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Dear Sirs

PLANNING ACT 2008

APPLICATION FOR THE PROPOSED THORPE MARSH GAS PIPELINE

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:

- (a) the report dated 7 December 2015 (“the Report”) of the findings and conclusions of the Examining Authority (“the ExA”), namely Kelvin MacDonald FAcSS FRTPI MCIH FRSA, who conducted an examination (“the Examination”) into the Application (“the Application”) submitted to the Planning Inspectorate on 20 November 2014 by Thorpe Marsh Power Limited (“the Applicant”) for a Development Consent Order (“the Order”) under section 37 of the Planning Act 2008 (“the 2008 Act”) for the Thorpe Marsh Gas Pipeline and associated development (“the Development”); and
- (b) representations received by the Secretary of State after the close of the Examination and not withdrawn in respect of the Application.

1.2 The Examination of the Application began on 23 April 2015 and was completed on 7 September 2015. The Examination was conducted on the basis of written evidence submitted to the ExA, site visits and two separate Issue Specific

Hearings (“ISH”) held on 17 June 2015 to consider representations on the draft Order and Compulsory Acquisition (“CA”).

1.3 The Order, as applied for, would grant development consent within the administrative areas of Doncaster Metropolitan Borough Council, East Riding of Yorkshire Council, Selby District Council and North Yorkshire County Council for the construction and operation of a continuously welded buried steel cross-country gas pipeline of approximately 19.1km in length starting from an offtake approximately 1.5km west of Camblesforth, in the County of North Yorkshire and ending at the proposed Thorpe Marsh Combined Cycle Gas Turbine (“CCGT”) Power Station site at Marsh Lane, Barnby Dun, in the Metropolitan Borough of Doncaster, together with permanent and temporary associated development. The gas pipeline will transport natural gas fuel to the CCGT Power Station, which was granted consent under section 36 of the Electricity Act 1989 on 31 October 2011.

1.4 In addition to the proposed pipeline, the Application seeks powers to construct some permanent above ground development, including: a Minimum Off-take Connection (“MOC”) to the National Transmission System (“NTS”) to be constructed and operated by National Grid; an above ground installation (“AGI”) adjacent to the National Grid off-take, which would contain pipeline control valves and Pipeline Internal Gauging (“PIG”) ‘pigging’ facilities; 1m high cathodic protection test posts at intervals of approximately 1km and pipeline marking (e.g. 3m high aerial marker posts every 2km (or closer where required); marker posts approximately 1m high at every road, rail, drain, watercourse, fence, wall and hedgerow crossing; and an electrical compound on Moss Road, just east of Moseley House Farm in the Metropolitan Borough of Doncaster.

1.5 The Application also seeks a range of permanent rights (e.g. to access and maintain the pipeline when operational) and temporary rights (e.g. to use land for construction or access purposes), including a temporary “pipe dump” at Burn Airfield near the village of Burn and also temporary construction access and compounds for the storage of materials, excavation materials and car parking facilities etc. to support 51 crossings of features such as roads, rivers and railways. Provision is also sought for various works along the route corridor to install the pipeline, that are only needed during construction. In summary, these comprise temporary working widths and access routes, where access to the working width cannot be achieved from a public highway.

1.6 A new Gas Reception Facility, to be constructed at the power station site, already has existing planning consent (as part of the CCGT power station consent under section 36 of the Electricity Act 1989) and does not therefore form part of this application.

1.7 Published alongside this letter¹ is a copy of the Report of findings and conclusions as amended by the Errata Sheet (Ref EN070003) of corrections produced by the Planning Inspectorate and agreed by the ExA prior to the Secretary of State’s decision on the Order. The ExA’s findings and conclusions are set out in

1. <http://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/thorpe-marsh-gas-pipeline/>

chapters 4 to 9 of the Report, and the ExA's summary of conclusions and recommendation to the Secretary of State is at chapter 10.

2. Summary of the ExA's Recommendation

2.1 The ExA has recommended that the Order should be made in the form of the Order included at Appendix D to the Report.

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 proposals in the Application.** This letter is 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 The Secretary of State has also had regard to the three Local Impact Reports ("LIRs") submitted by: i) Doncaster Metropolitan Borough Council; ii) East Riding of Yorkshire Council; and iii) Selby District Council and North Yorkshire County [ER 3.6] and to the relevant local plans [ER 3.7], as well as the environmental information as defined in Regulations 2(1) of the 2009 Regulations, the Infrastructure Planning (Decisions) Regulations 2010 (the "Decisions Regulations") and to all other matters which the Secretary of State considers to be important and relevant to her decision as required by section 104 of the 2008 Act.

4. Secretary of State's consideration

4.1 The Secretary of State has 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 numbered references, unless otherwise stated, are to paragraphs of the Examination Report ("ER").

The Secretary of State notes that the issues identified by the ExA for particular consideration were as follows:

- Air quality and emissions;
- Biodiversity and geological conservation;
- Dust, odour, artificial light, smoke, steam and insect infestation;
- Flood risk;
- Historic environment;
- Land use including open space, green infrastructure and Green Belt;
- Landscape and visual;
- Noise and vibration;

- Pipeline safety;
- Socio-economic;
- Soil and geology;
- Traffic and transport;
- Waste management; and
- Water quality and resources.

