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Your ref: EN060001

Date: 17 December 2014

Dear Mr Morris

## **PLANNING ACT 2008: APPLICATION FOR THE WILLINGTON C GAS PIPELINE ORDER**

### **1 Introduction**

1.1 I am directed by the Secretary of State for Energy and Climate Change (the "Secretary of State") to advise you that consideration has been given to the report of the Examining Inspector forming the Examining Authority ("the ExA"), Mr Stephen Roscoe, who conducted an examination ("Examination") into the application (the "Application") dated 22 August 2013 by RWE Generation UK plc ("RWE") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act").

1.2 The Examination of the Application began on 11 January 2014 and was completed on 2 July 2014. The Examination was conducted on the basis of written evidence submitted to the ExA and the following hearings at the Town Hall, King Edward Place, Burton upon Trent:

- issue-specific hearings on 11 March, 9 April and 22 May 2014; and
- a compulsory acquisition hearing on 12 March 2014.

1.3 The Order, as applied for, would grant development consent for the construction and operation of a buried gas pipeline of approximately 27km in

length starting at a location south of Yoxall in Staffordshire and ending within the Willington C Power Station site at Willington in Derbyshire, together with permanent and temporary associated development. The gas pipeline will transport natural gas fuel to the power station, which received consent under section 36 of the Electricity Act 1989 in March 2011. The power station will have a capacity of around 2000MW of Combined Cycle Gas Turbine generating units, and 400MW of Open Cycle Gas turbine generating units.

1.4 Published alongside this letter is a copy of the ExA's Report, the Order and a note on the circumstances in which the Secretary of State's decision may be challenged in **Annex A**. The ExA's findings and conclusions are set out in sections 4, 5 and 8 of the Report, and his recommendation is at section 8.6 (see below).

## **2 Summary of the ExA's Report and Recommendations**

2.1 The ExA's report included findings and conclusions on the following principal issues:

- a. Biodiversity, biological environment and ecology;
- b. Flood risk and climate change;
- c. Noise and vibration disturbance;
- d. Land use and safety;
- e. Traffic, travel and transportation;
- f. Design landscape and visual impact;
- g. Socio-economic effects;
- h. Historic Environment;
- i. Rationale for the selection of route, worksites and pipe laying strategies;
- j. Air quality and emissions;
- k. River change;
- l. Water quality and resources.

2.2 The ExA recommended that the Order be made in the form set out in Appendix A of the Report [ER 8.6].

## **3 Summary of the Secretary of State's Decision**

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make with modifications an Order granting development consent for the Application. This letter with the ExA's Report and the Order constitutes both the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and the notice and statement required by regulation 23(2)(c) and (d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("2009 Regulations").



3.2 In reaching his decision, the Secretary of State has had regard to energy National Policy Statements (NPS) EN-1 (Overarching NPS for Energy) and EN-4 (NPS for Gas Supply Infrastructure and Gas and Oil Pipelines), which set out a national need for development of new nationally significant energy infrastructure of the type proposed by the Applicant. After having regard to the comments of the ExA set out in Section 5 of the Report, the Secretary of State is content that in the absence of any adverse effects which are unacceptable in planning terms, a decision to make the Order would be in accordance with EN-1 and EN-4. In particular, EN-1 states that it is critical that the UK continues to have secure and reliable supplies of electricity during the transition to a low carbon economy; and that one of the main security of supply challenges during the transition to a low carbon economy is the requirement for substantial and timely private sector investment in power stations and gas infrastructure. The Secretary of State is therefore satisfied with the case for granting consent for the Development given the contribution the power station, which the pipeline will connect to the National Transmission System, will make to securing energy supply. The Secretary of State also agrees with the conclusion of the ExA that the benefits of the proposed development outweigh its adverse impacts [ER 5.4].

3.3 The Secretary of State also had regard to the Local Impact Reports (LIRs) submitted by East Staffordshire Borough Council, Lichfield District Council, South Derbyshire District Council and Staffordshire County Council; the environmental information as defined in regulation 2(1) of the 2009 Regulations; other relevant legal and policy provisions referred to by the ExA at ER 3.53 – 3.82 (pages 23-28); and all other matters which he considers important and relevant to his decision as required by section 104 of the 2008 Act.

#### **4 Secretary of State's consideration**

4.1 The Secretary of State has carefully considered the Report and all other material considerations. The Secretary of State's consideration of the Report is set out in the following paragraphs. All paragraph references, unless otherwise stated, are to the Report, and references to Requirements are to those in the draft Order in Appendix A of the Report.

