

The Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

**The Able Marine Energy Park Development Consent Order**

**Planning Inspectorate Reference: TR030001**

**Summary of Written Representation of C.GEN Killingholme Limited (Interested Party  
reference: 10015531)**

29 June 2012

## **PART 1 - INTRODUCTION**

1. This is a summary of the first written representation ("WR1") prepared on behalf of C.GEN Killingholme Limited ("C.GEN"). It relates to the application by Able Humber Ports Limited ("Able") to the Secretary of State for the Able Marine Energy Park Development Consent Order (the "Application").
2. C.GEN has notified the Examining Authority of its objection to the Application and the specific elements of the proposed Able Marine Energy Park ("AMEP") for which the Application was made in a relevant representation made on 30 March 2012.
3. C.GEN proposes to make an application for a development consent order ("DCO") to the Secretary of State for Energy and Climate Change in the second half of 2012. The DCO would authorise C.GEN to construct and operate a 470MWe thermal generating station ("Generating Station") and associated development on land adjacent to C.RO Ports Killingholme, North Lincolnshire ("C.GEN Project"). This land, which is owned by C.GEN, is adjacent to that affected by the Application. The C.GEN Project is a Nationally Significant Infrastructure Project ("NSIP") for which a DCO is required under the Planning Act 2008. It will play an important role in helping to meet future increased demand for electricity.

## **PART 2 - STATEMENTS ON EXAMINING AUTHORITY'S INITIAL ASSESSMENT OF PRINCIPAL ISSUES**

4. **Principal Issue 2: *Navigation and other marine impacts***
  - 4.1 C.GEN's primary concern is that there has been inadequate consultation for it to properly assess the navigational and other marine impacts, such as sedimentation, of AMEP on its proposals for the future. C.GEN is particularly concerned to ensure its future operations are not prejudiced by any adverse impacts AMEP may have on C.RO Ports Killingholme, through which C.GEN may transport fuel for, and waste from, the C.GEN Project.
5. **Principal Issue 3: *The scope and scale of the proposal* and Principal Issue 8: *Impacts on Network Rail***
  - 5.1 The Application makes provision for the compulsory acquisition of the Killingholme Branch Line (the "Railway") by which C.GEN will be able to connect to the wider national railway network. C.GEN objects to the proposed acquisition of the Railway by Able because that would unreasonably and unnecessarily prejudice C.GEN's own project. C.GEN proposes to transport solid fuel for the C.GEN Project along the Railway, as well as waste and other materials. A direct connection to Network Rail's network is essential to C.GEN's future

operations. This will require the construction of new sidings and the negotiation of connection and access agreements with Network Rail. Discussions between C.GEN and Network Rail are ongoing. Those discussions relate not only to the need for connection and access arrangements, but also the availability of train paths.

- 5.2 C.GEN would thus be directly and adversely affected by the proposed privatisation of the Railway and/or any restriction upon its use or the manner of its operation. It has considerable concerns about the operational impacts on its future use of the Railway if compulsory acquisition proceeds.
- 5.3 C.GEN considers that Able has carried out insufficient consultation about AMEP, and in particular in relation to the Railway. If it had carried out consultation properly, it would have been aware of the concerns of C.GEN (and others) in relation to the Railway, and importantly, it would also have been aware of C.GEN's proposals for the future use of the Railway. Instead, Able has proceeded on the basis that it will acquire the Railway because it wishes to accommodate AMEP. As a result, its Application (including the Environmental Statement) fails to take account of future requirements for train movements on the Railway, and growth in those movements. Able does not know whether, in light of C.GEN's requirements for use (and those of others), it can manage any potential conflict between use of the Railway and operation of AMEP. In this respect, C.GEN submits that Able cannot show (and the Secretary of State cannot be satisfied) that AMEP can safely and effectively operate whilst allowing continued and future use of the Railway, whether it remains in the ownership of Network Rail or not.
- 5.4 C.GEN can show a reasonably foreseeable need for rail access. However, Able has not consulted C.GEN. Able has not shown for what purpose related to AMEP it needs to use the Railway, and furthermore it has not shown why it is necessary to acquire the Railway. Its proposals are driven entirely by its own - unexplained - priorities, without regard to existing and future use of part of the Network, the use of which by others is supported and encouraged by Government policy, and in particular the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Fossil Fuel Generating Infrastructure (EN-2) .
- 5.5 In conclusion therefore:
- 5.5.1 Able has failed properly to justify its proposal to compulsorily acquire the Railway;

- 5.5.2 Applying the statutory tests under the Planning Act 2008, Able has failed to establish that the acquisition is required for AMEP, and has not made a compelling case in the public interest for the acquisition;
- 5.5.3 There is a complete absence of detail on what alternatives Able has considered, if any, and why these are not possible. In particular, the feasibility of level crossings at the site should have been explored, as well as any other potential variations to the design of AMEP;
- 5.5.4 C.GEN has reasonably foreseeable requirements for rail access; and
- 5.5.5 There are a number of genuine operational concerns, not least that C.GEN would be required to depend on rights in contract against Able to obtain and maintain a connection and to allow it to use the Railway when Able wished to cross it for the purposes of AMEP.
- 5.6 The effect of any acquisition will be that although Able does not apparently need to use the Railway for the purposes of AMEP (other than to cross it), existing and potential users of a national, regulated railway asset (where there is a reasonable prospect of such use) are deprived of their ability to use that asset simply because it is considered to be an obstacle to a proposed private development. It is not acceptable, appropriate or in the public interest for part of the national railway network to be privatised to benefit one person's narrow private interests to the detriment of the wider public interest..

## 6. **Drainage**

- 6.1 Although Drainage is not a Principal Issue, C.GEN wishes to bring this issue to the attention of the Examining Authority. There are constraints on drainage for all development sites within the Killingholme Marsh system. AMEP should not be allowed to prejudice the drainage of other sites within the area. C.GEN is concerned to ensure that if the proposed North East Lindsey Drainage Board pumping scheme does not go ahead, Able will be required to make alternative surface water disposal arrangements to ensure that AMEP does not adversely affect the drainage of other sites within the area.

## **PART 3 - COMMENTS ON THE RELEVANT REPRESENTATIONS**

7. C.GEN notes the objections of Network Rail and Associated British Ports to AMEP and supports them.

#### **PART 4 - RESPONSES TO FIRST WRITTEN QUESTIONS**

8. To assist the Examining Authority, WR1 includes C.GEN's response to questions directed primarily to Able and Network Rail which relate to the issues in which it is concerned.

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## **PART 1 - INTRODUCTION**

1. This first written representation ("WR 1") has been prepared on behalf of C.GEN Killingholme Limited ("C.GEN"). It relates to the application by Able Humber Ports Limited ("Able") to the Secretary of State for the Able Marine Energy Park Development Consent Order, which bears the IPC's reference TR030001 (the "Application").
2. The Application was made on 19 December 2011 and accepted by the IPC on 12 January 2012.
3. C.GEN has notified the Examining Authority of its objection to the Application and the specific elements of the proposed Able Marine Energy Park ("AMEP") for which the Application was made in a relevant representation made on 30 March 2012. That representation is attached at Appendix 1.
4. This Representation has been prepared in response to and in compliance with the Examining Authority's procedural letters of 1 May 2012 and 31 May 2012 and its rulings following the Preliminary Meeting which took place on 24 May 2012.
5. This Representation contains the following Parts:
  - 5.1 Statements in response to the Principal Issues identified by the Examining Authority in its Initial Assessment of Principal Issues, set out in its letter of 1 May 2012 (Part 2);
  - 5.2 Comments on the Relevant Representations received by the Examining Authority (Part 3);  
and
  - 5.3 Responses to the first written questions posed by the Examining Authority in its procedural letter of 31 May 2012 (Part 4).

### **C.GEN**

6. C.GEN is a UK-based company that is part of the C.GEN group of businesses (C.GEN Group, whose headquarters are in Luxembourg).
7. C.GEN aims to invest in environmentally friendly power generation, with limited or no emission of CO<sub>2</sub>. The C.GEN Group develops its own projects in an environmentally and socially responsible manner.



8. The C.GEN Group is affiliated to the C.RO Ports Group, owners of C.RO Ports Killingholme. The businesses are, however, separate and distinct companies and the project outlined below is being promoted by C.GEN as part of the C.GEN Group's business.

#### **C.GEN's North Killingholme Power Project**

9. C.GEN proposes to make an application for a development consent order ("DCO") to the Secretary of State for Energy and Climate Change in the second half of 2012. The DCO would authorise C.GEN to construct and operate a 470MWe thermal generating station ("Generating Station") and associated development on land adjacent to C.RO Ports Killingholme, North Lincolnshire ("C.GEN Project"). This land, which is owned by C.GEN, is adjacent to that affected by the Application. The C.GEN Project is a Nationally Significant Infrastructure Project ("NSIP") for which a DCO is required under the Planning Act 2008.
10. The UK energy sector will change dramatically over the next decade with around 18GW of existing generating capacity set to close. In addition, in five years' time a third of the UK's coal generating capacity will be lost due to Government and European Union requirements to meet emissions targets. There is an identified and urgent need to create enough new (and particularly low carbon) generating capacity, not only to fill any existing gap but also to meet increasing demand, all while meeting emission targets.
11. The Generating Station is intended to operate either as a Combined Cycle Gas Turbine ("CCGT") plant or as an Integrated Gasification Combined Cycle ("IGCC") plant. When operating as a CCGT plant, the Generating Station would be fired on natural gas which would be obtained from existing high pressure gas supply networks in the area. When operating as an IGCC plant the Generating Station would be fuelled by coal (principally), possibly blended with petroleum coke (petcoke) or biomass. The use of gasification technology will provide a great deal of flexibility with respect to the choice of fuels. To allow the Generating Station to operate as an IGCC plant, gasification equipment would be constructed in addition to the items of plant associated with the CCGT.
12. The new generating capacity that will be provided by the C.GEN Project will be enough to supply electricity for up to one million homes and has the potential to help reduce the UK's carbon emissions by displacing electricity generation from older and less environmentally friendly coal-fired power stations. Operation of the Generating Station as an IGCC plant with CO<sub>2</sub> capture will emit up to 88 per cent less CO<sub>2</sub> (expressed as tonnes CO<sub>2</sub> per megawatt-hour) than existing coal-fired power stations in the UK. The emission of other primary

pollutants from conventional coal fired power stations (oxides of nitrogen, sulphur dioxide and particulate matter) will also be much lower, and comparable to those of a natural gas fired CCGT. In addition, operation of the Generating Station as a CCGT plant will emit 55 per cent less CO<sub>2</sub> than a conventional coal-fired plant of the same electrical power output.

13. Government policy is that new facilities for power generation are urgently needed, and that fossil fuel generating stations play a vital role in providing reliable electricity supplies. This includes the development of clean coal facilities, such as C.GEN's IGCC plant. This is set out fully in Part 1 of the National Policy Statement ("NPS") for Fossil Fuel Electricity Generating Infrastructure (EN-2). In addition, The Overriding NPS for Energy (EN-1) requires that all new commercial fossil fuel generating stations are carbon capture ready ("CCR") (paragraph 4.7.10). In addition to satisfying the CCR criteria, new coal-fired generating stations must have carbon capture and storage ("CCS") on at least 300 MW net capacity and secure arrangements for the transport and storage of carbon dioxide (NPS EN-1 paragraph 4.7.5. When operating as an IGCC plant, carbon dioxide will be captured using pre-combustion technology.
14. The C.GEN Project will thus be CCR because it will (subject to the necessary consents) be ready to operate as either a CCGT plant or an IGCC plant fired on solid fuel. It will, therefore, comply with national policy (EN-1) on CCR and CCS, while delivering urgently needed new electricity generating capacity in the United Kingdom.
15. Also relevant is the suitability of the site proposed for C.GEN's project for fossil fuel electricity generating infrastructure. Of paramount importance for C.GEN is the availability of a suitable site, located close to water (for use in cooling, and steam generation), and the availability of multi-modal transport links. In respect of each of these, C.GEN's project conforms with policy set out in the NPS for Fossil Fuel Generating Infrastructure (EN-2) which sets out policies specific to fossil fuel projects. At Part 2.2, EN-2 sets out the factors that should influence site selection by developers. These include: land use considerations (paragraph 2.2.1); the proximity of appropriate transport infrastructure for the transport of fuel, waste, and also for the purposes of construction (2.2.5); and the proximity to water resources for cooling and use in the turbine(s) (2.2.7).
16. Of particular relevance in relation to AMEP is the importance of transport infrastructure. Paragraph 2.2.5 of EN-2 states, "new fossil fuel generating stations need to be accessible for the delivery and removal of construction material, fuel, waste and equipment, and employees".

17. It goes on (paragraph 2.2.6) to emphasise the importance of multi-modal transport, including water or rail routes where possible, for the transport of fuel and residues. "Applicants should locate new fossil fuel generating stations in the vicinity of existing transport routes wherever possible". C.GEN has done so. Its project is located close to C.RO Ports Killingholme, which is suitable for handling coal deliveries by sea. It is also located adjacent to an existing Network Rail railway line, which will enable the delivery of solid fuel by rail, and also the transport from the site of waste and other residues. In each case, this will minimise the impact of the C.GEN Project on the road network, and lead to carbon reduction benefits. In addition, C.GEN considers that the only way to enable the use and delivery of coal mined in the United Kingdom is to ensure the availability of reliable rail access.
18. In light of this, C.GEN has commissioned work to review the requirements for the supply of solid fuel by rail. A copy of this report is appended as Appendix 2. This assesses the supply of coal by train as one of two basic infrastructures to transport coal to the plant. The use of the Killingholme Branch Line (the "Railway") for the transport of coal to, and waste from, the new Generating Station, is a fundamental part of the supply chain requirements for C.GEN's project. The report describes an assumed base case, which sets out the basic requirements for use of the Railway. Therefore, nothing in this study should be read as setting out currently anticipated maximum use requirements. C.GEN will need to be satisfied that there will be no impediment to modifying or increasing the use of the Railway, currently or in the future in accordance with its own requirements, subject to the regulatory framework. That flexibility cannot be assured if Able owns and operates the Railway. C.GEN considers that it is reasonable to expect that it may require further rail capacity in the future. The ability to use the Railway, and increase such use, within a regulated framework is therefore very important to C.GEN. Operations will require a throughput of at least 4,500 tonnes of coal per day. This will require the arrival of a minimum of five trains per day, a total of ten train movements a day. In addition, trains are likely to be necessary for the transport of waste from the site. A direct connection to Network Rail's network is thus essential to C.GEN's future operation as an IGCC plant.
19. C.GEN is currently in discussions with Network Rail for the purposes of obtaining a connection agreement, and ensuring that the necessary train paths are available on the network. C.GEN proposes to keep the Examining Authority abreast of any developments, through its written representations. The following parts of this Written Representation set out C.GEN's position on the Railway and AMEP in full. In summary, C.GEN objects to the

proposed acquisition of the Railway by Able because that would unreasonably and unnecessarily prejudice C.GEN's own project.