4.2 The Secretary of State has had regard to the ExA's analysis of the above issues. 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.

5. Need and Relevant Policy for the Proposed Development

5.1 As the ExA has noted [ER 4.4.2], the purpose of the proposed Development is to provide fuel from the national gas grid to the consented (but unbuilt) Thorpe Marsh CCGT Power Station. The CCGT Power Station consent granted in 2011 under section 36 of the Electricity Act 1989 requires that the commencement of any phase of the Development should not be later than five years from the date of the consent, or such longer period as the Secretary of State may thereafter direct in writing. The proposed Development will connect the Thorpe Marsh CCGT Power Station to a National Grid Gas supply pipeline, which runs to the south of Cambleforth, near Selby [ER 4.4.1].

5.2 In view of the above, the Secretary of State agrees with the ExA that there is a clearly demonstrable need for the Development [ER 4.5.1], and 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 consistent with the relevant energy National Policy Statements 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 electricity generating infrastructure of the type proposed by the Applicant [ER 10.1.1]. In particular, EN-1 states that it is critical that the UK continues to have secure and reliable supply 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 CCGT Power Station, which the pipeline will connect to the NTS, will make to securing energy supply. The Development would also contribute to meeting the need for energy capacity and, in doing so, will bring benefits to the area in terms of economic activity [ER 10.1.2]. Accordingly the Secretary of State is satisfied that the need for the proposed Development has been established. The Secretary of State also agrees with the conclusion of the ExA that the matters weighing significantly in favour of the proposed Development outweigh the matters weighing significantly against [ER 7.4.1].

6. Biodiversity and Habitats

Findings and Conclusions in relation to Habitats Regulations

6.1 Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) (“the Habitats Regulations”) requires the Secretary of State to consider whether the proposed Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site or European offshore marine site as defined in the Habitats Regulations and the Offshore Habitats Regulations. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment (“AA”) addressing the implications for the European Site in view of its conservation objectives. In the light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the project will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there is no feasible alternative or imperative reasons of overriding public interest apply.

6.2 The Applicant submitted a Habitat Regulations No Significant Effects Report (“NSER”) with the Application. This considered the potential for Likely Significant Effects on the following European sites:

- Hatfield Moor Special Area of Conservation (“SAC”);
- Thorne Moor SAC;
- Thorne and Hatfield Moors Special Protection Area (“SPA”);
- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar site;
- River Derwent SAC;
- Lower Derwent Valley SPA;
- Lower Derwent Valley SAC;
- Lower Derwent Ramsar site; and
- Skipwith Common SAC.

6.3 The NSER considered each of these sites against the following possible impacts: Direct habitat loss; Changes in air quality (dust and air emissions); Changes in hydrology; Changes to water quality; and Disturbance.

6.4 The Secretary of State notes that Natural England (“NE”), as the nature conservation body for England for the purposes of the Habitats Regulations, advised [ER 6.3.3 and 6.3.7] that due to both the distance from the proposed pipeline route to the nearest European designated site and the fact that no pathways of effect have been identified, the proposed Development is not likely to have a significant effect on any European designated sites. NE confirmed this finding related to the proposed Development either alone or in-combination with other plans and projects. The Secretary of State notes that the ExA concluded that there is no reasonable scientific doubt that the proposed Development will not result in any likely significant effects on any European site, either alone or in-combination with other plans and projects [ER 6.4.2].

6.5 The Secretary of State agrees with the advice of NE and the ExA's recommendation [ER 6.1.1] that a report on the Implications for European Sites was not necessary and accepts the advice of the ExA that the proposed Development does not give rise to any relevant likely significant effects on European sites, either alone or in combination with other projects and so she considers that she does not need to undertake an AA.

Environmental Enhancements

6.6 The Secretary of State notes that the ExA had particular regard in the Examination to the need for, and applicability of, environmental enhancements [ER 5.4.35] and to paragraph 5.3.4 of NPS EN-1 and the need to demonstrate how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests [ER 5.4.36]. The ExA examined the perceived need for environmental enhancements raised in representations from the Environment Agency and Yorkshire Wildlife Trust ("YWT") [ER 5.4.39] beyond those already offered by the Applicant in respect of the proposed Thorpe Marsh CCGT Power Station [ER 5.4.43 – 5.4.44]. The ExA also examined the suggestion in the Selby District and North Yorkshire County Councils joint LIR that there may be opportunities for contributing to wider environmental enhancements [ER 5.4.40]. The Applicant in response provided details of the enhancements would be secured in respect of the Development by Requirement 15(1) in the draft Order [ER 5.4.45].

6.7 The Secretary of State notes that a Statement of Common Ground has been agreed between the Applicant and YWT, which states *"given the exceptionally high contribution that the proposed Thorpe Marsh power station will be making to local wildlife, together with the mitigation measures along the proposed pipeline, that ecological measures outlined in the Environmental Statement (ES) are satisfactory"* [ER 5.4.48]. In addition, YWT and the Applicant agreed that landowners/occupiers along the proposed gas pipeline route should be informed of potential Agri-environment schemes which may enable benefit to local wildlife and that enhancement measures for field margins and boundaries already agreed [ER 5.4.45] will comprise, where possible, consideration of Buglife's B-Lines project (which incentivises the planting of wildlife rich habitats) [ER 5.4.50].

