a Change' [[REP2-014](#)] describes five proposed changes to the scheme and indicates that a change request will be submitted at Deadline 5 (Tuesday 5 April 2022) in the Examination Timetable. The Applicant seeks advice from the Examining Authority (ExA) in regard to the above matters, allowing them to finalise and implement their proposed consultation on the Material Change Application.

Materiality of the proposed changes

In the Applicant's view the proposed changes, when taken together, are material. Ultimately it is for the ExA to decide whether or not a proposed change is material once the formal request is submitted. However, the ExA notes the proposed changes include:

1. the extension of waterborne transport offloading area to incorporate land within the River Trent, thereby affecting Crown Land and the need to obtain rights, albeit temporarily, over this land;
2. changes to the additional abnormal indivisible load route (Work No. 10A) (Contractor/ outage compound area, east of Keadby 1 Power Station and north of Keadby 1 Power Station), which may necessitate the Compulsory Acquisition of "additional land" as defined in The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations);
3. an increase to the maximum parameters (height) for up to two absorbers/ stacks;
4. increase to the maximum parameters (height) for CO2 stripper column; and
5. an increase in proposed soil import volumes.

The ExA considers the 'Notification of Proposed Application for a Change' [[REP2-014](#)] provides a clear description of the proposed change and sets out the Applicant's rationale and pressing need for making the changes detailed in that document. However, the ExA also considers the proposed changes may give rise to new or materially different likely significant effects, but does not at this time have sufficient information to reach an opinion in this regard. As such the ExA would seek the information detailed in items 3 to 7 (inclusive) as set out in Figure 3 of AN16.

The ExA also notes the "additional land", as defined by Regulation 2 of the CA Regulations, has not previously been identified in the submitted Book of Reference [[REP1-003](#)]. Furthermore, no evidence of landowner consent related to "additional land" has been received. Figure 3: 5. of AN16 states: *"If the CA Regulations are engaged applicants must provide the information prescribed by Regulation 5 of the CA Regulations... and should clarify how it is considered that the procedural requirements of the CA Regulations can be met within the statutory six month Examination stage."*

Bearing the above factors in mind, the ExA considers the CA Regulations are engaged and the Applicant must comply with Regulation 5 of those Regulations. They must also clarify the above matters, especially in the light of the fact that the Applicant has indicated that it intends to submit the change request at Deadline 5 (Tuesday 5 April 2022) in the Examination Timetable.

Consultation

Whether or not the proposed changes are material, the ExA considers in order to ensure fairness an appropriate and proportionate non-statutory consultation should be carried out before the change request is submitted.

The ExA considers that the consultation must engage all those persons identified in the Planning Act 2008 under section 42 (a) to (d) who would be affected by the proposed changes (giving a minimum of 28 days), including any section 42 persons not originally consulted on the application but who may now be affected by the proposed changes. The Applicant should also consider whether or not persons not already participating in the Examination (and not falling within section 42) might need an opportunity to comment (such as persons living or commercial entities operating outside the Order limits) and whether or not any newspaper notices or site notices are necessary to inform these persons about the proposed changes.

When submitting the change request it is recommended that the Applicant submits a statement which:

- lists the persons (affected by the changes) under section 42(1)(a) to (d) who have been consulted (identifying any new persons ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those section 42(1)(d) persons who are “affected persons”, meaning those persons over whose land Compulsory Acquisition powers will be exercised. It is noted that if the procedure under the CA Regulations is to be followed the Applicant will also need to submit a request for additional land and identify the additional Affected Persons;
- provides justification as to why any person under section 42(1)(a) to (d) is not affected by the proposed changes and has not therefore been consulted;
- provides copies of any newspaper notices or site notices or justification as to why such general publicity is not required to ensure fairness, using case law as necessary to support the Applicant’s position; and
- appends as an annex comprising any consultation responses received.

If the ExA decides to accept the changes (whether or not material) into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing, or potentially orally at hearings, as the Examination progresses. Nonetheless, if the ExA is not satisfied with the extent of non-statutory consultation undertaken by the Applicant the ExA may request that further non-statutory consultation is carried out to safeguard the interests of and/ or inform those potentially impacted by the changes who are not already involved in the Examination. The ExA would also remind all parties that it has discretion under Rules 10(3) and 14(1) of The Infrastructure Planning (Examination Procedure) Rules 2010 to permit representations to be made by people who are not Interested Parties, where it is appropriate to do so.

Next steps

The Applicant is asked to ensure therefore that the change request which is intended to be submitted at Deadline 5 responds fully to the points made above. Additionally, without prejudice to any view as to the materiality or merits of the proposed changes to the application, the ExA may wish to understand more about the nature of the changes and their impacts. As such the ExA may seek to ask questions about these proposed changes at the forthcoming hearings due to be scheduled for March 2022.

The ExA may also feel it necessary to prepare further written questions in regard to these proposed changes.

Yours faithfully

Christopher Butler

Examining Inspector

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