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Stephen McNaught
Dundas & Wilson LLP

Your Ref: SJM/YPW/TRA001.1961

Our Ref: EN020003

By email

Date: 9 May 2012

Dear Mr McNaught

**EN020003 – King’s Lynn B Power Station Connection Project
Draft Development Consent Order, Explanatory Memorandum and related
documents**

I write with reference to your letter dated 2 April 2012 and the draft Development Consent Order (DCO), Explanatory Memorandum and related documents enclosed therein in respect of the proposed King’s Lynn B Power Station Connection Project. In your email you requested our comments on the draft documents.

We have now considered the documents provided and set out our initial comments on the draft DCO in the attached Annex A. We have also reviewed the draft Works and Land Plans submitted as supporting material, and I set out below our comments on these documents.

Works and Land Plans

Works Plans

The Works Plans (Sheets 1-3) show the proposed location of the route and alignment of works; and the limits within which the development may be carried out. The plans title should state "*Regulation 5(2)(j)(i)(ii)*" rather than "*Regulation 5(2)(i)(ii)*". It would also be useful if the plans included the reference numbers and locations of the pylons as described in Schedule 1 to aid the reading of the plans; and similarly, to denote associated development using the Schedule 1 references ((a)-(g)).

Land Plans

The plans title should state "*Regulation 5(2)(i)(i)-(iv)*" rather than "*Regulation 5(2)(i)(ii)*". At present it is difficult to read these plans as a key has not been provided to explain the use of the different hatching. The land plans should clearly indicate which plots of land may be taken by temporary possession, in line with Schedule 5 of the DCO. Annex 3 of CLG *Guidance related to procedures for compulsory acquisition* states that:

"Promoters should ensure that references to the plan in the draft order and other documentation relating to the application correspond exactly with the headings on the plan"

itself.

All land to be compulsorily acquired, and any replacement land, should be clearly identified on the plan by colouring or by any other method at the discretion of the promoter. Where it is decided to use colouring, the long-standing convention (without statutory basis) is that land proposed to be acquired is shown pink, land over which a new right would subsist is shown blue, and replacement land shown green. Where black-and-white copies are used they must still provide clear identification of the land to be compulsorily acquired and, where appropriate, any replacement land (e.g. by suitable shading or hatching)."

As with Part 3 and Part 5 of the Book of Reference, the applicant has indicated land of those who enjoy easement or other private rights, to be extinguished, as well as special category land and replacement land. The applicant should therefore ensure compliance with APFP Regulation 5(2)(i) sub-sections (iii) and (iv).

I hope you find these comments useful at this stage of the process and that they will assist in preparation of further drafts of the DCO. Our comments are entirely without prejudice to any future decisions of the Secretary of State, including the decision under Section 55 of the Planning Act 2008 to accept any application.

Yours sincerely

Chris White

Case Manager
The Planning Inspectorate

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the Planning Inspectorate website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.

Annex A

Kings Lynn B Connector PINS comments on draft DCO

Page/provision	Comment
Preamble	"An application has been made to the <u>Secretary of State</u> , in accordance with..."
4/A2	"the 1981 Act" means the <u>Compulsory Purchase (Vesting Declarations) Act 1981</u>
4/A2	Although not mentioned in the draft Explanatory Memorandum (EM), there is an additional definition of "address". The submission EM should refer to it and explain what "number" is envisaged in this definition; is electronic transmission to include telephone numbers and if so, why?
4/A2	Paragraph 5.3 of the draft EM supposedly identifies differences from the existing Model Provisions. It should also include "authorised development", the definition of which includes the phrases "including any necessary demolitions" and "within the Order Limits". The need for those phrases should be explained in the submission EM. Similarly the "Order limits" should be referred to and the differences from the Model Provision explained.
4/A2	The definition of "decision maker" is no longer required as a result of the amendments to the PA2008 by the Localism Act 2011. References to "the decision maker" throughout the DCO should be replaced by "the Secretary of State".
4/A2	The submission EM should explain the reasoning for the definition of "electronic transmission", and identify any precedent for that definition.
4/A2	The draft EM acknowledges that there is an additional definition "maintain", but does no more. The submission EM should explain why activities outside the ordinary meaning of 'maintain' are required in the definition – in particular enlargement or extension of the authorised development.
4/A2	The relationship between "the Order land" and the "Order limits", and between "the Order limits" and the "limits of deviation" is not readily apparent and should be explained in the submission EM.
4/A2	"rights of way plan" – should this be defined as "... <i>the rights of way plan certified as the rights of way plan...</i> "?
4/A2	"land plan", "works plan" and respective definitions – should presumably be plural as there are a number of these plans. "the sections" definition may also need to be plural (if more than one plan). Generally plans should be identified by plan numbers.
5/A3	The draft EM says that this sort of provision is commonplace in T&WA orders. It would assist if the submission EM could provide examples or appropriate references (as has been done in EM paragraph 7.3).