6.8 Furthermore, the Secretary of State also notes that Natural England welcomes the environmental enhancement measures set out in the Applicant's supporting Environmental Statement ("ES") and in the Biodiversity Strategy, which it considers *"will have a positive effect on the natural environment by providing a range of biodiverse habitats on the site"* and *"in accordance with "the principles set out in paragraph 118 of the National Planning Policy Framework, Section 5.3.4 of NPS (EN-1) and Section 40 of the Natural Environment and Rural Communities Act (2006)"* [ER 5.4.58].

6.9 The Secretary of State agrees with the conclusion reached by the ExA after taking into account all relevant factors [ER 5.4.35 - 5.4.59] that the draft Order should not be amended to provide environmental enhancements beyond those listed in the Schedule of Ecological Enhancements that the Applicant is intending to undertake, as set out in Appendix 6 to its response [REP1-014] to Deadline 1 in the Examination [ER 5.4.60].

7. Flood Risk, including consideration of a representation received from the Applicant after the close of the ExA's examination

7.1 The Secretary of State notes from the Report that issues surrounding flood risk were amongst the most significant dealt with in the Examination [ER 5.9.1]. The whole of the Development is situated over the Sherwood Sandstone Principal Aquifer and the southern tip and northern extents of the proposed pipeline route corridor are situated within a groundwater Source Protection Zone III. Sixteen open drains are also located along the pipeline route [ER 5.9.4 and ER 5.22.5]. The Applicant's Flood Risk Assessment ("FRA") states that a large proportion of the pipeline route corridor is located in either Flood Zone 3 (high probability) or Flood Zone 2 (medium probability). The Site Offices and Pipe Dump area is entirely in Flood Zone 1 (low probability). The AGI and MOC are located in Flood Zone 2. The pipeline route corridor also passes through land of each category (Very Low to High) as categorised in the Environment Agency's ("EA") Flood Map for Surface Water [ER 5.9.5].

7.2 The FRA states: "*As the Proposed Gas Pipeline will be buried along its entire length and will not give rise to any change to existing ground levels or result in any permanent new structures within the floodplain once operational. The operation of the Proposed Gas Pipeline will not, therefore, lead to any impacts on flood risks in the vicinity of the Proposed Pipeline Corridor*" [ER 5.9.6]. The Secretary of State notes that with the exception of the AGI, the FRA therefore only assesses risks during construction [ER 5.9.7].

7.3 The Secretary of State notes that the ES concludes that with the proposed mitigation measures in the Construction Environmental Management Plan ("CEMP"), and the proposed timing and duration of the construction works, this would ensure a low likelihood of the construction sites being affected by extreme flooding and the magnitude of impact is therefore considered to be small [ER 5.9.8]. Mitigation measures that would be adopted during the construction phase of the pipeline include ensuring that works in high risk flood areas are carried out during the driest months, minimising the length of time trenches would be left open, using trenchless techniques for crossing water courses, and the movement of heavy plant away from high flood risk areas to Flood Zone 1 in extreme weather conditions. These mitigation measures would be secured by Requirement 4 in Part II of Schedule 1 to the Order. In addition, Requirement 12 stipulates that details of a surface and foul water drainage system must be agreed prior to the commencement of each stage of the Development [ER 5.9.9].

7.4 The Secretary of State notes that in response to the written representations raised by the EA and the ExA on the flood risks [ER 5.9.11 – 5.9.18] during the examination, an Addendum to the FRA was provided by the Applicant which assesses flood risks in relation to the MOC/AGI site. This confirmed that finished floor levels should be raised to a minimum of 600mm above the 1 in 100 year flood level for the AGI/MOC and a sustainable urban drainage system ("SUDS") could be employed for the AGI site to manage surface water run-off [ER 5.9.19]. The EA confirmed that the FRA Addendum addressed the points it had raised in its written representations subject to an additional Requirement requiring a scheme for mitigation of flood risk be agreed prior to the commencement of the Development

[ER 5.9.20]. The Secretary of State notes this is included as Requirement 21 in the draft Order annexed to the Report.

7.5 The Secretary of State notes that a Statement of Common Ground was agreed with the EA, which did not record any outstanding areas of disagreement in respect of flood risk [ER 5.9.25] and confirmed that the EA was satisfied with the level of detail in the FRA Addendum and proposed mitigation measures that would be secured by Requirements in the Order [ER 5.9.30].

7.6 The Secretary of State notes the ExA's conclusion that "*Given the detailed examination undertaken of issues surrounding flooding, the preparation of a FRA Addendum by the Applicant to address concerns raised by the Environment Agency, the insertion of a further requirement into the draft DCO to deal with flooding issues alongside the securing of mitigation measures and the ultimate statement of content by the Environment Agency, I conclude that issues relating to flooding have been addressed satisfactorily in the requirements contained in the recommended draft DCO*" [ER 5.9.31]. However, the Secretary of State is also mindful of the advice relating to development and flood risk set out in Overarching National Policy Statement EN-1 and other relevant guidance. This states that if there are no reasonably available alternative sites in Flood Zones 1 and 2 ("the Sequential Test"), then nationally significant energy infrastructure can be located in Flood Zone 3 subject to "the Exception Test". The Sequential and Exception Tests provides a method of managing flood risk while still allowing necessary development to occur.