20. The C.GEN Project will thus play an important role in helping to meet future increased demand for electricity. It is currently at the pre-application stage. Preliminary environmental information was published on 2 May 2012 and the deadline for public comment closed on 14 June 2012. C.GEN is currently considering the responses.
21. It should be noted that C.GEN has never been formally consulted regarding AMEP despite Able's assurances that it would be.

## **PART 2 - STATEMENTS ON EXAMINING AUTHORITY'S INITIAL ASSESSMENT OF PRINCIPAL ISSUES**

### **22. Introduction**

This part of the Representation contains statements on behalf of C.GEN that address certain aspects of the Examining Authority's Initial Assessment of the Principal Issues contained in Annex C of its letter dated 1 May 2012. In each case, the Principal Issue in question is set out in bold italics as stated in the Examining Authority's letter and C.GEN's case in respect of the relevant Principal Issue follows. C.GEN reserves the right to comment further in relation to the Principal Issues, particularly if further information emerges at a later stage of the examination.

### **23. Principal Issue 2: *The extent to which the proposed port might have significant adverse navigation or other marine impacts on other operators in the Humber estuary, and possible mitigation requirements***

23.1 C.GEN's primary concern in this regard is that there has been inadequate consultation for it to properly assess the navigational and other marine impacts, such as sedimentation, of AMEP on its proposals for the future. In particular C.GEN is concerned that there has not been adequate assessment of the impacts of AMEP on C.RO Ports Killingholme. C.GEN may transport fuel for, and waste from, the C.GEN Project via C.RO Ports Killingholme and is concerned to ensure its future operations are not prejudiced by any adverse navigational or marine impacts AMEP may have on the facility.

23.2 In addition, the deficiencies in the hydrodynamic and accretion/scour modelling for AMEP have implications for the environmental impact assessment process for the C.GEN Project. C.GEN can have only limited, if any, confidence in its own assessment of the impacts of the C.GEN Project's cooling water intake pipes on the hydrodynamic regime, given that part of that assessment must include the in-combination effects with AMEP. To make this assessment C.GEN will need to rely on Able's assessment in respect of AMEP. This is of serious concern to C.GEN,

### **24. Principal Issue 3: *The scope and scale of the principal and associated development constituting the proposal, and the extent of the land proposed for compulsory acquisition***

24.1 C.GEN's primary concern with the scope and scale of AMEP relates principally to the proposed compulsory acquisition and privatisation of the Railway, which connects C.RO

Ports Killingholme to the wider national railway network (the "Network"). This is further discussed in relation to Principal Issue 8 below.

25. **Principal Issue 8: *The impacts of the proposed development on the assets and operations of Network Rail***

25.1 The DCO makes provision for the compulsory acquisition of the track and track-bed of the Railway by which C.GEN will be able to connect to the Network. C.GEN objects to this proposal. As described above, C.GEN proposes to transport solid fuel for the C.GEN Project along the Railway, as well as waste and other materials. This will require the construction of new sidings and the negotiation of connection and access agreements with Network Rail. Discussions between C.GEN and Network Rail are ongoing, as set out above. Those discussions relate not only to the need for connection and access arrangements, but also the availability of train paths.

25.2 C.GEN would thus be directly and adversely affected by the proposed privatisation of the Railway and/or any restriction upon its use or the manner of its operation. It has considerable concerns about the operational impacts on its future use of the Railway if compulsory acquisition proceeds.

25.3 C.GEN is very concerned about this part of the proposals for AMEP. It considers that Able has carried out insufficient consultation about AMEP, and in particular in relation to the Railway. If it had carried out consultation properly, it would have been aware of the concerns of C.GEN (and others) in relation to the Railway, and importantly, it would also have been aware of C.GEN's proposals for the future use of the Railway. Instead, Able has proceeded on the basis that it will acquire the Railway because it wishes to accommodate AMEP. As a result, its Application (including the Environmental Statement) fails to take account of future requirements for train movements on the Railway, and growth in those movements. Able does not know whether, in light of C.GEN's requirements for use (and those of others), it can manage any potential conflict between use of the Railway and operation of AMEP. In this respect, C.GEN submits that Able cannot show (and the Secretary of State cannot be satisfied) that AMEP can safely and effectively operate whilst allowing continued and future use of the Railway, whether it remains in the ownership of Network Rail or not.

25.4 C.GEN can show a reasonably foreseeable need for rail access. It has carried out studies to investigate its requirements for use of the Railway. It is in discussions with Network Rail about the need for a connection agreement and capacity. Able has not consulted C.GEN. Able has not shown for what purpose related to AMEP it needs to use the Railway, and

furthermore it has not shown why it is necessary to acquire the Railway. Its proposals are driven entirely by its own - unexplained - priorities, without regard to existing and future use of part of the Network, the use of which by others is supported and encouraged by Government policy.

Government and Network Rail policy on rail freight

- 25.5 Before setting out the arguments against Able's proposed acquisition of the Railway, it is important to consider the policy and factual background that underlies the need to maintain and develop the rail freight capacity of the Network. This is in the context of a proposal that seeks to remove infrastructure from the Network that has an important place in allowing freight to be transported by rail. The Railway would also have an important role in developing the capacity of the Network to carry freight by rail. As matters stand, there are no proposals to accommodate or protect the future rail freight needs of C.GEN in so far as they may be affected by AMEP. There is no, or at least insufficient, clarity, and no detail, about how the Railway (if acquired by Able) would be protected so that rail freight access or capacity required by C.GEN for its project could be accommodated and allowed to grow. C.GEN considers that this represents a serious deficiency in the Application, and therefore AMEP as a whole, given the policy context.
- 25.6 Able's proposal to acquire the Railway is inconsistent with the thrust and direction of Government policy all of which in recent years has aimed to increase the modal share of rail freight transport and enhance the Network's ability to transport freight effectively by rail. These policies accentuate the need to maintain rail connections to existing ports. It also conflicts with the legislative regime relating to railways.
- 25.7 These policy documents include:
- 25.7.1 *Delivering a Sustainable Railway* (Department for Transport (July 2007)) - This report states that the long term ambition is for a railway that "can handle double today's level of freight and passenger travel" and that the Government was confident "that rail freight will continue to grow over the next 10 years". The document cites the Eddington Study<sup>1</sup>, and states that "international links via ports...showing signs of congestion and unreliability" are "crucial to the

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<sup>1</sup> *The Eddington Transport Study*, Department for Transport, 2006.

productivity and competitiveness of the economy". The Secretary of State noted that the railway is well placed to serve such markets.

- 25.7.2 *Strategic Business Plan update, Supporting Documentation, Strategic Freight Network* (Network Rail (April 2008)) - In this update Network Rail asserts that it is a reasonable assumption that there will be a need to carry an increasing level of imported goods by rail between expanded ports and conurbations;
- 25.7.3 *Britain's Transport Infrastructure Strategic Rail Freight Network: the Longer Term Vision* (Department for Transport (September 2009)) - Increased freight capacity and the protection of strategic freight capacity are stated as key elements of the Government's longer term vision. It follows from this that, although the Railway on the Able site would not be defined as part of the strategic freight network, that privatising the Railway would be inconsistent with the implicit Government objective of achieving a more developed and fully functioning Network able to transport freight effectively;
- 25.7.4 *Value and Importance of Rail Freight* (July 2010) - Network Rail states in the summary to this document that "enabling rail freight to expand and thrive is a key responsibility of the rail industry, especially if rail is to play its part in supporting economic recovery and long term sustainable growth". Network Rail "forecast that rail freight could increase by as much as 140% by 2030" and that "even the most conservative scenario shows rail freight growing strongly". Network Rail's "vision is to increase the modal share of rail and to take freight off Britain's roads, improving the economy, our quality of life and substantially reducing carbon emissions". Moreover, in the main document Network Rail asserts that the UK Government recognises that rail freight "can have significant environmental and social benefits" and that accordingly the Government encourages its use with two key grants, which provide capital and revenue support;
- 25.7.5 *Planning ahead: Control Period 5 and beyond - Britain's railway from 2014* (Network Rail, Association of Train Operating Companies, Rail Freight Operators' Association) - This document confirms that demand for rail freight services is set to rise due to a return to economic growth, increasingly congested roads and skies, and a commitment that the UK cut its carbon emissions. The authors' vision includes "rail connections to terminals and distribution centres,



making rail a natural choice and increased market share from 11.5 per cent to 20 per cent of surface freight";

25.7.6 *The National Policy Statement for Ports* (Department for Transport (January 2012)) - The NPS for Ports requires the planning system to objectively consider the modal share of traffic entering and leaving ports in the context of external congestion and environmental costs. It states that "broadly speaking, rail and coastal or inland shipping should be encouraged over road transport, where cost effective"; and

25.7.7 *The National Policy Statement for Fossil Fuel Generating Infrastructure (EN-2)* - EN2 sets out the importance of accessibility for new fossil fuel generating stations. It also states that Government policy encourages the multi-modal transport of materials (fuel and residues) by water and rail routes where possible.

25.8 In respect of paragraphs 25.7.6 and 25.7.7 above, the Secretary of State will be aware of the provisions of Section 104 of the Planning Act 2008, which require that in deciding the Application the Secretary of State must have regard to "a relevant national policy statement". That must include having regard to the extent to which elements of a proposed development would frustrate, or impede, or conflict, with the requirements of a relevant NPS, so far as it relates to other existing nationally significant infrastructure. Further, the extent to which AMEP will impede C.GEN's use of the Railway is a relevant and important matter, to which the Secretary of State must also have regard under Section 104(2)(d) of the Planning Act 2008.

25.9 These policy documents illustrate the centrality of rail freight to ports and intermodal traffic, and the Government's focus on increasing its modal share. Despite the clear policy direction from the Government, Able is proposing that a freight railway line, for which connection agreements are in place for the purpose of moving freight by rail, and for which there will be increased demand from other users going forward, is to be removed from the Network to accommodate the requirements of one developer, Able has not even demonstrated a clear need to use that Railway. Similarly, it has not demonstrated the way in which it can or will affect the Railway. This is clearly contrary to the thrust of Government policy.

Able's purported justification

25.10 At paragraph 5.1.2 in the Statement of Reasons submitted with its application for AMEP, Able states that the Railway is to be acquired in order to allow the site to be operated as a

whole. However, Able does not assert that (or explain why) it needs to use the Railway as part of AMEP. Similarly, it does not ( or does not properly) explain why the presence of the Railway prevents the operation of AMEP as a whole or why, whilst still operating as a railway, the change in ownership so improves the operational characteristics of AMEP.

25.11 The Statement of Reasons then goes on to assert that the remainder of the Railway (i.e. that extending beyond the north-western boundary of the AMEP site) is also required so that the Railway can be treated as a single unit. It is not clear what is meant by this. The Railway is already a single unit. It can only be speculated that Able considers it impracticable for the Railway to be owned by a number of different bodies, or that it foresees some connection with the Logistics Park for which it has planning permission, located on the north-west side of C.RO Ports Killingholme. However, such a purpose would be beyond the scope of this Application and no compelling case in the public interest has been made for the acquisition.

25.12 This, on the basis of available information, comprises Able's case for acquiring the Railway. As it stands it is considered to be inchoate, vague, and certainly far short of a compelling case in the public interest.

No justification for acquiring Railway

25.13 At no point, and certainly as things stand, has it been clear why Able needs to acquire the Railway at all. This asserted requirement has not been explained to C.GEN. Neither is it at all clear from Able's application documents. To date, the available information remains uninformative and wholly unsatisfactory. No justification has been provided.

25.14 C.GEN cannot agree to the privatisation of the Railway without understanding how this would be achieved in a way that is not detrimental to its rights, which it cannot do given the complete lack of any information in this respect. That in turn demands a rationale for the acquisition. On the face of it, Able does not need to acquire the Railway at all for AMEP. It should not, therefore, be empowered to do so.

25.15 Able must satisfy the conditions of Section 122 of the Planning Act 2008. Pursuant to Section 122(2) a DCO may only include compulsory purchase powers if the land:

25.15.1 is required for the development to which the DCO relates;

25.15.2 is required to facilitate or is incidental to that development; or

25.15.3 is replacement land.

- 25.16 In relation to the test under Section 122(2), the Department of Communities and Local Government's *Planning Act 2008: Guidance related to procedures for compulsory acquisition* (CLG Guidance) states that the promoter must be able to demonstrate to the satisfaction of the decision-maker that the land in question is needed for the development for which consent is sought. The decision-maker should be satisfied, in this regard, that the land to be acquired is no more than is reasonably required for the purposes of the development.<sup>2</sup>
- 25.17 Applying the CLG Guidance to the Application, it is not apparent why the relevant land (the Railway) is required for AMEP, nor that it is no more than is reasonably required for AMEP to go ahead. The documentation accompanying the Application fails to explain why:
- 25.17.1 AMEP requires the compulsory acquisition and privatisation of the Railway; or
- 25.17.2 AMEP cannot be constructed or operated unless the Railway is acquired.
- 25.18 In addition, pursuant to Section 122(3) there must be a compelling case in the public interest for the land to be acquired.
- 25.19 Able has also failed to make a compelling case in the public interest that the compulsory acquisition of the Railway is required. The compelling case applies not only to the acquisition of Network Rail's land itself, but also to the consequences of that acquisition in terms of the implicit injurious affection of C.GEN's land caused by the removal of the potential for a direct connection to the Network. The requirement to show that there is a compelling case in the public interest applies equally to the proposed disapplication of the Railways Act provisions contained in Article 47(1) of the draft DCO because the effect of that legislative amendment on Network Rail's and C.GEN's land will be the same.
- 25.20 The Statement of Reasons does not set out how acquiring the Railway in order for the site to be operated as a whole meets the tests in Section 122 set out above, or even what "as a whole" means. It is possible to speculate that Able intends for parts of wind turbines, vehicles, and other materials to cross the Railway on a flexible basis. However, a number of questions remain as a result: How will this operation affect the operation of the Railway? How will C.GEN's future train movement requirements be provided for and managed? What sensitivity analyses for future use of the Railway have been undertaken? How will this be done safely

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<sup>2</sup> Department for Communities and Local Government, *Planning Act 2008: Guidance related to procedures for compulsory acquisition*, para 24.

and efficiently? Are works proposed to facilitate this? In short, how can the interference be explained and then justified?

