



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Thorpe Marsh Gas Pipeline

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

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7 December 2015

Development would secure this supply by connecting the CCGT Power Station with the National Transmission System approximately 1.5 kilometres west of Camblesforth in North Yorkshire. Without the Proposed Development, the CCGT Power Station would be unable to come forward. The grant of the Order would give the Applicant sufficient certainty to start the construction of the CCGT Power Station. The need for the Proposed Development is, therefore, acute.

- 8.4.9 In terms of the approach taken to compulsory acquisition, the Statement of Reasons makes it clear in paragraph 2.2 that:

The Applicant has sought to acquire the necessary land interests it requires by agreement and has already secured the majority of those interests required for the delivery of the Proposed Development. The Applicant has contracted to acquire the majority of the land and interests it requires by private treaty (approximately 94% in terms of pipeline corridor distance and in relation to the number of owners and occupiers affected). Where an agreement has been reached with a party, the Applicant intends that such party's interest will not be the subject of compulsory acquisition unless at the relevant time the party is unable to fulfil its contractual obligations to grant an interest to the Applicant.

- 8.4.10 In the same paragraph, the Applicant argues that, despite this approach, it still requires the powers of compulsory acquisition as it intends that such party's interest will not be the subject of compulsory acquisition unless at the relevant time the party is unable to fulfil its contractual obligations to grant an interest to the Applicant and because a range of compulsory acquisition and powers of temporary use are also necessary to secure control and/or use of the remaining land and rights.

- 8.4.11 The Statement of Reasons deals, in paragraph 7.28 onward, with the use of temporary rights stating that such an approach would minimise the exercise of compulsory acquisition of land or rights and allow land that is not required for the Proposed Development following the completion of construction to revert to the relevant landowner/occupier.

Availability and Adequacy of Funds

- 8.4.12 The application was accompanied by a Funding Statement [APP-016] to indicate how the draft DCO is proposed to be funded. The 2013 guidance *Planning Act 2008: procedures for the compulsory acquisition of land* recommends at paragraph 17 that the statement should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required.
- 8.4.13 The funding statement reports professional advice that puts a maximum precautionary value on the total contingent liability associated with the acquisition of land or interests in land of £5million.

It identified that the Applicant company was a wholly owned special purpose vehicle of GE Energy LLC, a company incorporated in Delaware, USA, and controlled by General Electric Company.

- 8.4.14 The Draft DCO submitted with the application [APP-009] includes, at Article 36, a provision requiring that a guarantee or other acceptable security be put in place to meet compulsory acquisition compensation liabilities before those powers may be used. That provision anticipates that the guarantee would be approved by the Secretary of State.
- 8.4.15 On 11 February 2015, a revised Funding Statement [AS-004] advised differently in respect of ownership; that the Applicant company was, subsequent to the application being made, a wholly owned subsidiary of Carlton Power, with funding to be provided by Wainstones Investments, another company of the same group. The accounts of Wainstones Investments were supplied.
- 8.4.16 In my first written questions [PD-006] I sought further details of the structure of the company group and the interrelationships between its constituent companies, which were provided at deadline 1 [REP1-014]; the financial statements of Carlton Power were provided following my second round of questions at deadline 4 [REP4-015].
- 8.4.17 In its response to my first questions, the Applicant provided a letter from Carlton Power [Appendix 3, REP1-014] confirming its willingness to enter into a guarantee agreement, escrow arrangement, bond or other suitable alternative security.
- 8.4.18 In the Compulsory Acquisition Hearing held on 17 June 2015, I questioned a representative of Thorpe Marsh Power Ltd concerning the decision making processes within Carlton Power, its financial standing and its access to funding. In its Note of Oral Representations at the Compulsory Acquisition hearing [REP3-013] the Applicant stated that the Applicant is not dependent on third party financing to provide the security and considers that the Secretary of State can be comfortable that the relevant resources are already in place and will be available in order to provide the necessary guarantee or alternative security without the need for any alternative financing.
- 8.4.19 Also in my first questions, [PD-006], I asked the local authorities whether or not they would prefer to be the body approving such a guarantee or an alternative form of security relating to that part of the project lying within the areas for which they were responsible.
- 8.4.20 Doncaster Metropolitan Borough Council expressly declined to comment on the matter [LIR-001] and East Riding of Yorkshire does not wish to be the approving authority for a guarantee [REP1-039]. Selby District Council defer to North Yorkshire County Council [REP1-012], who have no objection to the Secretary of State being responsible for approving the guarantee [REP1-011].
- 8.4.21 Having reviewed the maximum precautionary value on the total contingent liability associated with the acquisition of land or interests

in land, the parent company's assets and decision making processes and the procedures for securing a guarantee, ***I conclude that aspects related to the availability and adequacy of funds have been dealt with satisfactorily in this application.***

The Objector's case

- 8.4.22 The objections to compulsory acquisition from statutory undertakers have been dealt with above. Apart from the objections from statutory undertakers, there were no representations or objections from any other affected persons. One affected person, Mr Metcalfe, gave evidence at the ISH into the draft DCO held on 17 June 2015. This evidence centred on possible effects of the proposal on farming practices and did not focus on issues surrounding compulsory acquisition.

The case for specific parcels

- 8.4.23 Apart from statutory undertakes and Crown interests, there are 137 affected persons listed as having Category 1 and/or Category 2 interests in the final submitted version of the Book of Reference published on 4 September 2015 [AS-025]. These relate to 265 plots listed in Part 1 of the final BOR.
- 8.4.24 In considering the case for specific parcels, the ExA recognises that, firstly, according to the Applicant's final Updates in Relation to the Acquisition of Rights, Compulsory Acquisition and Affected Persons dated 24 July 2015 [REP4-009], there were only eighteen plots potentially subject to CA on which agreement was still to be reached. Two of these (48 and 49) were in relation to The Queen's Most Excellent Majesty in Right of Her Crown - discussed in the Chapter; three (plots 30, 64, 263) in relation to Network Rail Infrastructure Ltd., two (plots 50 and 246) were in relation to the Environment Agency; four (plots 84, 85, 86, 87 and 88) were in relation to the Highways England (formerly the Secretary of State for Transport); one (plot 132) was in relation to the Canal and River Trust; one (plot 133) was in relation to the East Riding of Yorkshire Council.
- 8.4.25 The position in relation to the statutory undertakers listed in the previous paragraph is discussed below.
- 8.4.26 East Riding of Yorkshire Council is shown in the Applicant's final draft Book of Reference [AS-025] as being a Category 1 occupier or having a Category 2 interest in respect of the plots shown in Parts 1 and 2 of the BoR. East Riding of Yorkshire council did not make any representations on the proposed compulsory acquisition powers. I note the update provided by the applicant at deadline 4 [REP4-009] which explained that negotiations were ongoing in respect of the freehold interest but were likely to result in agreement; although no such agreement was confirmed to be in place before the end of the examination. I also note the confirmation in their statement of