7.7 As provided for in EN-1 (Section 5.7) the Sequential Test is undertaken to ensure that no other reasonably available sites are available for a development within areas or zones of lower flood risk. Where the Sequential Test cannot deliver an acceptable alternative site the Exception Test can then be applied and all three elements of that test must be passed before development can be consented (EN-1, paragraph 5.7.6). However, as the ExA had not specifically made reference to the Sequential and Exception Tests, and there was no reference to the tests in the Applicant's FRA or FRA Addendum, the Secretary of State sought clarification on this point, after the close of the Examination. The Applicant responded in a written representation dated 12 January 2016 (and which is published alongside the decision letter) and included at Annex 1 to that representation their consideration of the Sequential and Exceptions Tests.

7.8 The Secretary of State has considered that representation, in conjunction with the FRA, FRA Addendum, the ExA Report, other relevant representations and the requirements set out in national planning policy relating to the Sequential Test and the Exception Test.

The Sequential Test

7.9 The Secretary of State notes that the Applicant in its 12 January 2016 representation states that it "*did apply the sequential approach to site selection, although this was an inherent part of the site selection process/consideration of alternatives and is not expressly set out in the application documentation as a response to policy in its own right.*" In addition to the relevant National Policy Statement, the Applicant drew the attention of the Secretary of State to associated

planning guidance in the National Planning Policy Framework (“NPPF”) which covers Sequential Tests and states that “*When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken.*”

7.10 The Secretary of State notes that the Application is located in an area at widespread high risk of flooding, with the majority of the South Selby/East Riding/North Doncaster area being within Flood Zones 2 and 3. The site of the proposed CCGT Power Station, which is largely within Flood Zone 3 (although it benefits from flood defences) and to which the pipeline needs to connect is fixed. The Applicant has identified from the EA’s flood map that it would not be possible to completely avoid a flood zone in the general vicinity of the Development, particularly as the existing gas feeder mains in the area run to the north and east of the site of the proposed Thorpe Marsh CCGT Power Station.

7.11 The Applicant’s initial pre-application feasibility study considered several grid connection options, but only two viable route options were identified: i) Route 1 option commencing at a potential offtake west of Cambleforth on the 48” diameter National Grid pipeline; and ii) Route 2 commencing at a potential offtake south east of Rawcliffe on the National Grid 36” diameter Feeder 7 pipeline. The Secretary of State notes that Route 2 was discounted on the grounds that: i) it was 1.4km longer than the Route option 2; ii) it passed through or close to areas containing potential protected species, based on the survey work undertaken at that time; and iii) it passed within 1km of a European Designated Site. The Secretary of State notes that Route 2 also passed through significantly more land located within Flood Zone 3 and would also have required the AGI to be located in that higher risk flood zone.

7.12 In view of the above, the Secretary of State sees no reason to disagree with the Applicant’s conclusion that the site of the Development is considered to be sequentially preferable on flood risk grounds and meets the requirements of the NPPF and NPS EN-1 for a site to have applied and passed the Sequential Test and for the Exception Test to be applied.

The Exception Test

7.13 Section 5 of EN-1, requires an applicant to demonstrate:

- that the project provides wider sustainability benefits to the community (including need for the infrastructure) that outweigh flood risk;
- the project should be on developable, previously developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable or previously developed land subject to any exceptions set out in the technological-specific National Policy Statements; and
- a FRA must demonstrate that the project will be safe, without increasing flood risk elsewhere subject to the exception below and, where possible, will reduce flood risk overall.

7.14 Exceptionally, where an increase in flood risk elsewhere cannot be avoided or wholly mitigated, it is noted the Secretary of State may grant consent if satisfied that the increase in present and future flood risk can be mitigated to an acceptable level

taking into account the benefits, including the need for nationally significant energy infrastructure.

7.15 As the Applicant has highlighted, the National Planning Practice Guidance (“NPPG”) includes in Table 2: Flood Risk Vulnerability Classification, a definition of ‘Essential Infrastructure’ as follows:

“Essential utility infrastructure which has to be located in a flood risk area for operational reasons, including electricity generating power stations and grid and primary substations; and water treatment works that need to remain operation in times of flood [Applicant’s emphasis].

7.16 Table 3 of Technical Guidance to the National Planning Policy Framework (March 2012) indicates such ‘Essential Infrastructure’ can be located in Flood Zone 3 subject to meeting the requirements, as set out in paragraph 7.13 above, and considered below.

