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## **RWE Generation UK plc**

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### **TILBURY 2 Examination – TR030003**

#### **Written Representation on behalf of Interested Party RWE Generation UK plc**

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**Submitted at Deadline 1  
20 March 2018**

## **1. Background**

- 1.1 This submission comprises the written representation of RWE Generation UK PLC. It is submitted at Deadline 1 in accordance with the timetable at Annex C of the Examining Authority's Rule 8 letter dated 26 February 2018.
- 1.2 RWE is one of the leading suppliers of electricity and gas in Europe. The Group encompasses all stages of the energy value chain, starting with the production of lignite and electricity generation from gas, coal, nuclear and renewables, to energy trading and distribution, and the supply of electricity, gas and innovative solutions.
- 1.3 RWE's major markets are Germany, United Kingdom, Netherlands, Belgium and Eastern Europe. The RWE Group is also active in renewable power generation outside of these regions. The RWE Group directly employs over 58,000 people globally.
- 1.4 RWE Generation UK plc ("RWE Generation") a division of the RWE Group, is a major owner and operator of power stations in the UK. RWE Generation has a strong position in the UK energy market with an overall installed capacity of over 8.5GW. Most of the fleet is made up of modern combined cycle gas turbines (CCGTs), along with some coal and a small amount of biomass.
- 1.5 In 2016, the UK portfolio generated 43.3TWh of electricity, almost 15% of all electricity demand in the UK.
- 1.6 RWE Generation also owns a number of closed power station sites that are in the process of demolition and repowering/replanting, including the former Tilbury B power station, the site of which adjoins the eastern boundary of the Tilbury 2 Order Limits.
- 1.7 RWE Generation submitted a Relevant Representation to the Examining Authority on 5 January 2018 registering as an Interested Party in respect of the Tilbury 2 Examination.
- 1.8 RWE Generation attended the Issue Specific Hearing on the Tilbury 2 draft Development Consent Order (dDCO) on 21 February 2018 and made oral representations in response to the Hearing's Agenda Item 3 and in response to Question 93. Those submissions are summarised within a separate submission document 'summary of the oral case put forward at the dDCO Issue Specific Hearing on 21 February 2018', also submitted at Deadline 1.
- 1.9 RWE Generation is a statutory undertaker for the purposes of the Planning Act 2008 by virtue of it having a s6 (1) (a) Electricity Act 1989 electricity generating licence.

## **2. Tilbury Energy Centre**

- 2.1 The powers and rights set out in the dDCO will adversely impact RWE Generation's ability to bring forward its proposed Tilbury Energy Centre (TEC) project on the Tilbury B Power Station Site. Further details of the proposed TEC site are set out below in section 3.
- 2.2 TEC is a project registered with PINS as a prospective power station development project that will consist of a combined cycle gas turbine power station with a generating capacity up to 2,500 MW, a peaking plant with a generating capacity up to 299 MW, and energy storage with a capacity of up to 100 MW together with associated development. RWE Generation anticipate submitting an EIA scoping request for TEC in April 2018, with a scheduled application submission date to PINS by Q1 2019.
- 2.3 Whilst at an early stage, a plan showing the indicative Order Limits for the proposed TEC project is attached at Appendix 1 and the nature of the potential interface with the Tilbury 2 proposals described further below in section 4.

## **3. Tilbury Energy Centre Site and Proposed Order Limits**

- 3.1 The proposed TEC will be developed on the site of the former Tilbury B power station which adjoins the eastern boundary of the Tilbury 2 Order Limits. Tilbury B was a coal

fired power station built during the 1960s. Under the Large Combustion Plant Directive Tilbury B was required to close by 31 December 2015, or after 20,000 hours of operation from 1st January 2008, whichever was sooner.