- 25.21 Neither does the Statement of Reasons explain how operating the Railway as a single unit would satisfy those tests. Clearly, it would not be sensible for the Railway to be operated by a number of different bodies. That is why the network comprised in the Railway is properly in the hands of Network Rail, and should remain so unless a compelling case is made in the public interest. There is no obvious reason why compulsory acquisition is required to ensure the status quo. In fact, it would result in a wholly different, and detrimental, position from the point of view of C.GEN.
- 25.22 In the context of the conditions in Section 122 of the Planning Act 2008, as well as the criteria in CLG's Guidance, Able is required to look at alternatives to compulsory acquisition. This includes examining how its proposals could (or could not) be modified, for example by building bridges or underpasses, or rearranging the layout of its development to have one bridge crossing accessed by gentle gradients, and/or diverting the Railway.
- 25.23 There is no evidence that Able has looked at alternatives. This would appear in part to be a result of it failing to consult properly. As a consequence, C.GEN is being asked to give up the possibility of a direct connection to the Network on the basis of a complete lack of any proper proposals. This is not an acceptable position. Able has failed to explain why there is no feasible alternative, including whether level crossings could continue to be used here, or why its development cannot be redesigned. The absence of any proper consultation - through which alternatives could have been properly explored, based on detailed proposals - has placed C.GEN in a position where it is now being pressured to accept a solution that is detrimentally worse, and uncertain. This is not reasonable.
- 25.24 Network Rail and the Office of Rail Regulation ("ORR") have specific requirements in respect of works to level crossings in the interests of public safety. As part of their policies will generally not permit new level crossings because they are thought to be dangerous. However, level crossings are to be permitted in "exceptional circumstances".<sup>3</sup>
- 25.25 It is assumed that AMEP requires new or different level crossings (or conceivably inset track over a longer distance) but C.GEN is not aware that any consideration has been given to whether new level crossings would be permitted. Whilst AMEP might be an enclosed site,

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<sup>3</sup> Office of Rail Regulation, *Level Crossings: A guide for managers, designers and operators*, Railway Safety Publication 7, p81.

which would be surrounded by appropriate security fencing the Railway should be assumed to function as an ordinary branch line, rather than as an internal network in a particular ownership.

25.26 C.GEN submits that Able must be required to set out (with evidence) the discussions it has had with Network Rail and the ORR about the feasibility of level crossings at AMEP, and requests the Examining Authority requires it to do so. It is not even clear whether Able proposes to install level crossings. The plans provided with the Application show a representation of crossings but the nature of these is not clear. Able must demonstrate the extent to which it has endeavoured to persuade Network Rail and the ORR that AMEP may be considered "exceptional circumstances", and the nature and content of any discussions in this regard, as well as technical and other submissions. For example, if level crossings might be acceptable subject to a redesign of AMEP, that should have been considered, and reported. It should be done now. This is of fundamental importance to determining whether the conditions in Section 122 Planning Act 2008 are met. The Secretary of State should have regard to this in making the determination as to whether there is a need to acquire the Railway, and if there is a compelling case in the public interest to do so (Section 122 Planning Act 2008). C.GEN submits that if level crossings could be installed - even if this requires Able to redesign elements of AMEP - (and bearing in mind the general public will not have access to the AMEP site) there is no need for Able to acquire the Railway, and nor would any compelling case exist for it to do so, to the extent that any exists now (which it does not). If level crossings can be constructed, even if this means that Able has to manage/design AMEP differently, no party that will need to use the Railway, nor Network Rail, will be detrimentally affected.

25.27 It would need to be demonstrated by Able why the Railway could not be retained by Network Rail if access was properly controlled. If Able cannot show this with Network Rail in place, the position is not helped if Network Rail is not present because the same considerations apply to the management of the Railway in any case. There would then be no compelling case to acquire the Railway on this basis.

#### Future requirements for rail access for C.GEN

25.28 As stated above, the C.GEN Project will be CCR, as required by Government policy (and the relevant NPS, in particular the Overarching NPS for Energy<sup>4</sup> and the NPS for Fossil Fuel

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<sup>4</sup> EN-1, sec para 4.7.

Electricity Generating Infrastructure<sup>5</sup>) because it will (subject to the necessary consents) be ready to operate as an IGCC plant fired on solid fuel. This solid fuel would need to be capable of being delivered by rail, but also by sea. This flexibility is important to C.GEN as an IGCC plant. It will give certainty as to availability of fuel. Without a connection to Network Rail's network, there is a substantial risk that an NSIP vital for ensuring that the UK's energy needs are met will not be able to operate. That is not an appropriate outcome and would be contrary to Government policy, including NPS EN-2 in relation to new fossil fuel electricity generating infrastructure.

25.29 In this case, what is proposed by Able is that an NSIP with no identified need to use the Railway - other than, put simply, for it not to be there at all - will deprive a nationally significant, low-carbon energy generator of the regulated access by which it should be able to obtain supplies of solid fuel by rail.

25.30 C.GEN does not consider that part of the Network can be privatised where there is an identified need for its use as part of the Network - see paragraph 33.8 below. Even if the Railway is not in use at this moment, there is a defined, reasonable and reasonably foreseeable requirement for its use in future. In fact, C.GEN can demonstrate a much better and clearer expectation of use for the Railway than Able. The conditions of Network Rail's licence do not allow it to dispose of Network or assets that will be required or are likely to be required in the future (i.e. where there is a reasonably foreseeable use), without the ORR's approval. Therefore Network Rail's licence from its independent regulator would be overridden by this proposal. Network Rail is not in a position to agree the disposal without reference to the ORR.

25.31 Whilst one of the scenarios envisaged in C.GEN's Preliminary Environmental Information Report is the construction and operation of a gas fired generating station, the CCGT, with subsequent conversion to a generating station fired on solid fuel with carbon capture technology - the IGCC - it is equally the case that the Generating Station will be constructed as an IGCC plant. In any case, the turbines that C.GEN will install will be capable of ready conversion to burn hydrogen as part of an IGCC plant. Today, CCGT turbines are not capable of burning hydrogen without significant and expensive works, or replacement. The C.GEN Project will be properly CCR. It should not, therefore, be assumed that there will be no need for a rail connection from the outset because it is foreseeable that C.GEN will use the connection for its IGCC. To assume C.GEN would not would be to prejudice C.GEN.

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<sup>5</sup> EN-2. see para 2.3.

- 25.32 Even if it were the case that the C.GEN Project first began operation in a CCGT role, a rail connection will be required at a subsequent stage. C.GEN selected the site for the proposed power station for reasons that include its proximity to the Railway and - subject to the necessary agreements with Network Rail - the ability to obtain a solid fuel supply by rail. If the Railway is acquired by Able as proposed, it is difficult to see how that rail access can be guaranteed. It would be entirely dependent on Able granting access through a contract with C.GEN, and operating the Railway, which would not be Able's main business. At the very least, Able could not be required to enter into a subsequent contract with C.GEN; any such arrangements - were they acceptable - would have to be agreed now, and Able's project made contingent on them being agreed. A sanction would be required for later failing to provide access.
- 25.33 The C.GEN Project is at the pre-application stage. This has required considerable investment in the development of the technology and a design of the Generating Station as an IGCC plant, fired on solid fuel. It has involved significant expenditure on experts and professional advisers, and on technical reports and other supporting documents. It will involve large amounts of management time, attendance at public meetings, the preparation of written submissions, among other aspects of the development consent process under the Planning Act 2008. It has also involved carrying out extensive consultation with the public and statutory bodies (including Network Rail). To date, expenditure on C.GEN's Project has amounted to over €2.4 million. It should be plain that this level of commitment and expenditure will not be incurred without C.GEN believing that it will be able to construct and operate a generating station that is CCR, including securing the delivery of solid fuel by rail. The requirement to have direct access to Network Rail's Network is fully intended and reasonably foreseeable. It is much clearer and more foreseeable than Able's requirement, if there is any such requirement, for Able to use the Railway at all.
- 25.34 C.GEN expects that it will require the arrival of a minimum of 5 trains per day, a total of ten train movements a day, to supply it with solid fuel to operate as an IGCC plant. This is a significant number of trains. In addition, it is possible that C.RO Ports Killingholme may also choose to move freight via the Railway, and as part of operating any fuel delivery infrastructure for the C.GEN Project.
- 25.35 In light of this, it is submitted that the Secretary of State can consider that there is a reasonably foreseeable use for the Railway.

Balancing AMEP and the rail needs of other users

- 25.36 Assuming that AMEP is indeed an NSIP (which is contested), it is not the case that because of this fact its needs (such as they are in relation to the Railway) override the existing and future requirements of other operators in the vicinity of AMEP. It is not the case that C.GEN and others must simply accept that Able should be able to acquire the Railway for its own purposes, and then rely on Able to provide them with the same level of connection/access that Network Rail does under the supervision of the ORR. As it stands, Able has not carried out a proper assessment of the impacts of it acquiring and managing the Railway, in combination with the operation of AMEP. The current position is entirely contrary to the usual method of assessing whether the impacts of a project are acceptable.
- 25.37 As matters stand, it appears that Able proposes that the Railway - for which there is a reasonable prospect of use by others - is removed from the Network because it is an obstacle to the proposed development. C.GEN submits that the fact that Able is an NSIP (if indeed it is) does not by itself justify the acquisition of land and rights in land.
- 25.38 The Secretary of State is empowered to confer powers of compulsory acquisition not simply because a project is an NSIP, but only where land is needed/required to facilitate the project, and there is a compelling case in the public interest for the acquisition of that land. It is not sufficient to rely on the fact that the project is an NSIP.
- 25.39 Where there are alternatives to compulsory acquisition, the land cannot be shown to be needed, and there is no compelling case.
- 25.40 Further, it is not Government policy that there is a hierarchy of projects, with some - such as an NSIP - trumping the needs of other projects or facilities. Where there are differing requirements, a compromise may be possible. It is not the case, however, that one project can justifiably remove access to publicly owned facilities for its own ends. Network Rail has an important role in this respect to ensure that access to its Network remains unimpaired.
- 25.41 There is an identified need for port facilities to support the construction of offshore wind generating capacity, but that is not an overriding policy that on its own justifies removing land and interests from others. That must be judged on a case-by-case basis having regard to the availability of alternatives to the acquisition, or indeed the project as a whole. That is particularly the case where existing or proposed projects that are affected by proposals are supported by NPS, and those NPS also support the requirement for rail access envisaged by C.GEN (see references to EN-2 above at paragraph 25.7.7).



25.42 Under Section 104 of the Planning Act 2008, the Secretary of State is required to determine an NSIP with reference to the relevant NPS. That means having regard to policies that may also dictate that he should not allow certain elements of a proposal to go ahead, where they would conflict with a NPS. For C.GEN, there is NPS support for rail access. In this respect, a decision about AMEP must have regard to the relevant NPS that require rail access to be maintained.

Practical considerations

25.43 There are a number of practical issues that are fundamental to C.GEN's concerns about the use of the Railway if it becomes a private siding. A private siding is a portion of railway track that connects to Network Rail's Network but is managed, owned or controlled by a person other than Network Rail. Control by Able is not appropriate or acceptable if the Railway became a private siding. As a result, the Railway should remain in the ownership of Network Rail.

25.44 C.GEN has not been given any detail about how its future requirements to connect to Network Rail's Network can be guaranteed. The Environmental Statement notes that existing rights of access would be retained but, gives no information as to how this would be achieved. The DCO does not address this expressly. There is no guarantee that Able could operate the Railway without prejudicing other users. Indeed, if Able considers the Railway to be detrimental to AMEP's operations, it is implicit that the Railway and its operation would be subsidiary to AMEP. There is a worrying lack of clarity as a result of Able not considering or addressing these points.