4.2 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations. This letter should therefore be read with the ExA's Report and the Order.

## Ecology and Biodiversity

4.3 The Secretary of State notes that the ExA considered a number of issues under the above heading:

(a) Habitats Regulation Assessment

The Conservation of Habitats and Species Regulations 2010 (as amended) ("the Habitats Regulations") require the Secretary of State to consider whether the project would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European 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 61(1) of the Habitats Regulations to address potential adverse effects on site integrity. The Secretary of State may only agree to the project if he has ascertained that it will not adversely affect the integrity of a European site.

The applicant submitted a 'European Sites Report' which concluded that there is no real possibility of any adverse impact on any European sites and that the proposed development does not qualify under regulation 61(1)(a) of the Habitats Regulations as requiring an Appropriate Assessment to be carried out.

The Secretary of State notes that no party disagreed with the conclusions of the applicant's European Sites report, which also accords with the advice of Natural England (NE) both before the examination in its pre-application consultation responses, and during the examination in its Statement of Common Ground (SoCG) with the applicant which confirmed that no further action or assessment was necessary.

The Secretary of State accepts the advice of the ExA that the application proposal does not give rise to any relevant likely significant effects on European sites or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other projects [ER 4.10].

(b) Other Wildlife Sites and Species

The Secretary of State also agrees with the ExA's conclusion that although the proposal has the potential to impact on a number of nationally and locally designated sites and European and Nationally Protected Species, mainly during the construction period, the impacts will be temporary in nature and that the mitigation measures included in the Order such as appropriate management and reinstatement strategies can appropriately mitigate any adverse effects on these receptors. The Secretary of State is therefore satisfied that the proposal would not result in any unacceptable adverse impacts on wildlife sites and protected species [ER 4.24 and ER 4.30], and is in accordance with EN-1 and EN-4 in this regard.



## **5 Other Matters**

### Flood Risk

5.1 The Secretary of State has considered the concern raised towards the end of the examination by Mr TM Jones, the owner and licensee of Derby Aero Club, in relation to the potential for an increase of flooding in the Derby Airfield area. On this matter, the Secretary of State agrees with the ExA that the efficiency of drainage across the pipeline route both during and following construction would be maintained through the Requirement 13 (as amended) and through the Land Drainage and Flood Defence consents required in respect of works in floodplains, main rivers and ordinary watercourses [ER 4.39 – 4.41].

5.2 The Secretary of State has amended Requirement 13 to provide that the purpose of the agricultural land drainage scheme is to ensure that, during and following construction, the efficiency of drainage is maintained within and outside the Works limits, including that of the Derby Airfield area.

### Land Use and Safety

5.3 The design and safety management of the proposed pipeline will be regulated under the Pipelines Safety Regulations 1996 by the Health and Safety Executive (HSE). The Secretary of State notes the involvement of the HSE in the detailed design of the pipeline; and notes that following submission of the detailed design, the HSE would also provide Land Use Planning advice in relation to the pipeline.

5.4 The Secretary of State notes that in response to the ExA's letter setting out the timetable for the examination and specifying the information required by him (Rule 6 and 4 letters of 28 November 2013), the HSE confirmed that it did not wish to raise any health and safety issues during the examination. This is in accordance with the HSE's response of 15 January 2014 to RWE's request seeking agreement of a SoCG, which also confirmed that HSE did not wish to agree a SoCG with RWE as doing so could prejudice HSE's future ability to regulate the design, construction and operation of the pipeline in advance of the processes for these matters. Based on this, and the evidence provided during the examination [ER 4.60], the Secretary of State notes and agrees with the ExA's conclusion that the proposal and its associated zones for HSE land use planning advice would not have an unacceptable adverse impact on existing or future development [ER4.61].

### Compulsory Acquisition ("CA") Powers

5.5 The Secretary of State has considered the CA powers sought for land, rights over land and the extinguishment or suspension of rights. The rights sought are of both a permanent and temporary nature, for the purpose of constructing, operating and maintaining the Willington C Gas Pipeline which would supply gas to the Willington C Power Station from the national gas

transmission system. The ExA sets out its consideration of matters relating to CA in section 6 of the report.

5.6 The ExA highlighted that there were no objections to CA that had not been withdrawn by the end of the examination [ER 6.80]. The ExA concluded that the application was appropriate in the context of the relevant requirements of section 122, section 123 and section 138 of the Planning Act (ER 6.96, 6.99 and 6.101). The Secretary of State agrees with the ExA's conclusion.