7.17 For the reasons set out above, the Secretary of State is satisfied that the need case for the Development has been made and provides wider sustainability benefits that outweigh flood risk. The Secretary of State is also satisfied that for operational reasons (i.e. the need to connect to the proposed Thorpe Marsh CCGT Power Station and lack of alternative grid connection points) it is necessary to locate the Development within the flood zone and there are no sequentially preferable reasonable alternatives. As noted in paragraphs 7.4 and 7.5 above, mitigation measures to be secured by Requirements in the Order, will ensure that the Development will be safe and not increase flood risk elsewhere. The Secretary of State notes that the EA came to the same conclusion [ER 7.1.29] and this was not contradicted by the local authorities in their LIRs [ER 7.1.30]. The Secretary of State is satisfied therefore that the Exception Test is passed and that, with the secured mitigation measures, there is no reason to refuse the Development on flood risk grounds.

8. Compulsory Acquisition (“CA”) Powers, including consideration of representations received from interested parties after the close of the ExA’s examination

8.1 The Secretary of State notes that the request for CA of land and/or rights over land covers plots along the total length of the proposed route for the gas pipeline [ER8.1.7]. The rights sought are of both a permanent and temporary nature, for the purpose of constructing, operating and maintaining the Thorpe Marsh Gas Pipeline. The purposes for which CA of land and rights is requested are set out in Part 1 of Schedule 1 of the Order [ER 8.2.1]. The purposes for which the CA of rights is required are set out in Schedule 5 of the Order [ER 8.2.2]. The purposes for which they are required are in summary:

- For access and maintenance to the AGI and cathodic equipment; the acquisition of permanent rights for access and to undertake work to facilitate access;

- For the installation of the pipeline; the acquisition of permanent rights to install the pipeline and associated development, to facilitate access for the installation and for the on-going maintenance of the pipeline and associated development;
- Over land where the pipeline is installed, a restrictive covenant over the land to protect the pipeline and access to it, and the erection of structures over the pipeline.
- Over land in where the electrical cables and free-standing infrastructure are installed, a restrictive covenant to protect the infrastructure and access to it.

8.2 The Secretary of State has considered the compulsory acquisition powers sought by the Applicant in the light of sections 122 and 123 of the Planning Act 2008, the relevant guidance and the Human Rights Act 1988. In doing so, the Secretary of State notes that compulsory acquisition can only be granted if certain conditions are met, namely:

- the land is required for the development to which the consent relates, or is required to facilitate or is incidental to that development;
- there must be a compelling case in the public interest;
- there must be a need for the project to be carried out;
- there must be consistency and coherence in the decision-making process:
- all reasonable alternatives to compulsory acquisition have been explored;
- the applicant has a clear idea of how it intends to use the land and can demonstrate that funds are available to pay for the acquisition; and
- the Secretary of State is satisfied that the purposes stated for the acquisition are legitimate and sufficient to justify the inevitable interference with the human rights of those affected.

8.3 The ExA sets out his consideration of the matters relating to compulsory acquisition in section 8 of the Report. The Secretary of State has considered the ExA's examination of the case for compulsory acquisition powers [ER 8.4.1-8.4.54] and agrees with the conclusion of the ExA that the proposed restrictions on the use of those powers ensures that the land to be taken is no more than is reasonably required and is proportionate [ER 8.5.17]. The Secretary of State also agrees with the conclusion of the ExA that the Application was appropriate in the context of the relevant tests in legislation and guidance relating to the procedures for compulsory acquisition of land [ER 8.5.1 – 8.5.15].

8.4 The Secretary of State's consideration of human rights is set out in paragraphs 9.3 and 9.4 below. However, it is noted that the ExA is satisfied that the proposed Development would not violate human rights in relation to the Human Rights Act 1988 and the European Convention on Human Rights and would comply with DCLG Guidance [ER.8.7.4]. The ExA also concludes that each plot in the Book of Reference to be compulsorily acquired has been identified with a clear purpose and all the land is required. The ExA considers a compelling case in the public interest has been made out for each of the plots of land to be acquired compulsorily and there is a clear need for the project to proceed. There are no practicable alternatives to meet the objectives sought, and the public benefit outweighs the loss

to private interests or the restrictions imposed on those interests. The ExA is satisfied that funding is available for the project and concludes therefore that the tests set out above have been met [ER 8.7.5 – 8.7.7].

8.5 Apart from statutory undertakers, who are further considered below, there were no representations or objections from any other affected persons. The Secretary of State notes that one affected person, Mr Metcalfe, gave evidence at the Issue Specific Hearing into the draft Order, but his evidence centred on the possible effects of the proposal on farming practices rather than issues surrounding CA [ER 8.4.22].

8.6 It is also noted that apart from statutory undertakers and Crown Land interests (also considered further below), there are 137 affected persons listed in the Book of Reference (“BoR”) as having Category 1 and/or 2 interests. These relate to 265 plots [ER 8.4.23]. The Secretary of State notes that of those individual plots listed in the BoR, there were only 18 plots potentially subject to CA on which agreement was still to be reached at 24 July 2015. Two of these (Plots 48 and 49) were in relation to Crown Land; three (plots 30, 64 and 263) in relation to Network Rail Infrastructure Ltd (“NRIL”), two (plots 50 and 246) were in relation to the EA; four (plots 85-88) in relation to the Highways England (“HE”) (formerly the Secretary of State for Transport); one (plot 132) was in relation to the Canal and River Trust; and one (plot 133) was in relation to the East Riding of Yorkshire Council (“ERYC”) [ER 8.4.24].