25.45 A number of further concerns arise:

25.45.1 Network Rail owns and operates the Railway and is responsible for its maintenance, repair and renewal. It has been appointed for that purpose pursuant to the Railways Act 1993 and Able has failed to establish any reason why Network Rail should not continue to be responsible in this manner or is not an appropriate person to do so for the Railway. It is not appropriate, or proportionate, to acquire the Railway and remove it from the existing regulatory framework to accommodate the private interests of Able in operating AMEP;

25.45.2 It is also of concern that Able has no demonstrated experience of operating main line railway facilities, let alone safely and efficiently. It has not explained how it would manage to do so. Given that C.GEN would rely upon safe and efficient

operation of the Railway, operation by Able is not appropriate. It is Network Rail's role to provide safely and efficiently operated railways where required. Able has not set out what its safety case would be for operating the Railway as a siding, with components crossing the Railway while trains are using it. There is no reason why this responsibility should be handed to a third party where there is no evidenced requirement to use the Railway as part of AMEP, but only the ability to cross it;

25.45.3 Further, it is questionable whether it is appropriate for the Railway to be operated as a private siding given the likely volume of rail traffic. It is noted that the Planning Inspectorate's first round of written questions include a number of questions to Able about the Logistics Park that is to the north-west of C.RO Ports Killingholme and how it would be connected to the Railway. That development includes proposals for a railway siding. It is reasonable to assume that if this Project is implemented it will generate train movements. However, that project is not the purpose of this Application and it is not appropriate to justify acquisition of the Railway on this basis;

25.45.4 In combination with movements from C.RO Ports Killingholme, the Able Logistics Park (and potentially others) there will be relatively heavy - and potentially conflicting - use of the Railway. It is appropriate that such use and timetabling is regulated, quite apart from the need to regulate conflicts with AMEP and its operation. It will be noted that there is no in-combination assessment of such use, including of projected increases in C.GEN's (and other potential users') train movements. No signalling proposal is provided;

25.45.5 Able has not applied for a connection agreement - or explained where AMEP's connection to the Network would be - and cannot evidence how this will be secured, and maintained, or that it will be able to obtain such an agreement. The proposed acquisition leaves C.GEN reliant on Able to give it access via the Railway, which then would be in Able's ownership and control, to the Network;

25.45.6 Currently C.GEN would be able to rely on Network Rail to regulate access and maintain the track in the future. There is a framework for ensuring that this happens. If the Railway is privatised, C.GEN would have to rely on enforcement of access, maintenance and other provisions through the Courts. In circumstances where track was not maintained, or access was blocked, C.GEN would have no

immediate recourse. This is unacceptable given that it would have been put in this position by the unnecessary privatisation of the Railway;

- 25.45.7 A private agreement between C.GEN and Able would be wholly dependent on Able - a potential competitor or conflicting user - performing its contractual obligations as to maintenance, access, and an agreed method of operation that could only be enforced in the Courts. This is distinguished from a position in which all parties are able to use the Railway as part of the regulated Network, where access, maintenance and other matters are controlled by Network Rail and the ORR; and
- 25.45.8 There is no safeguard proposed for the possibility that AMEP is not built out but the Railway is acquired. In such a case, C.GEN would have been unnecessarily deprived of its right to access and would have to seek access by other means. It would be entirely unacceptable for C.GEN to have to seek powers of compulsory acquisition to be able to use the Railway.
- 25.45.9 There is too much uncertainty about how C.GEN's ability to use the Railway in the future would be affected, or guaranteed. C.GEN submits that, in the circumstances, the Secretary of State should not grant Able powers of compulsory purchase in relation to the Railway.

#### Conclusion

- 25.46 In conclusion:
- 25.46.1 Able has failed properly to justify its proposal to compulsorily acquire the Railway.
- 25.46.2 Applying the statutory tests, Able has failed to establish that the acquisition is required for AMEP, and has not made a compelling case in the public interest for the acquisition;
- 25.46.3 There is a complete absence of detail on what alternatives Able has considered if any, and why these are not possible. In particular, the feasibility of level crossings at the site should have been explored, as well as any other potential variations to the design of AMEP;
- 25.46.4 C.GEN has reasonably foreseeable requirements for rail access; and

- 25.46.5 There are a number of genuine operational concerns, not least that C.GEN would be required to depend on rights in contract against Able to obtain and maintain a connection and to allow it to use the Railway when Able wished to cross it for the purposes of AMEP.
- 25.47 The effect of any acquisition will be that although Able does not apparently need to use the Railway for the purposes of AMEP (other than to cross it), existing and potential users of a national, regulated railway asset (where there is a reasonable prospect of such use) are deprived of their ability to use that asset simply because it is considered to be an obstacle to a proposed private development. It is not acceptable, appropriate or in the public interest for part of the Network serving a statutory harbour which is a statutory undertaking to be privatised to benefit one person's narrow private interests to the detriment of the wider public interest..
26. ***Principal Issue 7: The impacts of the proposed development on land traffic and the adequacy of the proposed mitigation***
- 26.1 In addition, the deficiencies in the information provided regarding the impact of AMEP on the road network have implications for the environmental impact assessment process for the C.GEN Project. C.GEN can have only limited, if any, confidence in its own assessment of the impacts of the C.GEN Project on the road network, given that part of that assessment must include the in-combination effects with AMEP. To make this assessment C.GEN will need to rely on Able's assessment in respect of AMEP. This is of serious concern to C.GEN,
27. **Drainage**
- 27.1 Although Drainage is not a Principal Issue, C.GEN wishes to bring this issue to the attention of the Examining Authority.
- 27.2 There are constraints on drainage for all development sites within the Killingholme Marsh system. AMEP should not be allowed to prejudice the drainage of other sites within the area.
- 27.3 At present the site is drained by a network of open watercourses draining via a flapped gravity outfall. Able's Environmental Statement relies on a proposed North East Lindsey Drainage Board ("NELDB") scheme for improving the drainage of the Killingholme Marsh system. This is a pumping scheme designed to cater for unrestricted surface water discharges from all potential development sites in the catchment area. Able will relocate the existing tidal outfall

and the proposed pumping station to accommodate AMEP but asserts that otherwise AMEP is compliant with NELDB requirements.

- 27.4 C.GEN is concerned to ensure that if the NELDB scheme does not go ahead, Able will be required to make alternative surface water disposal arrangements to ensure that AMEP does not adversely affect the drainage of other sites within the area. There are no protections in place at present to ensure this occurs, other than the statement by the NELDB in its relevant representation that if its proposed scheme does not go ahead it will not grant consent to Able unless it can demonstrate that alternative arrangements will be put in place.

**PART 3: COMMENTS ON THE RELEVANT REPRESENTATIONS RECEIVED BY THE EXAMINING AUTHORITY**

**28. Introduction**

This part provides C.GEN's comments on the Relevant Representations that have been made to the Examining Authority. The name of the party who has made the Relevant Representation is identified in bold, with C.GEN's comments on that Relevant Representation immediately following.

**29. Network Rail Infrastructure Limited**

29.1 C.GEN notes the objections of Network Rail to AMEP set out in its Relevant Representation and supports them.

**30. Associated British Ports**

30.1 C.GEN notes the objections of Associated British Ports to AMEP set out in its Relevant Representation and supports them.

## PART 4: RESPONSES TO EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS

### 31. Introduction

This Part of the Representation sets out responses to the Examining Authority's first written questions as set out at Annex D1 to its letter dated 31 May 2012. While the Examining Authority has not directed any questions primarily to C.GEN's attention, to assist the Examining Authority C.GEN has provided a response to those questions which relate to the issues in which it is concerned.

### 32. Response to questions primarily for Able

#### Railway construction and operation

44. *Is it the intention to operate the railway line within the application site solely as a single siding?*

32.1 C.GEN has identified (see paragraph 25.10 onwards) that there are no details of how Able proposes to operate the Railway at all. C.GEN submits that it is not appropriate to consider the Railway as a siding in any event; certainly not that part of the Railway that goes through AMEP. Any trains serving C.RO Ports Killingholme - or even the Logistics Park - will be through trains. As a result, the track comprised in the Railway cannot be considered to be a siding.

32.2 The Application documents do not identify additional sidings or loops. Further, the Application does not deal anywhere specifically with works to the Railway. There is no specific provision for Able to carry out works to improve/upgrade the Railway. Further, if Able proposes to construct and operate level crossings, or inset track, these should be authorised by a specific work in the DCO. In the absence of a specific authorising provision, Able will not have the requisite authorisation to carry out the works necessary to the Railway. It must therefore be questioned whether Able proposes to carry out any works at all.

32.3 Able has stated that it proposes to run two trains per day on the Railway, although it is not clear from where these trains would originate, where they would travel, or what purpose they would serve in connection with the construction and/or operation of AMEP.

32.4 Therefore, C.GEN submits that if the Secretary of State authorises the acquisition of the Railway, the DCO must contain a provision requiring Able to carry out the requisite works to the Railway to enable its use by C.GEN and not to operate AMEP unless it has done so. Further, Able's use of the Railway should be limited to those levels that it has assessed in its

Environmental Statement: not more than two trains per day. Able must also be required to operate the Railway in accordance with a methodology that allows C.GEN to use the Railway, including increasing its use in future, according to a methodology approved by the Secretary of State. Able should be required to agree that methodology with C.GEN. It should be prevented AMEP except in accordance with that methodology. C.GEN would also require protective provisions to that effect. Such provisions would also need to protect its operational requirements.

45. *Is it the intention to reinstate the railway line along the section which is dismantled towards the Logistics Park, and if so where are the impacts of this assessed?*

32.5 It is clear that any such intention would require further consents in addition to the DCO. No such intention could be brought forward as part of the development proposed in the Application. It would not meet the tests in Section 122 of the Planning Act 2008.

32.6 Nonetheless, there is a lack of clarity about Able's future proposals for the Railway. This is of considerable concern. The future use of the Railway is important and relevant to the determination of whether the proposed acquisition should be allowed. This is because if Able proposes to use the Railway to link AMEP and the Logistics Park, this may lead to an increase in the number of trains Able operates on the Railway above the two per day that have been assessed.

32.7 If Able proposes to operate more than two trains per day as part of AMEP, including those serving the Logistics Park, it must assess the environmental effects of this. That is a clear requirement of the EIA Regulations. Paragraph 20 of Part 1 of Schedule 4 requires an Environmental Statement include, "a description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative ... effects". If the Logistics Park will use the Railway in addition to AMEP's use (even if not connected), that is a cumulative and in-combination effect. If the Logistics Park will use the Railway in relation to AMEP, that also needs to be assessed. Such an assessment would need to include forecasts of the use of the Railway predicted for the Logistics Park. At present there is no assessment and the Secretary of State cannot be satisfied that the effects of AMEP will be properly contained.



46. *What would be the implications for the construction and operation of the proposed development if the compulsory acquisition of the Network Rail land was not approved?*

32.8 As stated elsewhere, there is a worrying lack of detail about Able's proposals for the Railway. This includes an outline of the main alternatives that Able has studied and the reasons for Able's choice to dispose of the structures and buildings for AMEP as it has done, including the need for acquiring the Railway to accommodate that. Able has, therefore, failed to comply with the requirements of the EIA Regulations. The Environmental Statement simply assumes that the Railway will be acquired. It is wholly dependent on that being the case. It does not show how the development might be otherwise laid out, or constructed in a different way, to avoid the effects of acquiring the Railway.

32.9 Further, Able cannot satisfy Section 122 of the Planning Act 2008 because it cannot show that the Railway land is needed for its development, and that there is a compelling case in the public interest to remove the Railway from public ownership and prejudicially affect the rights of those who currently are able to use it. This is explained fully in paragraphs 25.14 to 25.27 above.

32.10 Able has not complied with the Guidance on Procedures for Compulsory Acquisition. Able has also failed to show that it has looked at alternatives to compulsory acquisition of the Railway. Such alternatives might include the diversion of the Railway, constructing bridges or the provision of alternative access.

47. *Is it proposed that the railway track should be maintained at existing levels, or does the proposed development require that it should be raised to match new ground levels of working areas?*

32.11 That this question has been asked demonstrates the lack of detail about Able's proposals for the Railway, and the lack of proper assessment. If alterations to the Railway are proposed these must be assessed.

Transport and travel

48. *In Annex 15.1, Transport Assessment -*

.....

*(c) what if any assumptions about growth in port traffic at Immingham and C.RO have been built into the modelling?*

32.12 It is apparent that no such assumptions have been made, and no allowance has been made in respect of growth in vessel or rail traffic. The transport modelling has proceeded on the basis of existing traffic levels at C.RO Ports Killingholme. While future traffic levels as a result of committed development (and developments for which planning permission has been sought) have been inputted into the model, no assumptions based on the growth of traffic associated with existing facilities have been included. As stated above, C.GEN's pending DCO application includes the option of importing coal via C.RO Ports Killingholme. As a result the impacts of AMEP on C.RO Ports Killingholme have not been fully assessed. The assessment is defective. It cannot properly assess the effect of AMEP on the environment. If AMEP were approved on this basis it would be contrary to the Directive.

32.13 It should also be noted that Able has not taken any account of use of the Railway by C.GEN, or in fact use by anybody other than Able itself. The assessments certainly do not take account of potential growth in rail traffic on the Railway. Its transport assessments are, therefore, flawed.

33. **Response to questions primarily for Network Rail**

62. *Would Network Rail explain further why it contests the validity or applicability of s.47(1) of the draft Development Consent Order to the effect that the proposed modification would constitute a minor modification for the purposes of Part 4 of the Railways Act (RA2005), given that -*

*(a) s.34(2) of RA2005 gives the power to determine that a closure is minor modification to the Secretary of State for Transport who would make the Order; and (or alternatively)*

*(b) s.35 of RA2005 relates to the impacts on passengers and stations?*

33.1 Irrespective of any response from Network Rail, C.GEN contests the validity of Article 47(1) of the draft DCO. It agrees with Network Rail's statement in its relevant representation that

the closure of the Railway does not constitute a minor modification under Section 34 RA 2005. Given this, it is not appropriate for the DCO to deem it otherwise. Doing so will circumvent the regulatory requirements that pertain where a closure is not a minor modification, and in respect of which the appropriate decision maker is the ORR.