Page/provision	Comment
6/A4(4)	Is this sub-article intended to apply to the whole of the authorised development (including the associated development) or just the transmission line itself (Work No 1)?
6/A5	See previous comment re definition of 'maintain' – is this extended definition intended to extend to the associated development forming part of the authorised development?
6/A6	<p>The submission EM (and DCO) should make clear that this Article relates only to Work No 1 and not all of the 'authorised development';</p> <p>The reference to "deposited" is confusing and superfluous, as "the sections" is sufficiently defined in A2.</p>
6/A7(1)	The draft EM says that 'the Order' has been used instead of a list of provisions. However, the DCO actually refers to " <i>the provisions of this Order conferring powers on the undertaker</i> ". This is potentially confusing as not all of the provisions of the Order confer powers and other provisions continue to run with the land under s156(1). Listing the provisions excluded from s156(1) would avoid this.
6/A7(2)	The DCO/submission EM should set out which of the works comprised in the authorised development are intended to be for " <i>the express benefit of owners and occupiers of land, statutory undertakers and other persons affected by the authorised development</i> ". Otherwise it will not be readily apparent which of the powers are to be reserved to National Grid, and which are not.
6/A8(2)	Whilst recognising that the paragraph follows the Model provision in referring to an agreement under paragraph 1, is it the intention that this paragraph takes effect on the <u>agreement</u> for transfer or lease or on the transfer or lease itself?
7/A9	<p>The paragraph numbering and cross-referencing to other articles has gone awry.</p> <p>The draft EM says that this sort of provision is commonly included in T&WA orders. It would assist if the submission EM could provide examples or appropriate references, together with a more detailed explanation of why this provision is needed in this case and how it is intended to operate.</p> <p>It would assist if the submission EM explained why 'major highway works' only include works within the specified subsections of s86(3) and not the other sub-sections.</p>
8/A11	As indicated in A2, "street" is defined as a street within s48 of the 1991 Act. The s48 definition includes any highway. The submission EM should explain why this article needs to be extended to include public rights of way. It should also explain why a general power to stop up is justified, rather than just to stop up the streets and rights of way in Schedule 3.
8/A12	<p>Reference in 12(1)(a) should be to Schedule 4.</p> <p>The submission EM should provide examples or precedents for paragraph (2), which is a novel provision.</p> <p>Is this provision appropriate for <u>maintenance</u> of the authorised development, in the light of the extended definition of "maintain" in A2?</p> <p>Are the precise access locations adequately identified in Schedule 4 as there is no reference to any plans?</p>

Page/provision	Comment
8/A13(1)	The submission EM/DCO should identify the specific powers of "strengthening, improvement, repair or reconstruction" of any street, as referred to in 13(1)(a). Strengthening and improvement are not referred to in the definition of "maintain" in A2, nor do they appear elsewhere in relation to streets..
9/A14(7)	Regulation 12 of the EP(E&W) Regulations 2010 prohibit unauthorised "groundwater activities" as well as "water discharge activities" A14(7) confirms that the latter are not authorised by the DCO; should the same apply to the former?
9/A14(8)	There is a disparity between the draft DCO (which refers to deemed consent/approval after 28 days) and the draft EM (14 days)
9/A14(9)	<p>14(9)(a) - For completeness, the submission EM should confirm that the omission of those owners of organisations owning sewers or drains referred to in the model provisions which are not referred to in 14(9) – e.g joint planning board – is because no such bodies own sewers or drains within the Order limits.</p> <p>14(9)(b) – <i>"...have the same meaning as in those Regulations"</i></p>
11/A17	The submission EM should mention and justify the addition of (1)(c) and (6) which are not in the model provisions.
12/A18	<p>A18(1) contains typographic errors.</p> <p>The power to acquire land compulsorily will only be included in the DCO if it is robustly justified. It is not clear why the power to acquire land is required at all; given the categoric statement in paragraph 9.2 of the draft EM that <i>"...it is not proposed to acquire any land compulsorily under this order, only to acquire or create new rights over land..."</i>.</p>
12/A20	<p>This provision seems to be broadly similar to Article 18 of the Rookery South (Resource Recovery Facility) Order 2011 (the Rookery Order).</p> <p>A20(1) – The draft EM says that the statutory successors of the undertaker will benefit from this power as well as persons deriving power under them <i>"...which enables the interest of the undertaker to be treated appropriately within the undertaker's group companies..."</i>. This is not understood and should be clarified in the submission EM.</p> <p>A20(1) –It is suggested that the authority to override should be more precisely expressed as in the Rookery Order: <i>"...agents) is authorised by this Order for the purposes of this article if it is authorised by this Order apart from this article and done..."</i></p> <p>A20(3) – <i>"...other land, including and any natural right to support."</i></p> <p>The submission EM should explain why, given that the provision is said to be derived from s237, the equivalent of s237(7) has been omitted.</p>