8.7 The Applicant provided an updated land position at 8 September 2015, which stated that *“The Applicant expects a legal agreement to be completed shortly”* in respect of the above plots (and also in respect of Plots 160 and 161 owned by WM Falkingham as executor of TW Falkingham and TW Falkingham Limited). In view of this, the Secretary of State sought an update of the position from the Applicant and affected parties on 29 December 2015. The Secretary of State also requested an update in respect of land owned by Geoffrey Harry Baxter (plots 168-170) as the Applicant’s update stated, *“The option agreement is expected to be entered into immediately after the mortgagee consent has been obtained. The consent is expected to be obtained shortly.”*

Crown Land

Queen’s Most Excellent Majesty in Right of her Crown –Plots 48 and 49

8.8 The Secretary of State notes that consent under section 135 of the Planning Act 2008 in relation to Plots 48 and 49 is being sought in parallel with negotiations between the Applicant and The Crown Estate Commissioners for the acquisition of interests in those plots [ER 8.2.10 and 8.2.11]. Although agreement has not yet been reached, the Commissioners have confirmed in a letter dated 12 January 2016 to PINS and the Secretary of State that they are currently in negotiations with the Applicant and the inclusion of article 39 in the draft Order gives them the ability to give their consent in accordance with section 135(2) at the appropriate time. The Secretary of State is satisfied that the necessary consent will be forthcoming, but in the circumstances he agrees with the ExA [ER 8.2.14- 8.2.16] that unconstrained powers of CA should not be granted in respect of Plots 48 and 49 and that the ExA’s recommended amendments to Articles 20 and 23 are included in the Order [ER 8.7.22].

The Secretary of State for Transport/Highways England – Plots 1, 2, 3, 4, 85, 86, 87 and 88)

8.9 The Secretary of State notes, in respect of Crown Land, that section 135 consent is no longer required in relation to Plots 85, 86, 87 and 88 by virtue of the change in status of the Highways Agency [ER 8.2.4 and 8.2.19] and the transfer of these plots from the Secretary of State for Transport to Highways England (“HE”) [ER 8.2.20 and 8.2.21]. However, the Applicant confirmed in its representation dated 4 September 2015 that although the Secretary of State for Transport confirmed rights in relation to Plots 1, 2, 3 and 4 had been transferred to HE, this had not been changed in the BoR. The Secretary of State has subsequently received confirmation from HE that the rights in relation to Plots 1, 2, 3 and 4 have passed to HE and so she is satisfied that no consent under Section 135 is required.

8.10 In respect of HE’s Category 1 and/or 2 land interests, the Secretary of State notes only Plots 85, 86, 87 and 88 are potentially subject to CA and on which agreement is still to be reached [ER 8.4.24]. HE has confirmed, however, in a further representation dated 11 January 2016 that they have no objection to the grant of the Order including CA and/or powers of temporary acquisition in respect of those plots provided those powers only grant the Applicant a right to: (i) place apparatus in HE land and to obtain access for such purposes; and (ii) take temporary possession to facilitate construction, operation and maintenance of the project. Although HE has not yet seen a legal agreement to this effect, the Applicant has confirmed that a legal agreement for their comments is to issue shortly. In the circumstances, the Secretary of State sees no reason why CA in respect of these plots should be withheld.

Government Pipeline and Storage System/ Compania Logistica de Hidrocarburos

8.11 Confirmation from Compania Logistica de Hidrocarburos (“CLH”) (following the sale by Government of the Pipeline and Storage System to it on 20 March 2015) of the completion of an asset protection agreement was also sought by the Secretary of State, but no response has been received. However, the Secretary of State agrees with the ExA that CLH’s assets are protected by the provisions included in Schedule 9 of the Order for the protection of electricity, gas, water and sewage statutory undertakers [ER8.6.13]. The Secretary of State therefore agrees with the ExA’s recommendation that the powers of acquisition of rights in respect of CLH be granted [ER8.6.14].

East Riding of Yorkshire Council – Plot 133

8.12 The Secretary of State notes that East Riding of Yorkshire Council (“ERYC”) did not make any representations on the proposed CA powers during the Examination. However, the Applicant confirmed to the ExA that negotiations were ongoing in respect of the freehold interest, which were likely to result in agreement [ER 8.4.26]. ERYC has since confirmed to the Secretary of State that it is content, in principle, to enter into a legal agreement permitting the proposed pipeline, subject to agreeing acceptable terms. In view of the above, the Secretary of State sees no reason why the powers of CA sought in respect of ERYC should not be granted.

Remaining 5 Plots on which agreement is still to be reached
Plots 160 and 161

8.13 The Secretary of State notes that no representations were received from freehold owners WM Falkingham as executor of TW Falkingham or TW Falkingham Limited during the examination in respect of Plots 160 and 161 [ER8.4.32]. They have also not responded to the Secretary of State's further consultation. However, the Applicant has confirmed that legal agreements are currently being reviewed by those landowners. Given that these two plots are only listed for temporary possession and the Applicant's Statement of Reasons set out a clear purpose and rationale for their inclusion, the ExA considers the plots fulfil the tests set out in legislation in establishing that the land is required to facilitate the Development and has therefore recommended their inclusion in Schedule 7 of the Order [ER 8.4.35]. In the circumstances, the Secretary of State sees no reason to disagree with the ExA's recommendation.