- 33.2 Section 34 RA 2005 provides that a proposal is a minor modification if it comes within the definition of Section 35 RA 2005. The main thrust of Section 35 is that a closure is only a minor modification where there are two alternative pieces of track that serve a destination and both are equally valid (in terms of journey time and an absence of stations on that part of track). Section 35 RA 2005 does not cover the closure of a section of track serving a particular destination (in this case C.RO Ports Killingholme) or others, where there is no alternative rail access to that site. A closure of that nature is, by virtue of Section 33 RA 2005, network change. Therefore, in the RA 2005, Parliament has determined that where a closure is of the nature of removing rail access, as it is here, it is properly the responsibility of the ORR as regulator to determine whether it should go ahead. Therefore, properly this question should also be directed to the ORR.
- 33.3 C.GEN acknowledges that Section 120 PA 2008 provides that a DCO may "apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the order". However, it does not consider - as a matter of policy at least - that the DCO should disapply the statutory provisions that would ordinarily require the network change procedure. This is for a number of reasons.
- 33.4 Able has not stated why it wishes to disapply the requirement to follow the network change procedure, apart from stating in the Explanatory Memorandum that by doing so it will avoid the detailed procedure involved. C.GEN can only assume that Able wishes to avoid the need to obtain separate and additional consents, and therefore the time and expense of the relevant processes. That is not a basis on which a DCO should disapply or amend other statutory provisions.
- 33.5 The DCO application and examination process does not - and cannot be - a substitute for the network change process in terms of regulatory oversight. It is different and would introduce an anomalous procedure. The DCO process is concerned with land use planning, and the acceptability or otherwise of proposed powers of compulsory purchase, see for example paragraph 4.10.2 of the Overarching NPS for Energy (EN-1). Further, the network change process is concerned with rail regulatory matters that are the responsibility of the ORR. There are specific notice and other procedural requirements for network change that have not been

followed here. Parties other than those who have registered as interested parties may therefore be prejudiced. Article 47(1) is designed to avoid subjecting the proposed closure to the proper regulatory scrutiny;

- 33.6 The assessment that the ORR will make is as regulator rather than judgements based on NPS, important and relevant considerations or a compelling case. The Secretary of State cannot simply step into the shoes of the ORR. Indeed, the purpose of an independent regulator would be defeated by the Secretary of State doing so. That is why Parliament has determined that closures of the nature as proposed here are within the purview of the ORR, and should be subject to proper scrutiny and the relevant process. Article 47(1) undermines the purpose of the ORR.
- 33.7 C.GEN submits that the same approach as used in Article 47(1) of the DCO in respect of the ORR's functions as regulator could be applied to the need for other consents and/or approvals, for example protected species licences under the Wildlife and Countryside Act 1981 or environmental permits under the Environmental Permitting (England and Wales) Regulations 2010. Under those provisions, matters which may well have been assessed as part of the environmental statement are nonetheless subject to further review by the relevant regulators. Parliament has not excluded their powers. That is appropriate. C.GEN submits that the same applies in relation to network change. The Secretary of State is not the ORR and cannot purport to adopt its role. To include such a provision would infringe C.GEN's convention rights.<sup>6</sup>
- 33.8 Further, C.GEN wishes to bring to the Examining Authority's attention the normal requirements upon Network Rail to obtain the consent of the ORR to disposals of land, as required by condition 7 of Network Rail's licence. At Appendix 3 is a copy of the ORR document, *Land Disposal by Network Rail: regulatory arrangements* (October 2010). Paragraph 1.1 makes clear that the ORR's "objective is to protect land that may be required for future development of the railway network and to prevent the disposal of that land against the public interest". It will be noted that paragraph (g) of the general consent to land disposal only applies to land "which has no reasonably foreseeable use (i) for, or in connection with, services relating to railways ...". As there is a reasonably foreseeable use for the Railway, Network Rail would be required under the terms of its licence to obtain the consent of ORR. Article 47(1) does not address the need for consent from the ORR under Network Rail's licence. In any event it cannot and neither should it, as a matter of policy. Only the ORR can,

and should, determine whether part of the Network can be disposed of. C.GEN submits that remains the case even where another person seeks to acquire the Railway compulsorily.

**- END OF WRITTEN REPRESENTATION -**

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<sup>6</sup> See Section 121 Planning Act 2008

# **APPENDIX 1**

Relevant Representation

**Able Marine Energy Park**

Representation No. **53**

Received **30 March 2012**

From **Benjamin Dove-Seymour** on behalf of **C.GEN Killingholme Limited**

**Representation****//**

1. C.GEN Killingholme Limited ("C.GEN") proposes to construct and operate a 470 MWe gas-fired electricity generating station on its - and additional - land, adjacent to the Project. This NSIP is currently at the pre-application stage and preliminary environmental information will be published shortly.

2. C.GEN formally objects to the Project.

3. Despite the findings of the IPC in its Section 55 Checklist, C.GEN has not received notice of acceptance of the application or copies of any documents, despite assurances from Able. C.GEN is surprised by Able's approach to consultation, which appears to ignore the requirements of the Planning Act 2008, etc. and remains concerned about Able's approach to engaging with bodies within section 42 of the Planning Act 2008, and its neighbours generally.

4. The application documents do not explain why the Project requires the compulsory acquisition and privatisation of Network Rail's railway, or why the Project cannot be constructed or operated unless the railway is acquired.

5. C.GEN proposes to transport solid fuel for the Project along the railway. This will involve the construction of new sidings and the relevant connection and access agreements being concluded with Network Rail. Discussions with Network Rail commenced in mid-2011 and are ongoing. Able is aware of C.GEN's proposed use of the railway. C.GEN would be directly and adversely affected by the proposed privatisation of the railway. It would not be acceptable or appropriate for part of the national railway network to be privatised to benefit one person's narrow (and as yet unexplained) private interests to the disadvantage of wider public interests. The proposed acquisition does not satisfy the conditions in section 122 of the Planning Act 2008. It is not required for the development; and there is no compelling case in the public interest for it to be acquired.

6. C.GEN has additional concerns, which are exacerbated by the lack of consultation:

6.1 Drainage: there are constraints on drainage for all development sites within the Killingholme Marshes system. The Project should not be allowed to prejudice the drainage of other sites within the area;

6.2 Navigation: C.GEN may obtain fuel /transport waste for its project via C.RO Ports Killingholme. C.GEN is concerned that there has not been adequate assessment of the impacts of the Project on the Port, which may prejudice C.GEN's proposals in future;

6.3 Traffic: C.GEN is considering the impacts of the Project on the road network; and

6.4 Cooling Water: C.GEN understands that Able may not have properly assessed changes to the river regime, in particular sedimentation. As well as potentially affecting the Port, C.GEN is concerned to the extent it can rely on the ES to understand the impacts of the Project on its own proposals for cooling water pipes.

7. C.GEN requests that the Commission considers these matters to be principal issues and gives C.GEN an opportunity to make additional

detailed representations on them in the examination. **//**

# APPENDIX 2

Royal Haskoning: *C.GEN North Killingholme Power project: Logistics study - Rail requirements*





# **C.GEN North Killingholme Power project**

## Logistics study - Rail requirements

C.GEN NV

28 June 2012

Final Report

9W5130



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**APPENDICES**

Appendix A            Layout Drawings



## 1 INTRODUCTION

This brief report forms part of a larger logistics study regarding the fuel intake and the waste outtake of the planned C.GEN ICGG Power Plant near Killingholme.

The report identifies C.GEN's requirements for use of the railway connecting its site to Immingham (the Killingholme Branch Line) or the national rail network for their fuel supply and waste outtake. The report details the modes of rail transportation for the various products and the required minimum rail road capacity per product.



## 2 TERMS OF REFERENCE

### 2.1 Product specifications

#### 2.1.1 Primary fuel

Product type	coal (two qualities)
Bulk density	0.9 tonnes/m <sup>3</sup>
Characteristics	average free flowing, medium to very dusty
Angle of repose	30 - 35°
Design heating value	25.1 GJ/t <u>Note:</u> the power station shall be able to handle coal with 23 GJ/t
Throughput	4,000 tonnes per day <u>Note:</u> based on the design heating value 1,200,000 tonnes per year (including secondary fuels) <u>Note:</u> based on 85% availability

#### 2.1.2 Secondary fuels

The throughput of the secondary intake products is regarded as part of the total throughput of the primary product.

Product type	Limestone
Bulk density	1.1 - 1.4 tonnes/m <sup>3</sup>
Throughput	5% of coal throughput =~ 200 tonnes per day
Product type	Pet coke
Bulk density	0.6 - 0.8 tonnes/m <sup>3</sup>
Throughput	max. 25% co-firing 1,000 tpd 300,000 tpa
Product type	Biomass (low priority, only wood pellets)
Bulk density	0.65 tonnes/m <sup>3</sup>
Throughput	max. 20% co-firing 800 tpd 240,000 tpa

#### 2.1.3 Waste products

Product type	Slag
Bulk density	1.2 kg/m <sup>3</sup>
Throughput	10 – 15% of coal throughput =~ 600 tonnes per day
Product type	Filter cake
Bulk density	1.0 tonnes/m <sup>3</sup>
Throughput	1% of coal throughput =~ 40 tonnes per day



Product type	Liquid sulphur
Bulk density	1.3 tonnes/m <sup>3</sup>
Throughput	120 tonnes per day

## 2.2 Operational hours

Operational hours power plant:	24 hours per day, 7 days per week, 50 weeks per year
--------------------------------	---

Operational hours train unloading:	
• Effective working hours per day	21 hours in 3 shift operation
• Operational days per week	7 days
• Operational weeks per year	50 weeks

## 2.3 Train specifications

Locomotive	Class 66
Length of locomotive	21.4 m
Wagon types	bottom unloaders
Rail freight operator	GB Rail freight, DB Schencker or Freightliner
Length of wagon	17.7 m
Number of wagons per train	19, 21 or 23
Length of train	19 wagons + locomotive: 357.7 m 21 wagons + locomotive: 393.3 m 23 wagons + locomotive: 431.7 m
Gross weight wagon	102 tonnes
Payload	73.3 tonnes/wagon 19 wagons: 1,425 tonnes 21 wagons: 1,575 tonnes 23 wagons: 1,725 tonnes



Figure 2.1: GB Rail freight



Figure 2.2: DB Schencker



Figure 2.3: Freightliner



## 2.4 Storage specifications

Table 2.1: Storage specifications

Product	Storage capacity	Storage type	Note
Coal + pet coke	To be determined	Bulk flat store	
Limestone	To be determined	Silos	limestone will be co-fired with coal with high ash fusion temperatures
Biomass	To be determined	Silos (max. 25m high)	
Slag	To be determined	Enclosed	
Filter cake	To be determined	Enclosed	
Liquid sulphur	To be determined	Silos	

## 2.5 Design principles

With respect to noise and dust emission: ALARA, BREF

In the UK the most stringent noise emission restrictions apply during night-time (23:00 – 7:00) compared to day-time (7:00 – 23:00).

Therefore, all noise emitting activities shall take place during day-time (7:00 – 23:00) as much as reasonably possible.

To reduce the personnel costs (OPEX) it is preferred to concentrate all handling within a day-shift (8 hours) if technically and operationally feasible.





### 3 ASSESSMENT OF REQUIRED STORAGE

This chapter briefly discusses the required amount of storage and the type of storage per product and scenario. In this report, a working assumption has been made that the main fuel storage is located at an external coal stockyard (Immingham in this case). Current annual cargo throughputs at ABP Humber International Terminal are 11 million tonnes of coal, petroleum coke, minerals, biomass and animal feedstuffs. Other UK seep sea ports or domestic mines are considered for fuel import for the Killingholme Project, but the conclusions made in this report remain valid and equally relevant.

#### 3.1 Design principle

##### 3.1.1 Storage type

It is assumed that all storage on the Project site will be fully enclosed as much as feasible due to the stringent requirement with respect to dust and noise emissions. This includes the coal, petcoke and biomass storage and the waste products.

##### 3.1.2 Storage amount

There are two governing principles taken into account for the minimum amount of storage for the main fuel products:

- 1.5 times the cargo of the largest vessel (in case of import by ship);
- 1/8 of the annual throughput (1.5 month consumption).

The principles are briefly discussed below.

##### 1.5 times largest vessel (in case of import by ship)

This requirement is based on logistics and is meant to guarantee that an arriving ship can always be unloaded immediately and completely into the storage.

The extra capacity of 0.5 times the largest ship accounts for the fact that even with strict planning there will always be product in store upon arrival of a vessel.

Moreover, in case of a power plant there must always be a certain amount of product in store to guarantee uninterrupted operations of the power plant.

##### 1/8 of the annual throughput

The 1/8 of the annual throughput in storage has to do with availability of the power plant: by having a certain amount of storage available the risk of a plant shutdown due to fuel shortage is minimised.

The exact quantity of buffer storage that is required is normally based on a risk assessment which takes into account factor like control over the supply chain, risks of strikes, world-wide availability of product, etc.

Such a risk assessment is not part of the scope of this report. Therefore the benchmark figure of 1/8 of the annual throughput (or: 1.5 month consumption) for equivalent operations is taken into account.



The more stringent requirement prevails when determining the storage for this project.

## **3.2 Fuel storage per product and scenario**

### **3.2.1 Primary fuel: Coal**

#### Storage of multiple coal types

Although two types of coal are anticipated to be fired the total required amount of storage is not doubled since the total annual coal consumption will remain 1.2 mtpa divided over the two coal types.

It is assumed that the total coal storage is divided into two separate stockpiles with ample toe clearance to keep the two coal grades separate.

This assumption is made since a separation by toe clearance gives the most conservative storage footprint and since it is more flexible than separation using a separation wall. The use of separation walls prohibits flexibility regarding the ratio between the volumes of the different coal types, since with separation walls this is fixed.

The total required coal storage for fuel intake using trains is discussed below.

#### Intake by train

It is obvious that for intake by train the storage requirement of 1/8 of the annual throughput is governing, viz. 150,000 tonnes storage.

In this report, a working assumption has been made that the main storage is located at the coal stockyard at Immingham. Current annual cargo throughputs at ABP Humber International Terminal are 11 million tonnes of coal, petroleum coke, minerals, biomass and animal feedstuffs.

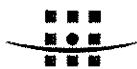
Other UK seep sea ports or domestic mines are considered for fuel import for the Killingholme Project, but the conclusions made in this report remain valid and would be equally relevant.

If the majority of the required 150,000 tonnes is stored at Immingham, then at the power plant only operational storage is required plus a smaller buffer to guarantee uninterrupted operations at the power plant in case of unlikely events like blockage of the rail road, strikes affecting the supply between Immingham and Killingholme, etc.

The possible duration of such an interruption of supply from Immingham should be subject to a risk assessment but is assumed to be maximum two weeks for the purpose of this study.

The required amount of storage is therefore two weeks consumption plus the cargo of one barge convoy, being:

$$14 \text{ days} \times 4,000 \text{ tpd} + 10,000 \text{ tonnes} \approx 70,000 \text{ tonnes}$$



### 3.2.2 Secondary fuels: Petcokes, Biomass, Limestone

It is assumed that intake of all secondary fuels will take place in the same manner as the raw coal since the envisaged equipment is capable of handling the secondary fuels. Only parcel sizes may differ.