Page/provision	Comment
13/A22	<p>The submission EM should explain the differences from model provision 21, including the need for the reference back to Article 18 in A22(1).</p> <p>A22(1)(a) - should presumably refer to existing rights described in the book of reference and shown on the land plan(s) - in the same way as (b).</p> <p>A22(4) – this is a novel provision. It would assist if the submission EM could provide precedents or appropriate references, together with a more detailed explanation of why this provision is needed in this case and how it is intended to operate.</p>
16/A27(1)	<p>The submission EM will need to provide further explanation of the distinction sought to be drawn between A27(1)(a)(i) and (ii). Schedule 5 (referred to in (a)(i)) enables temporary possession to be taken of certain plots for specified purposes; however (a)(ii) seems to be a catch-all provision that enables temporary possession to be taken of any of the Order land for any purpose (making (a)(i) superfluous?).</p>
17/A27(3)	<p>The submission EM will need to explain why temporary possession may last for two years rather than the one year referred to in the model provision. A27(3)(a) and (b) are intended to reflect A27(1)(a)(i) and (ii) but the reasons for the different treatment of these two types of temporary permission are not adequately explained in the draft EM.</p>
17/A27(7)	<p>The draft EM explains that this provision refers to s152 PA2008 as s10 CPA1965 is disapplied in s125 PA2008. However. S152 itself reapplies s10(2) in cases where s158 applies to provide a defence to nuisance. The draft EM confirms that to be the case in paragraph 8.2.</p>
17/A27(9)	<p>This provision comes from the model provision, which only applies to A27(1)(a)(i) land. A27(9) effectively applies it to A27(1)(a)(ii) land as well. Is this intended?</p>
18/A28(8)	<p>See comment on A27(7)</p>
18/A28(11)	<p>The submission EM should explain the distinction between 'use' in the model provision and 'operational use' in A28(11).</p>
19/A33	<p>Heading "Protections of Interests"</p>
19/A35	<p>The provisions for service in this article are less precise than in s229 and 230 PA2008; is there any reason why the PA2008 provisions are not to be adopted?</p>
20/A36	<p>Although this article follows the model provision, should it also include any provision for the responsibility for the costs of the reference to arbitration?</p>
21/A37	<p>This article appears to be based on A4 of Covanta's final draft DCO submitted to the Rookery Order examination, which was not accepted by the Examination Panel. A4 of the Rookery Order as finally laid before parliament was in a different form – see http://www.parliament.uk/documents/special-procedure-orders/rookery-south/Rookery-South-Order-as-laid.pdf</p>
22/Schedule 1	<p>We suggest separating out the associated development as Work No 2 (subdivided (a) to (g) as in the draft). The description of associated development in category (g) seems very wide; what are the works "within the scope" of the EIA?</p>