Plots 168, 169 and 170

8.14 Similarly, no representations were received from the freehold owner, GH Baxter, in respect of Plots 168, 169 and 170 during the examination [ER8.4.37] and he did not respond to the Secretary of State's further consultation. However, the Applicant has confirmed that consent has now been obtained from Mr Baxter and agreements were signed in October 2015. The 3 plots are listed in Schedule 5 (i.e. "*Land in which New Rights Etc May be Required*") and Schedule 7 (i.e. "*Land of which temporary possession may be taken*") to the draft Order annexed to the Report. However, in view of the Applicant's confirmation that agreements with Mr Baxter are now in place, the Secretary of State considers that CA rights in respect of Plots 168, 169 and 170 are no longer required and so should not be confirmed. Accordingly, the Plots have been removed from Schedules 5 and 7 to the Order.

Environment Agency – Plots 50 and 246

8.15 Taking into account what the ExA says in ER 8.6.16 and ER 8.6.18, and the confirmation from the EA in its representation dated 12 January 2016 that amended draft Heads of Terms have been requested by the Applicant's agent and once agreed they will be forwarded for finalisation, the Secretary of State sees no reason to disagree with the ExA's recommendation that CA of rights in respect of the EA be granted [ER 8.6.19].

The Canal and River Trust – Plot 132

8.16 The Canal and River Trust ("the Trust") made a written objection during the Examination to the inclusion of Plot 132 and its apparatus in the compulsory acquisition provisions in the Order. The Trust stated it would instead seek to reach agreement with the Applicant with a view to granting the sub-soil rights needed whilst providing all necessary protections to avoid the need for any compulsory purchase of the land and interests [ER 8.6.7]. However, neither record of this agreement nor a statement of Common Ground had been submitted by the close of the Examination [ER 8.6.9]. Similarly, at the close of the Examination, the Trust had not withdrawn its objection to the inclusion of the land in the Order [ER 8.6.11]. The Trust's

representation dated 13 January 2016 to the Secretary of State's further consultation confirms they are continuing their discussions with the Applicant and "*hope to finalise matters shortly*". The ExA noted that the Trust did not object to the proposed crossing techniques for the Aire and Calder Navigation Canal, but needed assurance that when the drilling technique is applied, there will be sufficient depth below the piles forming the navigation including a safety factor to protect the structural integrity of the canal [ER 9.4.16]. It was also noted that with this aim the Trust indicated a wish to review and agree details at the detailed design stage (i.e. post the grant of the Order) to ensure protective provisions are in place to safeguard the canal [ER 9.4.17].

8.17 The Secretary of State notes that the ExA considers the position has now been secured by the addition in Requirement 4 of a condition to consult the Trust on a written construction environmental management plan for each stage of the authorised development and by an addition in the same Requirement that the written construction environmental management plan for each stage shall contain details of the crossing method to be employed for each crossing, including the means by which the environmental and structural effects of that method will be controlled [ER 9.4.18]. He also notes that the ExA considers the Applicant's specific assurance by the Applicant in the ES, as quoted in ER 9.4.16, is not secured in the draft Order, but instead, appears to be hampered by the limits of downward deviation allowed under Article 6 [ER 9.4.19]. For this reason, the ExA has recommended a further sub-clause be added to Article 6(2) which disapplies downward deviation in respect of Work No.57 covering the canal crossing [ER 9.4.20]. In the circumstances, the Secretary of State agrees with the ExA and is content that the Trust's concerns have been addressed and their assets are protected by the inclusion in the Order of the provisions recommended by the ExA [ER9.4.23].

Network Rail Infrastructure Limited –Plots 26, 27, 30, 64, 252, 253, 254, 255, 256, 257, 258 and 263

8.18 The Secretary of State notes that the only other outstanding objection not withdrawn at the close of the ExA's Examination was from Network Rail Infrastructure Limited ("NRIL") in respect of the wording of a provision in the Protective Provisions [ER 8.7.19 and 9.4.3]. However, the Secretary of State also notes that given the change requested by NRIL has been made and included in Schedule 9 of the Order, the Secretary of State agrees with the ExA that there is no outstanding objection from NRIL to the inclusion of the Protective Provision in the Order [ER 9.4.3].

Compulsory Acquisition Powers – Conclusion

8.19 The Secretary of State is satisfied with the ExA's analysis of the issues relating to CA and notes the ExA's conclusion that the CA and temporary possession powers sought by the Applicant are necessary to enable the Development to proceed; that the land to be taken is reasonable, necessary and proportionate; that there is a compelling case in the public interest for the land to be acquired compulsorily; and that the financial provision to provide compensation for CA is adequate to meet the expected liabilities.