#### Limestone

It is understood that some coal types have a too high ash melting point and obstructions at the lower end of the gasifier can occur. In such case, limestone has to be added to lower the ash fusion temperature. The limestone is mixed with the fuel prior to gasification.

The raw limestone is delivered to the C.GEN Power Plant as aggregate with a maximum lump size of 50x50mm and stored in silos. This limestone is added to the raw coal on the belt conveyors towards the coal day bins and is pulverised together with the coal in the coal mills.

The limestone can be handled with the same equipment that is envisaged for intake of raw coal. It is understood that limestone is added to the coal up to a maximum of 5%. Therefore the required amount of storage based on the 1/8 of the annual throughput is about 7,500 tonnes.

#### Petcokes and biomass

Petcokes and biomass will be co-fired. It is understood that in the absence of any biomass or petcokes the power plant can function normally provided that sufficient coal is in store. Therefore the amount of storage is considered not to be determined by securing supply (1/8 of the throughput) but by the benchmark regarding 1.5 times the largest vessel.

However, it is assumed that some form of covered storage facilities for petcookes and biomass are present in Immingham so that petcookes and biomass can be delivered from Immingham to the power plant following the same ratio as for the coal supply.

#### *Petcokes*

It is assumed that the petcokes will be stored together with the coal in the covered bulk flat store with ample toe clearance to guarantee product separation. Since the petcokes are co-fired the amount of petcokes in store plus the amount of coal should be together about 70,000 tonnes. Having extra storage capacity in the bulk flatstore for the petcokes on top of the required 70,000 tonnes plus the extra area for toe-clearance is not considered to be necessary.

#### *Biomass*

It is assumed that biomass will be stored in separate concrete silos with a maximum height of 25m to avoid disintegration of the stored pellets. It could be considered to store the biomass in the same bulk flat store with coal and petcokes. However, assessment of the feasibility of such a solution is not part of this study.



The required amount of biomass storage is as follows:

- Train: two weeks consumption  
20% x 4,000 tpd x 14 days = 11,200 tonnes  
Note: assuming that the majority of the storage is at Immingham

### **3.3 Waste products storage**

It is expected that there will not be severe disruptions of the outtake of waste products, since the modalities which will take care of the outtake are readily available. Therefore, it is assumed that the storage capacities for the waste products must be equal to the weekly production of the respective waste material.

#### **3.3.1 Slag**

Slag is delivered by belt conveyor to a bunker inside a hall. The bunker must at least be large enough to facilitate the storage of (600 x 7 x 24 ≈) 100,000 tonnes of slag. Since slag is non-dusty and non-smelly, it can be stored openly. An overhead crane in the hall takes care of the even distribution of the slag along the bunker and for the loading of tipper trucks or open-topped containers.

#### **3.3.2 Liquid sulphur**

Liquid sulphur is stored in silos, which must at least be (120 x 7 x 24 ≈) 20,000 tonnes, or 10,000 m<sup>3</sup>.

#### **3.3.3 Filter cake**

Filter cake is discharged directly in waste containers, which are positioned under filter presses. Filter cake is produced with 40 tonnes per day, which are approximately two waste containers. Therefore, there must be enough storage space to store 14 containers.

Due to the limited quantities of filter cake outtake by truck is considered to be most feasible. Filter cake transportation is therefore not discussed any further in this report.



## **4 FUEL INTAKE - TRAINS**

### **4.1 General**

In general there are two scenarios possible:

- 1) All storage at the power plant site with direct unloading of vessels into the trains to avoid costs per ton for storage at the sea terminal. This is the practice at DRAX power station. This leads to lower stock costs at the sea terminal but requires a high capacity rail loading and unloading system to handle the peaks when a vessel arrives at the port plus and extensive storage yard at the power plant.
- 2) Minimum operational storage at the power plant and the majority of the storage at a sea terminal. This practice is assumed for the C.GEN power plant in this report, practice and will lead to higher stock costs at the terminal but allows for low capacity train handling.

The wagons used are of bottom unloading type. Considering the prevailing climatic conditions, no thawing station is required.

### **4.2 Half trains or full trains**

There is limited space on the C.GEN Site for rail tracks. Two options were identified:

- 1) Half trains;
- 2) Full trains.

NOTE: In both options it is assumed that the empty train can return to Immingham on the same track and in the opposite direction where it came from.

#### *Half trains*

Refer to the rail layout drawings in Appendix A. The arriving train can enter the side track immediately from the main line. There is room for an arriving half train + main line locomotive to park in front of the unloading station.

The unloading sequence is listed in the table in the next section.

#### *Full train*

The rail tracks on the C.GEN Site are extended to allow handling of full trains. The unloading station is located in a curve to allow parking of a full train in front of and behind the unloading station.

Note that it is assumed that the main line locomotive returns via the switch directly after the unloading station, therefore the curve radius of the track for the empty train is 100m which is for shunting locomotives only.



### 4.3 Capacity calculations

The train unloading cycle is as follows (Table 4.1):

**Table 4.1: Train unloading cycle**

No. Activity	Time required [s]	
	half-train	full train
1	From the previous cycle, an empty set of wagons train including shunter is idle on the track after the unloading station.	
2	A full train arrives at Site.	
3	90	90
4	300	300
5	60	60
6	300	300
7	120	160
8	260	340
9	300	300
10	The shunter pulls the train through the unloading station. It stops when a wagon is directly above the hopper in the unloading station.	
11	The wagon is unloaded.	
12	480	920
13	60	60
	<b>TOTAL [s]</b>	<b>1910</b>
	<b>TOTAL [min]</b>	<b>32</b>

The times are based on an on-site travel speed of 10 kmh for the locomotive, 5 kmh for the shunter, a couple / decouple time of 5 minutes.

Two options are distinguished, depending on the available length of the rail track before and after the train unloading station:

#### Option 1: Arrival of half-trains

Using trains with a length of 12 wagons and 75 tonnes payload, a typical half-train will deliver approximately 900 tonnes of coal. With a throughput of 4,000 tonnes of coal per day, 5 half-trains will arrive per day.



It is estimated that it takes 15 minutes to travel from HIT to Site with an average speed of 30 kmh and accounting for some slack.

At HIT, an advanced train loading system is present. According to [Recent developments in the field of bulk conveying, prof. F. Kessler], "The actual loading time of an approximately 400m long freight train with about 1600 tons of coal is approx. 20 minutes." Therefore, it is assumed conservatively that 900 tonnes of coal are loaded in 15 minutes. For shunting and waiting an additional 30 minutes are taken.

The results are displayed in the below table for various available hours per day.

It is seen from Table 4.2 that it takes approximately 8 hours to complete all activities for 5 half-trains excluding the unloading of coal.

The total time available for unloading is defined by the amount of available hours per day minus all the other required rail activities.

**Table 4.2: Required unloading capacity half-trains**

Item	Scenario in terms of available unloading hours per day				Unit
Available hours per day	8	12	16	24	[h]
Time required for loading at HIT	15	15	15	15	[min]
Time required for shunting and waiting at HIT	30	30	30	30	[min]
Time required for travelling	15	15	15	15	[min]
Time required for shunting and waiting at C.GEN site	32	32	32	32	[min]
Number of trains	5	5	5	5	
Total time spent for all trains	7.7	7.7	7.7	7.7	[h]
Available time for unloading	0.3	4.3	8.3	16.3	[h]
Required unloading capacity	13,000	1,050	540	280	[tph]

It is seen that in order to be able to unload five half-trains in 12 hours, an unloading capacity of at least 1,050 tph is required. It can also be seen that it is not feasible to unload a half-train in 8 hours, because there is only 0.3 hours left available for unloading in this case, which requires an unloading capacity which is too large.

Required equipment consists of a single locomotive, a single shunter and two sets of 12 wagons.



Option 2: Arrival of full trains

Using trains with a length of 23 wagons and 75 tonnes payload, a typical train will deliver approximately 1,725 tonnes of coal. With a throughput of 4,000 tonnes of coal per day, 2.3 trains per day are required. This means that two trains will arrive per day, and every third day three trains will arrive.

For calculations, it is assumed that 3 trains arrive in a day.

It is assumed that 1,725 tonnes of coal are loaded at HIT in 30 minutes.

It is seen from Table 4.3 that it takes approximately 6 hours to complete all rail activities for 3 trains excluding unloading.

To unload the 3 full trains in 8 hours, an unloading capacity of at least 2,360 tph is required, which is quite high. To unload in 12 hours, 840 tonnes per hour is required, which is feasible.

Required equipment consists of a single locomotive, a single shunter and two sets of 23 wagons.

**Table 4.3: Required unloading capacity for full trains**

Item	Scenario in terms of available unloading hours per day				Unit
Available hours per day	8	12	16	24	[h]
Time required for loading at HIT	30	30	30	30	[min]
Time required for shunting and waiting at HIT	30	30	30	30	[min]
Time required for travelling	15	15	15	15	[min]
Time required for shunting and waiting at C.GEN site	42	42	42	42	[min]
Number of trains	3	3	3	3	
Total time	5.8	5.8	5.8	5.8	[h]
Available time for unloading	2.2	6.2	10.2	18.2	[h]
Required unloading capacity	2,360	840	510	290	[tph]

#### 4.4 Handling capacity assessment

Freightliner

Freightliner utilises trains with a length of 19 wagons and 73,3 tonnes payload.


The wagons are of bottom unloading type.






Maximum speed of a Class 66 locomotive is 75mph, most freight is restricted to 50, 55 or 60mph.

**Table 4.4: Class 66 locomotive properties**

Class 66 Locomotive	
	
Designation	Class 66 Locomotive
Description	3300hp mainline diesel locomotive introduced in 1998.
Operation subsidiary	Freightliner Heavy Haul Limited
Weight	127 tonnes
Fuel capacity	1496 gal
Maximum speed	75 mph
Length over buffers	19.1 meters

**Table 4.5: Bottom unloading bulk wagon properties**

Bulk wagon, bottom unloader	
	
Designation	HXA
Description	The wagon is designed for the conveyance of coal. The body is designed for coal to be loaded through a full length, 1570mm nominal width aperture and to discharge through four sets of self-cleaning doors into a hopper between the rails. The doors are designed to operate individually.
Operation subsidiary	Freightliner Heavy Haul Limited
Tare Weight (Tons)	28.3 tonnes
Carrying Capacity (Tons)	73.3 tonnes
Length over buffers	19.1 meters

#### 4.5 Train route assessment

An overview of the train route from Immingham to Killingholme is shown in Figure 4.1.



**Figure 4.1: Sketch of train route**

The crossings on the HST terminal complex are shown in Figure 4.2.



**Figure 4.2, Crossings on HST terminal complex**

The time that the crossings on the HST terminal complex will be closed are estimated as follows: A full train with 23 wagons and a locomotive is approximately 460 m long, a half-train is 250 m long.



Crossing 1:

Railway length to switch is approximately 500 m. This means that this crossing will only be blocked by a running train.

*Half-train option:* With an average speed of 10 kmh (train is slowing down / starting up) the crossing will be blocked for approximately 2 minutes for a half-train.

The crossing will be blocked for  $(2 \times 10 =)$  20 minutes per day

*Full train option:* With an average speed of 10 kmh (train is slowing down) the crossing will be blocked for approximately 3 minutes for a full train.

The crossing will be blocked for  $(3 \times 6 =)$  18 minutes per day.

Crossing 2:

Railway length to switch is approximately 180 m.

*Half-train option:* The length from crossing to the unloading station for half-trains is approximately 450 m. This means that the crossing will be blocked only by a moving train. The train moves at 5 kmh (over switch). The crossing will be blocked for approximately 3 minutes.

The crossing will be blocked for  $(3 \times 10 =)$  30 minutes per day.

*Full train option:* Railway length to switch is approximately 630 m. The crossing will be blocked for 5 minutes per train. The crossing will be blocked for  $(5 \times 6 =)$  30 minutes per day.

Crossing 3 and 4:

*Half-train option:* The length from crossings to the unloading station for half-trains is approximately 268 m. This means that the crossing will be blocked only by a moving train. The train moves at 5 kmh. The crossings will be blocked for approximately 3 minutes.

The crossing will be blocked for  $(3 \times 10 =)$  30 minutes per day.

*Full train option:* The length from crossing to the unloading station is approximately 450 m. This means that there will be just enough space to keep crossings free while the locomotive decouples. The crossing will be blocked for 5 minutes by the moving train.

The crossing will be blocked for  $(5 \times 6 =)$  30 minutes per day.

It should be noted that the possible outtake of by-products by rail is not taken into account in the crossings occupancy.



## **5 INTAKE OF SECONDARY PRODUCTS**

Besides coal, there are several secondary products taken in, namely limestone, petcoke and biomass.

### **5.1 Limestone**

The raw limestone is delivered as aggregate with a maximum lump size of 50x50mm. The limestone is stored in silos. The limestone is added to the coal on the belt conveyors towards the coal day bins and pulverized together with the coal in the coal mills. It is assumed that limestone will be delivered per train just like the normal coal.

### **5.2 Petcoke**

Petcoke is handled and stored in the same way as the normal coal. The bulk flat store will be designed for the additional storage space that the secondary product requires, with additional space for toe clearances as shown in the drawing in Appendix A. It is assumed that limestone will be delivered per train just like the normal coal.

### **5.3 Biomass**

Biomass in the form of wood pellets is predominantly acquired overseas from countries like Sweden, Canada and USA. Wood pellets will therefore arrive in Handysize or Panamax vessels. It is assumed that the wood pellets will be unloaded and stored at Immingham. It is furthermore assumed that biomass will be delivered per train just like the normal coal. Wood pellets are stored in silos, which will have a maximum height of 25m.



## 6 OUTTAKE OF WASTE PRODUCTS

### 6.1 Outtake of slag

#### 6.1.1 General


Slag, with a density of 1.2 tonnes/m<sup>3</sup>, is a waste product which is produced in quantities of 600 tonnes per day. The slag is conveyed to the slag storage area with a belt conveyor. The belt conveyor discharges the slag in the storage area. An overhead crane is used to distribute the slag evenly and to load tipper trucks or open-topped containers. Disposal of slag by rail is explained below.