Page/provision	Comment
25/Schedule 4	The cross-reference to the Order should be to A12, not A14
26/Schedule 5	Further clarification is required with regard to the use of the column headings, in particular column (1). The wording in the final two columns is very general, and we would expect the submission DCO to be more specific as to the purpose of temporary possession for each plot affected. For example, for a particular plot number it could be identified as having a possession purpose of "working site" in column 3 and "work 2(f)" in column 3.
27/Schedule 6	<p>The paragraph numbering/indentation levels of the draft of this schedule make it difficult to follow.</p> <p><u>Paragraph 2</u> should have a heading "<i>Modification of the Land Compensation Act 1973</i>". It refers to modifications in sub-paragraphs (2) and (3) – which are not present in the draft. The modification would be more readily comprehensible if an entire new s44(1) is set out (as has been done with s7 CPA 1965 in paragraph 4 of this Schedule.</p> <p><u>Paragraph 3</u> seems very general – the submission EM should point to any precedent for a similar general provision. The first sub-paragraph should presumably be (1), not (a)?</p> <p><u>Paragraph 4</u> should refer to "<i>(measure of compensation in case of severance)</i>".</p> <p>Generally, the submission EM should explain and justify any proposed modifications to the compensation and compulsory purchase regime</p>
29/Schedule 7	<p>The paragraph numbering/indentation levels of the draft of this schedule make it difficult to follow.</p> <p>The submission EM should explain/justify these provisions and indicate the degree to which they have been agreed by the Environment Agency and the statutory undertakers.</p>
39/Schedule 8	<i>"Schedule 9 8"</i>
39/Schedule 8/para 1	Terms defined in A2 need not be duplicated in this paragraph, as A2 is expressed to apply " <i>In this Order...</i> ".
40/Schedule 8/para 3	<p><i>"approved details"</i> is undefined;</p> <p>Is "<i>where otherwise agreed in writing...</i>" actually intended? If what was intended was "<i>unless otherwise agreed..</i>", this is too general and appears to provide scope for the LPA to agree details that are outside the limits of what has been the subject of the application consultation and the EIA.</p>
40/Schedule 8/para 5	<p><i>"...landscaping scheme approved under requirement 7 4..."</i></p> <p><i>"..implementation timetables approved under requirement 6 4..."</i></p> <p>Are both 4(2) and 5(3) required?</p>
41/Schedule 8/para 7	<i>"(2)...approved under requirement 13 7(1)</i>

Page/provision	Comment
41/Schedule 8/para 8	Unlike the Model Provision, this paragraph precludes commencement of the development until a scheme has been approved for dealing with contamination "discovered during the course of carrying out the authorised development". The submission EM should explain the reason for this variation and indicate how the requirement is intended to operate.
41/Schedule 8/para 9	Unlike the Model Provision, this paragraph precludes commencement of the development until a scheme has been approved for dealing with archaeological interest "discovered during the course of carrying out the authorised development". The submission EM should explain the reason for this variation and indicate how the requirement is intended to operate. Similarly, the submission EM should explain why Model Provision 16(2) has been omitted.
42/Schedule 8/para 10	" <i>...unless otherwise agreed..</i> ", this is too general and appears to provide scope for the LPA to agree details that are outside the limits of what has been the subject of the application consultation and the EIA.
42/Schedule 8/para 11	The submission EM should explain why alternative Model Provision 18 has been chosen rather than Model Provision 19. There appears to be no requirement to agree a Code of Construction Practice? " <i>...unless otherwise agreed..</i> ", this is too general and appears to provide scope for the LPA to agree details that are outside the limits of what has been the subject of the application consultation and the EIA.
42/Schedule 8/para 12	The submission EM should explain the variation from the Model Provision.
42/Schedule 8/para 13	The submission EM should explain the variation from the Model Provision; " <i>...unless otherwise agreed..</i> ", this is too general and appears to provide scope for the HA to agree details that are outside the limits of what has been the subject of the application consultation and the EIA
42/Schedule 8/para 14	Any reason for the omission of the phrase " <i>after consultation with the relevant planning authority</i> " in the equivalent Model Provision should be explained in the submission EM.
43/Schedule 8/para 15	" <i>...unless otherwise agreed..</i> ", this is too general and appears to provide scope for the LPA to agree details that are outside the limits of what has been the subject of the application consultation and the EIA.
43/Schedule 8/para 16	Any reason for the omission of the phrase " <i>after consultation with the relevant planning authority</i> " in the equivalent Model Provision should be explained in the submission EM.
43/Schedule 8/para 18	" <i>...such condition as the relevant planning authority may approve...</i> " – see previous comments on " <i>unless otherwise agreed</i> "
43/Schedule 8/para 20	See previous comments on " <i>unless otherwise agreed</i> "