8.20 The Secretary of State agrees with the ExA's recommendations that unconstrained powers of CA are not confirmed in respect of plots 48 and 49 (Crown Land) and that amendments to Articles 20 and 23 are included in the Order. For the reasons set out in paragraph 8.14 above, the Secretary of State has also not confirmed powers of CA in respect of Plots 168, 169 and 170. She agrees with the ExA that all other CA powers should be granted.

8.21 Also taking into account of the conclusion reached below in respect of human rights and CA, the Secretary of State is therefore satisfied that the requirements in sections 122 and 123 of the 2008 Act and all other requirements for granting CA have been met.

9. General Considerations

Equality Act 2010

9.1 The Equality Act 2010 includes a public sector equality duty. This requires a public authority, in the exercise of its functions, to have due regard to the need to (a) eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic (e.g. age; gender; gender reassignment; disability; marriage and civil partnerships^{2[1]}; pregnancy and maternity; religion and belief; and race) and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2 The Secretary of State has considered the potential impacts of a development of this type in the context of the general equality duty and concluded that they are not likely to result in any significant differential impacts on any of the protected characteristics. The Secretary of State has had due regard to the need to achieve the statutory objectives referred to in section 149 of the Equality Act 2010, including having considered the ExA's findings and conclusions. She has seen no evidence which suggests that such differential impacts are likely in the present case.

Human Rights Act 1998

9.3 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights, by the Development and CA powers.

9.4 The Secretary of State notes that the ExA considered the impacts of the CA powers sought by the Applicant on the Human Rights of those people who might be affected by them [ER 8.5.41- 8.5.43 and ER 8.7.2- 8.7.4]. The ExA states that he has exercised the fullest discretion available to him to consider all written submissions received, and held a CA hearing which was publicised. The ExA has had full regard to all the submissions made during the Examination, which he has set

[1] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

out in the Report. The ExA considers the proposed Development would represent an improvement to the national gas transmission infrastructure and is necessary to deliver additional electrical generating capacity, a legitimate public interest. The ExA considers that the case for CA has been sufficiently made and the proposed Development would be a proportionate solution, taking into account the balance between environmental considerations and the work required. The ExA also concludes the purposes for the CA and temporary possession sought are therefore legitimate, necessary and proportionate and sufficiently justify, and clearly outweigh, any interference with the human rights of those with an interest in the land affected. The ExA is satisfied that the proposed Development would not violate human rights in relation to the Human Rights Act 1988 and the European Convention on Human Rights and would comply with DCLG Guidance. The Secretary of State has considered the rights to be protected and the ExA's consideration of those Human Rights. These are considered to be reasonable, that any interference is proportionate and that these measures are necessary to facilitate the delivery of the Development.

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

9.5 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 is of the view that the Report considers biodiversity sufficiently to accord with this duty.

10. Secretary of State's conclusions and decision

10.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for authorising the Development, given the added contribution to energy capacity and in ensuring security of supply that will be provided by the Thorpe Marsh CCGT Power Station as a direct result of the gas pipeline connection. The Secretary of State considers that the case is not outweighed by the potential adverse local impacts of the Development, as mitigated by the proposed terms of the Order, and that granting consent would be consistent with NPS EN-1 and EN-4.

10.2 The Secretary of State has also considered the Applicant's requests for powers to compulsorily acquire land and rights over land, which form part of the Application, and for the reasons set out above, has granted powers of compulsory acquisition in relation to a number, but not all of the plots concerned.

10.3 The Secretary of State considers that the Development will have no adverse effects on the integrity of European Designated Sites either alone or in combination with other plans and projects.

10.4. The Secretary of State has therefore decided to accept the ExA's recommendation in chapter 10 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 11 below. In reaching this decision, the Secretary of State had regard to the Report, as amended by the Errata Sheet referred to in paragraph 1.7 above, the LIRs submitted by the relevant local authorities and to all other matters which are considered important and relevant to the 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 consideration has been given to the environmental information as defined in regulation 2(1) of those Regulations. In accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, the Secretary of State has also had regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992 when considering this application.

11 Modifications to the Order

11.1 The Secretary of State has made a number of modifications to the Order recommended by the ExA.

The Secretary of State has amended article 11 to make it clear that the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 continue to apply.

The Secretary of State has amended Schedules 5 and 7 to the recommended Order to remove Plots 168,169 and 170 because the Applicant has confirmed that agreements are now in place with the freehold owner so the Secretary of State does not consider compulsory acquisition powers are required.

In addition to the above changes, the Secretary of State has made a number of other modifications to the recommended Order which do not materially alter its effect, including:

- adding a definition of “commence” consistent with previous Orders;
- adding a provision requiring written notice to be given of a transfer of the benefit of the Order to National Grid Gas under article 8(4);
- changes to conform with the current practice for drafting statutory instruments (for example, modernisation of language);
- the removal of unnecessary material; and
- other changes in the interests of clarity and consistency; and changes to ensure that the Order has the intended effect.

12. Challenge to decision

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

13. Publicity for decision

13.1. 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 faithfully

Giles Scott
Head of National Infrastructure Consents and Coal Liabilities

**ANNEX
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 Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

<http://infrastructure.planninginspectorate.gov.uk/projects/yorkshire-and-the-humber/thorpe-marsh-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)