#### 6.1.2 Outtake by train

Open-topped containers are loaded by slag if the outtake of slag is by train. The overhead crane fills the open-topped containers, which are transported by a reach-stacker to the paved area between the railroad and the coal storage, which is wide enough for a reach-stacker to manoeuvre and load flatbed wagons this route is approximately 600 m long.

Freightliner utilises container wagons for which the details are shown below.

**Table 6.1: Container wagon specifications**

	
Designation	KFA
Description	Standard Freightliner wagons operating as single wagons introduced during 1988.
Operation subsidiary	Freightliner Heavy Haul Limited
Tare Weight (Tons)	20 tonnes
Carrying Capacity (Tons)	60 tonnes
Loadable deck length	60 feet, is capable of carrying 1 x 40' and 1 x 20' containers or 2 x 30' containers or 3 x 20' containers.

Three 20ft container can be loaded on a single KFA wagon. However, from the specifications for 20 ft containers and the KFA wagons it can be seen that each 20 ft container shall be loaded with maximum 18 tonnes in order to stay below the maximum carrying capacity of the KFA wagon. It is therefore advised to load only two containers on a single KFA wagon. If only 2 containers are loaded on a single KFA wagon, the containers can be loaded with 27 tonnes of slag. This means that 22 containers will have to be filled by the overhead crane in the slag storage each day. The containers are loaded by reach-stackers on 11 wagons. This means that it is required to have a half-train with 11 wagons arriving each day.





When three containers are loaded on a single wagon, only  $(20 - 3) = 17$  tonnes of liquid sulphur can be loaded in a single 20 ft tank container in order to keep below the maximum allowable payload of the KFA wagon. When a single wagon is loaded with two containers, each container can contain 27 tonnes. This means that  $(120 / 27) = 5$  containers must be filled with liquid sulphur each day. A half-train can carry up to 24 tank containers. To collect this amount of liquid sulphur, every  $(24 / 5) = 5$  days a half-train is necessary.

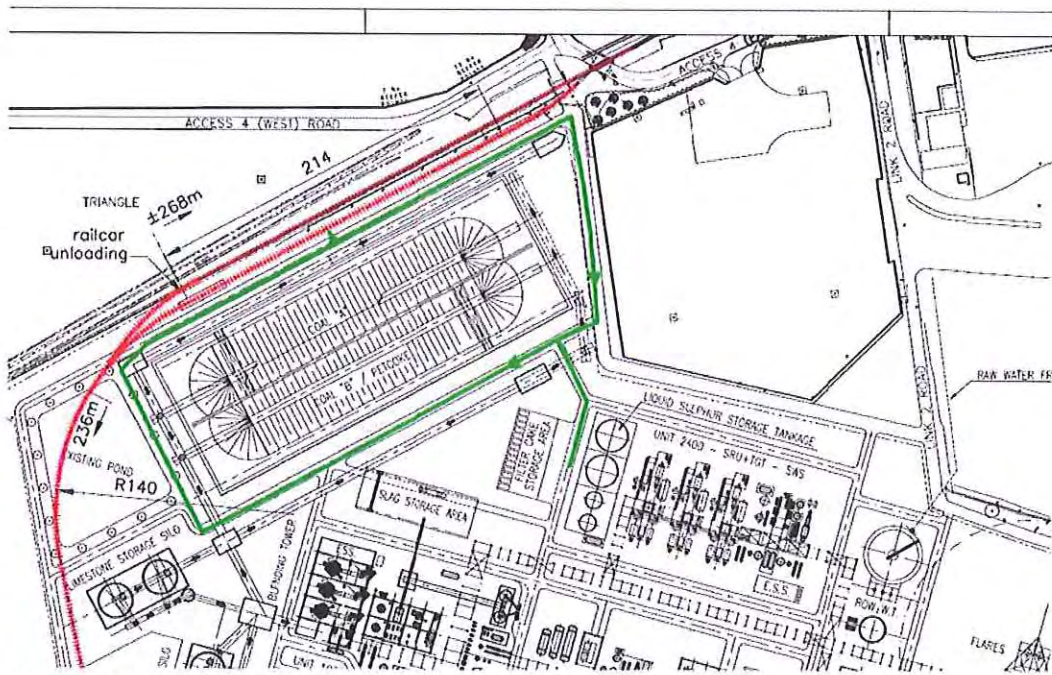


Figure 6.2: Reach-stacker route for liquid sulphur

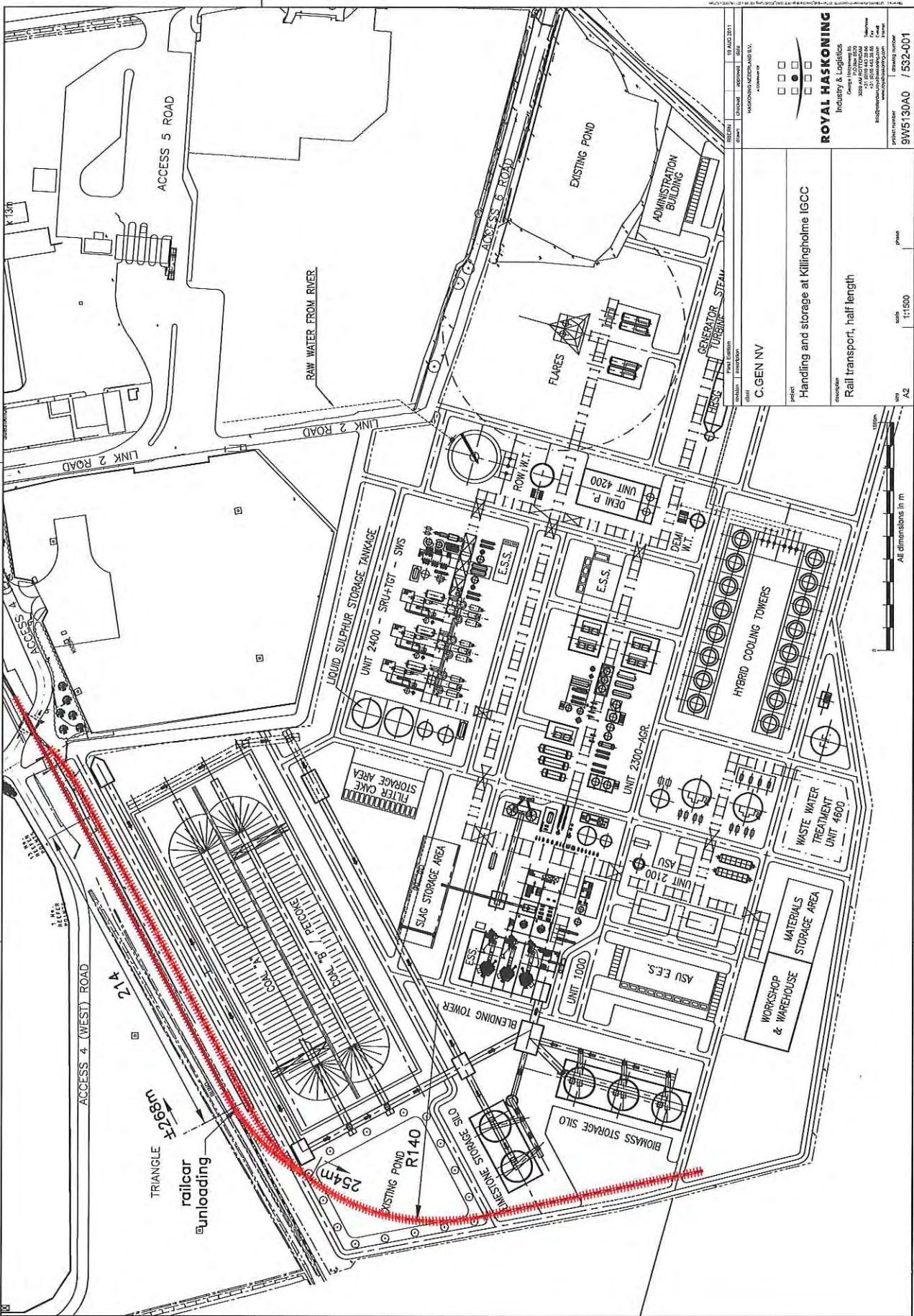
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## **Appendix A**

### **Layout Drawings**





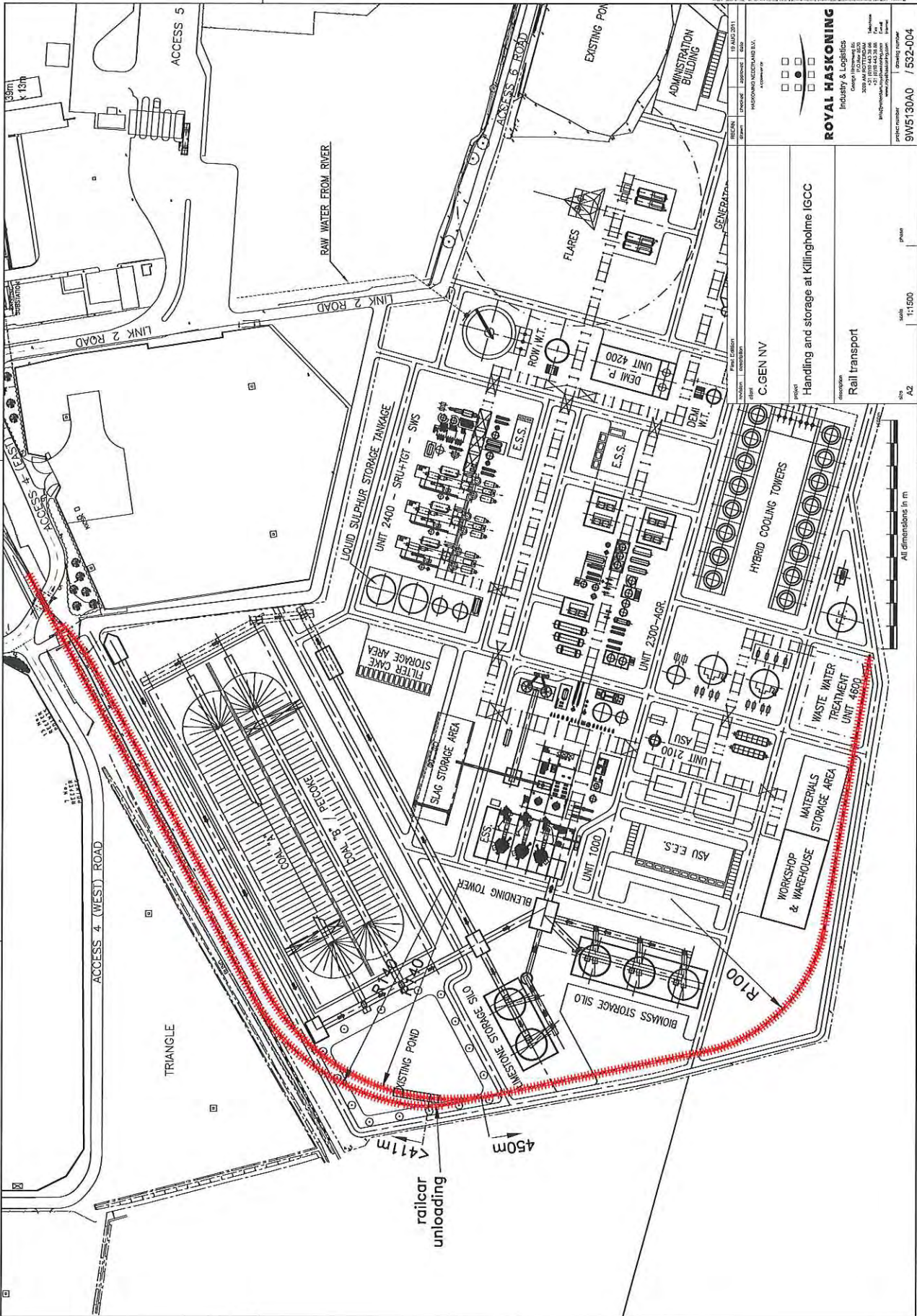
<b>ROYAL HASKONING</b> Industry & Logistics Oude Hoopdijk 55 3824 AP ZUTPHOEN T: +31 (0)142 25 80 00 F: +31 (0)142 25 80 01 E: <a href="mailto:royalhaskoning.com">royalhaskoning.com</a>	
project number	9W5130A0 / 532-001

client	C.GEN NV
project	Handling and storage at Killingholme IGCC
location	Rail transport, half length

scale	1:1500
sheet	A2

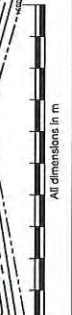
All dimensions in m





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PROJECT: Handling and storage at Killingholme IGCC  
 FACILITY: Rail transport  
 SCALE: 1:1500  
 SHEET: A2  
 PROJECT NUMBER: 9W5130A0 / 532-004  
 DATE: 19 JULY 2011



## **APPENDIX 3**

Office of Rail Regulation: *Land Disposal by Network Rail: the regulatory arrangements*



OFFICE OF RAIL REGULATION

**Land disposal by Network Rail:  
the regulatory arrangements**

**October 2010**

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# 1. Introduction

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- 1.1 The Office of Rail Regulation (ORR) regulates how Network Rail Infrastructure Limited (Network Rail) disposes of its land through condition 7 of its network licence. Our objective is to protect land that may be required for future development of the railway network and to prevent the disposal of that land against the public interest. Accordingly, Network Rail must seek our consent for any disposal not covered by a general consent.
- 1.2 In this document we set out:
- the general consent which allows Network Rail to dispose of land without prior notice in certain situations;
  - the criteria we will use in deciding whether we should intervene when notified of a proposed disposal; and
  - our policies relating to major air rights, compulsory purchase orders, and the potential for compensation after a blocked disposal.
- 1.3 For completeness we include as an annex the text of condition 7 of Network Rail's network licence.