5.7 If CA rights are granted, then provisions in the Human Rights Act 1998 are engaged. However, the Secretary of State notes that the ExA considers that the interference with private rights is proportionate and justified in the public interest [ER 6.106]. The ExA also considers that proper notifications have been issued so all those affected have, therefore, had the opportunity to have a fair and public hearing in accordance with Article 6 of the European Convention on Human Rights [ER 6.105].

5.8 The Secretary of State is satisfied with the ExA's analysis of the issues and agrees with the recommendation that the CA powers included in the Order in respect of the land detailed in the Book of Reference, final version 3, are approved [ER 6.109].

## **6. General Considerations**

### Equality Act 2010

6.1 The Equality Act 2010 introduced a new public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships<sup>1</sup>; pregnancy and maternity; religion and belief; and race. This was considered by the ExA who concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues. The Secretary of State agrees with this conclusion.

### Human Rights Act 1998

6.2 The ExA considered the possible effects of the development and compulsory purchase powers on the convention rights of those potentially affected by the development. The Secretary of State is of the opinion, therefore,

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<sup>1</sup> In respect of the first statutory objective (eliminating unlawful discrimination etc) only



that the grant of development consent would not be unlawful under section 6(1) of the Human Rights Act 1998.

### Section 40(1) of the Natural Environment and Rural Communities Act 2006

6.3 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 considers that the Report considers biodiversity sufficiently to accord with this duty.

## **7 Secretary of State's conclusions and decision**

7.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Application, given in particular that the consented Willington C Power Station, which requires a gas supply, would accord with national policy in terms of maintaining security of supply and the necessary transition to a low carbon economy. The Secretary of State agrees with the ExA that there are no adverse impacts which outweigh the need for the project to be delivered and the other benefits of the scheme [ER 5.4].

7.2 The Secretary of State has therefore decided to accept the ExA's recommendation in Section 8.6 of the Report to make the Order granting development consent and imposing the requirements as proposed by the ExA, but subject to the modifications described in section 8 below. He confirms that, in reaching this decision, he has had regard to the ExA Report, the LIRs submitted by the relevant authorities and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act. The Secretary of State also confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that he has taken into consideration the environmental information as defined in regulation 2(1) of those Regulations.

## **8 Modifications to the Order**

8.1 The Secretary of State has amended the definition of "commence" in article 2 so that the exclusion of cutting vegetation from the definition relates only to where this is for the purpose of other activities excluded from the definition of "commence". The amendment is made so as not to undermine the need for various schemes (including a Hedgerow and Tree Management Plan) to be approved under the Requirements before work commences.

8.2 The Secretary of State has amended article 3(5) to ensure that the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and other legislation under the Planning Act 2008 are not displaced.

8.3 The Secretary of State has amended article 18(5) and Schedule 7 to provide for compensation in cases where restrictive obligations are imposed; and article 19 (by removing the reference to rights being extinguished, etc.) to ensure that compensation under section 152 of the 2008 Act remains available.

8.4 For the reasons set out in paragraphs 5.1 - 5.2 above, the Secretary of State has amended Requirement 13 (which provides for a written scheme to deal with agricultural land drainage) to make it clear that the purpose of the scheme is to ensure that, during and following construction, the efficiency of drainage is maintained within and outside the works limits.

8.5 In addition to the above, the Secretary of State has made other changes which, while altering the way in which specific issues are dealt with, do not materially alter its effect, including changes to conform with the current practice for Statutory Instruments (e.g., modernisation of language), changes in the interests of clarity and consistency, the correction of errors and changes to ensure that the Order has the intended effect.

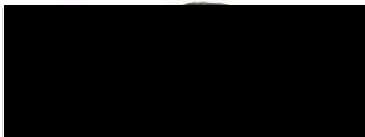
## **9 Challenge to decision**

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

## **10 Publicity for decision**

10.1 The Secretary of State's decision on this application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

Yours sincerely

A large black rectangular redaction box covering the signature of Giles Scott.

Giles Scott  
Head of National Infrastructure Consents



## ANNEX A

### LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the former Infrastructure Planning Commission or the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the date when the Order is published. The Willington C Gas Pipeline Project as made is being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planningportal.gov.uk/projects/west-midlands/willington-c-gas-pipeline/>

**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)**