## 2. General consent to the disposal of land by Network Rail

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1. ORR directs that for the purposes of condition 7 of the network licence Network Rail may dispose of land by entering into any of the following transactions without giving prior notice:
  - (a) the grant of a lease, which incorporates the Station Access Conditions, of all or part of a station to a passenger train operator providing railway services under a franchise agreement with the appropriate franchising authority or under a concession agreement with a Passenger Transport Executive or Transport for London (or its successors). The lease must be capable of termination on or before the termination of the relevant franchise agreement or the concession agreement. For the purpose of this paragraph a franchise agreement or a concession agreement shall not be treated as being terminated if, when it comes to an end, it is replaced by an agreement between the passenger train operator and the appropriate franchising authority, or a Passenger Transport Executive or Transport for London (or its successors), on similar terms;
  - (b) the grant of a lease of part of a station of which Network Rail is the station operator to a train operating company for the purpose of providing services relating to railways;
  - (c) the grant of a lease:
    - (i) of all or part of a light maintenance depot (LMD) to any person for the purpose of providing services relating to railways; or
    - (ii) of land for the construction of an LMD provided that there are no plans to use the land for other railway purposes and the land is used only for such purposes as are permitted by the National Depot Access Conditions (December Standard) or such other depot access conditions as may be approved by ORR;
  - (d) the grant of a reversionary or concurrent lease pursuant to an obligation contained in any such lease referred to in paragraphs 1(a) and 1(c) provided that the grant of the reversionary or concurrent lease



does not interfere with or restrict the carrying on of railway services at the station or LMD;

- (e) the grant of a lease or a licence which contains a materially unfettered right permitting Network Rail to terminate the lease or licence if the land is required by Network Rail for the performance of its responsibilities as a provider of network services or for the purpose of the network business or for the purposes of railway and/or integrated transport related redevelopment;
- (f) the grant of a lease or licence of all or part of a building which will be used by the lessee as office accommodation;
- (g) the disposal of land which has no reasonably foreseeable use:
  - (i) for, or in connection with, services relating to railways; or
  - (ii) for any other public transport use, which would provide benefit for rail passengers, through better integration of public transport modes;
- (h) the renewal or extension of any lease where the renewal is required by operation of law;
- (i) the grant of a licence where the grant would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or a holder of a licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;
- (j) the grant of sub-surface or air rights that do not infringe on the space which may be needed to facilitate the provision of services relating to railways (major developments are excluded from such grant);
- (k) the disposal of any land made solely for the purpose of boundary rectification of land in which Network Rail has an estate or interest;
- (l) the grant to a third party of a wayleave, easement or servitude where the grant would not have a material adverse effect on the ability of Network Rail, any network operator, any beneficiary or any holder of a

licence under the Act or the Railway (Licensing of Railway Undertakings) Regulations 2005 to use or develop the land for the purpose of providing services relating to railways;

- (m) the grant of a lease of a freight depot, freight terminal or freight sidings for the purposes of providing services relating to railways;
  - (n) the grant of a lease to a person providing network services for the purpose of providing services relating to railways;
  - (o) any disposal of land to the extent it comprises a network or railway facility (or part of a network or railway facility) which has been the subject of a decision on closure under section 43(9) of the Act (or the effect of the provisions set out in sections 22-35 of the Railways Act 2005 is that it is permitted to be closed or its use discontinued) and that decision (or effect of those provisions) does not explicitly require that the licence holder does not dispose of the land; or
  - (p) the dedication of land to a governmental or local authority, agency or department for the purposes of or in connection with a highway including approaches to level crossings, where such land does not form part of the operational rail network and where recent prior consultation with relevant train operators, passenger transport executives, Transport for London (or its successors) or Regional Transport Partnerships, as appropriate, has raised no issues.
2. ORR may after consulting the licence holder modify or revoke this general consent if it appears to ORR requisite or expedient to do so by reason of any change of circumstances having regard to the duties imposed on ORR by section 4 of the Act.

3. In this direction:

“the Act”	is the Railways Act 1993;
“lease”	includes a tenancy;
“prior notice”	means a notice to ORR under condition 7.2 of Network Rail’s network licence;
“Station Access Conditions”	means the National Station Access Conditions 1996 (England and Wales) lodged with ORR on 30 January 1996, or the National Station Access Conditions 1996 (Scotland) lodged with ORR on 4 March 1996 as appropriate, and in both cases, modified from time to time with the approval of ORR;
“Depot Access Conditions”	means the National Depot Access Conditions (England and Wales) or the National Depot Access Conditions (Scotland) lodged with ORR, and in both cases modified from time to time with the approval of ORR;

and any other words and phrases in this direction shall have the same meaning as in the Act or network licence.

### **3. ORR's decision criteria**

---

- 3.1 Where Network Rail has given notice to ORR and its stakeholders of any proposed land disposal, we will use the decision criteria in paragraph 3.5 below to decide whether to let the transaction proceed.
- 3.2 We will expect Network Rail to have consulted the following parties about the development of any land disposal proposals:
- (a) the Department for Transport (DfT) or successor franchising authority;
  - (b) in Scotland, Transport Scotland, the Regional Transport Partnerships and the Scottish Council for Development & Industry;
  - (c) in Wales, the Welsh Assembly Government;
  - (d) in Greater London, and in adjacent or surrounding areas that might impact upon strategic transport plans for Greater London and on London Underground Limited's duties as an infrastructure controller, Transport for London and London TravelWatch;
  - (e) the local planning authority, County Council and Passenger Transport Authority (PTA) or the associated Passenger Transport Executive (PTE) (where appropriate), for the area in which the site is located;
  - (f) train operating companies (passenger and freight);
  - (g) the Rail Freight Group and the Freight Transport Association;
  - (h) Passenger Focus ;
  - (i) Community Rail Partnerships and the Association of Community Rail Partnerships;
  - (j) key transport infrastructure providers such as port and airport authorities; and
  - (k) British Transport Police.

- 3.3 We may require Network Rail to provide further information within seven days, or such further time as allowed, if its proposals are so unclear that we cannot consider them. In the event that Network Rail cannot provide the required information, the notification will be rejected. No formal notice directing Network Rail not to proceed with the disposal will be necessary.
- 3.4 Once a notification is sufficient for us to consider we will conduct our own internal review.
- 3.5 We will have regard to the following criteria when considering a notification from Network Rail about a proposed disposal of land:
- (a) ORR's duties under section 4 of the Act, and in particular our duties to:
    - (i) promote improvements in railway service performance;
    - (ii) otherwise to protect the interests of users of railway services;
    - (iii) promote the use of the railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent that it considers economically practicable;
    - (iv) contribute to the development of an integrated system of transport of passengers and goods;
    - (v) contribute to the achievement of sustainable development; and
    - (vi) enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
  - (b) Where ORR has considered Network Rail's notification and any supplementary information, including representations from third parties, and:
    - (i) there is evidence of a clear, feasible and funded plan or plans put forward by a passenger or freight train operator or funder for the site for future development of the railway network; or
    - (ii) the DfT (or successor franchising authority), Transport Scotland, the Welsh Assembly Government, PTA/PTE or other local transport authority provides evidence that the site is needed for

future development of the railway network or for the development of integrated transport facilities; or

- (iii) there is evidence which indicates that the proposed disposal would conflict with Network Rail's obligations under condition 1 of its network licence;

it is unlikely that ORR will consent to the disposal of land by Network Rail.

- (c) In reaching a decision ORR may have regard to relevant considerations including:
  - (i) whether the site is identified or reserved for transport use in any local transport plan or local statutory plan, and whether funding has been identified;
  - (ii) whether the site is likely to be required as a result of a regional transport strategy developed in accordance with national or regional planning guidance;
  - (iii) whether the site features in the business or marketing plans of the local train operators, Network Rail, PTAs/PTEs, or freight operators or any other party involved in the provision of services relating to railways; and
  - (iv) the financing of projects relevant to the site.
- (d) Where:
  - (i) Network Rail provides evidence that it has received no objections in respect of any proposed disposal within the six months preceding its notification to ORR; or
  - (ii) the only objection(s) are from individuals, a local or national pressure group without support from a train operator or funder and ORR concludes from Network Rail's submission and its further statements and evidence that there are no major issues at stake;

it is likely that ORR will allow Network Rail to dispose of the land.

- 3.6 With regard to paragraph 1(g) of the general consent to the disposal of land by Network Rail, ORR will need to be satisfied with any changes to Network Rail's internal screening process for identifying possible use for, or in connection with, services relating to railways, including the extent to which that process allows other parties to register an interest in rail-related development for particular sites.

## 4. Application of policy

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### Introduction

- 4.1 In this section we set out our policies relating to major air rights, compulsory purchase orders, and the potential for compensation in the event that we block a disposal<sup>1</sup>.

### Major air rights disposals

- 4.2 From time to time Network Rail may wish to dispose of airspace rights above land that it owns. The general consent in chapter 2 allows Network Rail to dispose of land by *“the grant of sub-surface or air rights that do not infringe on the space which may be needed to facilitate the provision of services relating to railways”*. The intention behind this provision was that it would be used only for minor disposals which would not interfere with the running of the railway. Disposals of this type could include, for example, transactions for advertising space, the laying of telecommunications wires and pipes, and bridges over the railway that are considered as routine in nature.
- 4.3 We do not expect disposals for major airspace construction to fall within this provision since the necessary deck/raft/building etc supports could subsequently impose physical constraints on the ability to expand railway facilities beneath and around the development and therefore impinge on the operation of the railway. Further, significant construction work above the operational railway creates a degree of additional risk of disruption, with potentially severe economic consequences for Network Rail and train operators.
- 4.4 We expect that Network Rail should consider a “major development” to include the situation where it would need to grant an interest in its land to provide support for a structure that could not be regarded as being of a routine nature. We also expect Network Rail to notify us its proposals for air rights disposals that would, for example, facilitate the construction of new tunnels or any constructions above stations. Before notification, we would

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<sup>1</sup> These policies are not new but we restate them here for completeness and for ease of reference. They were last published in our document describing the regulatory arrangements in June 2006, available at [www.rail-reg.gov.uk/upload/pdf/292d.pdf](http://www.rail-reg.gov.uk/upload/pdf/292d.pdf)



expect Network Rail to consult the industry fully on issues of potential railway expansion and operational risk.

- 4.5 In considering the grant of a specific consent for such cases, we will wish to see that Network Rail has, where appropriate, addressed the wider industry risks, including the position regarding economic loss for train operators, arising from construction work above the operational railway.

### **Network Rail's handling of compulsory purchase orders**

- 4.6 There may be occasions when Network Rail is required to sell its land through the execution of a compulsory purchase order (CPO).
- 4.7 Under licence condition 7.3(b), Network Rail is allowed to dispose of land without notifying us when the land is required by or under any enactment. However, there may be circumstances where a CPO would require Network Rail to dispose of land which would normally be referred to us for specific consent under condition 7.
- 4.8 We expect Network Rail to operate appropriate procedures for dealing with proposed CPOs. These shall include notification to us and its relevant customers and funders of its receipt, and if appropriate, appeal against it, where the disposal of land would not be covered by the general consent of condition 7.

### **The award of compensation**

- 4.9 Licence condition 7.4(b) states that Network Rail is "*entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction*" (not to proceed with a disposal).
- 4.10 However, Network Rail should be able to anticipate potential rail use and should not propose to dispose of land needed for the railway. It follows that it is unlikely that there will be circumstances where Network Rail can demonstrate a loss of value arising from our refusal to consent to the disposal of land, and therefore it is unlikely that compensation would be appropriate.

## ***Annex A: text of condition 7 of Network Rail's network licence***

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The text of condition 7 of Network Rail's network licence is repeated below. The numbering used in the licence has been retained.

### **Condition 7: Land disposal**

- 7.1 The licence holder shall not dispose of any land otherwise than in accordance with the following paragraphs of this condition 7.
- 7.2 Save as provided in condition 7.3, the licence holder shall give to ORR not less than 3 months' prior written notice of its intention to dispose of any land. Having given such notice, the licence holder shall supply such further information as ORR may require relating to such land or the circumstances of such intended disposal or where such a disposal to a specific person is in contemplation the known relevant intentions of the person proposing to acquire such land. The licence holder shall supply the required information within seven days of the requirement being made, or such further time as allowed by ORR.
- 7.3 Notwithstanding conditions 7.1 and 7.2, the licence holder may dispose of any land:
- (a) where:
    - (i) ORR has issued directions for the purposes of this condition containing a general consent (whether or not subject to conditions) to:
      - (aa) transactions of a specified description; and/or
      - (bb) the disposal of land specified in the directions as excluded land; and
- which specifies the intervals at which the general consent can be reviewed; and

- (ii) the disposal of the land in question is effected pursuant to a transaction of a description specified in any directions given under condition 7.3(a)(i) or the land in question is specified in those directions as excluded land and the disposal is in accordance with any conditions to which the general consent under condition 7.3(a)(i) is subject; or
- (b) where the disposal in question is required by or under any enactment and for these purposes a disposal shall be treated as being under an enactment if:
  - (i) the licence holder agrees to the terms of a disposal which would otherwise be required under an enactment; or
  - (ii) the disposal would have been under an enactment had the acquiring party taken all the steps which were open for it to take providing that the acquiring party has acted with reasonable expedition and diligence.

7.4 Notwithstanding condition 7.1, the licence holder may dispose of any land specified in a notice given under condition 7.2 in circumstances where:

- (a) ORR confirms in writing that it consents to such disposal (which consent may be made subject to the acceptance by the licence holder of such conditions relating to railway use, network business or the carrying out of licensed activities as ORR may specify and the licence holder shall ensure that any such disposal shall be subject to those conditions); or
- (b) ORR has not, within the notice period referred to in condition 7.2, issued a direction for the purpose of this condition 7 requiring the licence holder not to proceed with such disposal and notifying the licence holder that it is entitled to be compensated appropriately for the loss of value (if any) as a result of ORR issuing a direction under this condition 7.4(b).

7.5 In this condition:

“disposal”	includes any sale, assignment, gift, lease, licence, the grant of any right of possession, loan, security, mortgage, charge or the grant of any other encumbrance or knowingly permitting any encumbrance to subsist (other than an encumbrance subsisting on the date when the land was acquired by the licence holder or on 15 November 2001) or any other disposition to a third party, and “dispose” shall be construed accordingly;
“excluded land”	means any land which is specified as such in directions issued under condition 7.3;
“land”	includes buildings and other structures, land covered by water, and any estate, interest, easements, servitudes or rights in or over land.