- 3.2 During 2011 the power station underwent conversion works to allow it to operate as a dedicated biomass power station for the remainder of its operational hours. The station closed in October 2013. After a period of decommissioning, demolition commenced in March 2016 with an anticipated completion date of Summer 2019.
- 3.3 The Tilbury B site presents an ideal location for the new energy centre and offers several benefits including nearby gas connection, cooling water supply, on-site connection to the National Grid as well as benefitting from close proximity to London which is a large consumer of electricity.
- 3.4 Tilbury is well situated in terms of providing electricity to a densely populated region of the UK, which has a high electricity demand. The generation capacity in the South East needs to be maintained and developed in order to reduce reliance on the national transmission network and to minimise efficiency losses through the transmission system. It is proposed that the new station will be connected to the existing on-site 400KV substation.
- 3.5 The features which make the former Tilbury B site a suitable location for investing in new plant include:
  - 3.5.1 the majority of land already lies within RWE Generation's ownership;
  - 3.5.2 it has good availability of estuarine water sufficient for once through cooling which is the most energy efficient form of plant cooling system and has capacity to support potential future carbon capture and storage;
  - 3.5.3 access to existing water cooling infrastructure such as intake tunnels and outfall;
  - 3.5.4 the availability of a nearby gas main connection point;
  - 3.5.5 the availability of an existing on-site grid connection;
  - 3.5.6 good access to the motorway network (M25) via the A13; and
  - 3.5.7 it is a brownfield site.
- 3.6 The Tilbury B site remains part of the operational estate of RWE Generation, and remains operational land for the purposes of its statutory undertaking and section 263 of the Town and Country Planning Act 1990.
- 3.7 The site is ideally located to respond to the need for further conventional energy generation capacity articulated in National Policy Statement EN-1, and to provide that capacity cost-effectively through the UK electricity capacity market auction process. It is in this context that RWE Generation will be bringing forward its proposals for TEC.
4. **Interface between TEC and Tilbury 2**
  - 4.1 The Order Limits of the site of the proposed TEC and Tilbury 2 are almost certain to overlap. Construction periods may run concurrently, and operational and maintenance elements of Tilbury 2 will affect the TEC proposals.
  - 4.2 RWE Generation's objective in submitting this written representation to the Tilbury 2 Examination is to explain to the Examining Authority the potential interface between TEC and Tilbury 2 and to outline the importance of the inclusion of measures in the Tilbury 2 Development Consent Order (DCO) to facilitate both projects accommodating one another throughout their respective construction, operation and maintenance periods.

- 4.3 It is RWE Generation's position that such mutual co-existence is possible and it understands that there is no suggestion from the Applicant to the contrary.
- 4.4 The Tilbury 2 project will interface with TEC in the following ways:
- 4.4.1 interference with TEC's access and service corridor;
  - 4.4.2 interference with rights reserved for the benefit of RWE Generation enabling the construction and subsequent use of a new foul drainage connection from the former Tilbury B site across the Tilbury 2 site; and
  - 4.4.3 interference with design, construction, operation and maintenance of cooling water intake infrastructure necessary to operate TEC and which will be located within the Order limits and the extended harbour limits as shown on the Applicant's Harbour Limits Plan. This includes the ability for RWE Generation to obtain a further River Works Licence to authorise the construction operation and maintenance of its intake.
- 4.5 RWE Generation currently enjoys the benefit of a number of reserved rights, as set out below, relating to access, services and intake infrastructure located under the existing Jetty, which is the structure located to the far south of the Tilbury 2 Order limits and identified on sheet 4 of the Applicant's 'general arrangement' plans. These rights were secured following negotiation with the Applicant in contemplation of the TEC project coming forward.
- 4.6 The plan attached at Appendix 2 to this Representation is an indication of the land rights required for the delivery of the TEC project. The Tilbury 2 DCO must operate to preserve these rights to avoid preventing the delivery of the TEC.

#### **Access**

- 4.6.1 RWE Generation enjoys a right of way to the Tilbury B site (and proposed TEC site) via Fort Road at all times and for all purposes. The means of access from the site onto the public highway is identified by black shading on the Applicant's Rights of Way and Access Plans, and referred to in the key as 'area of private means of access to be stopped up'.
- 4.6.2 In the event of the access being relocated, RWE Generation enjoys existing rights protecting it from any interruption to the rights of way reserved for its benefit. Preservation of a suitable and continuous means of access (including with or without abnormal loads) for the purposes of maintenance, construction and operation on the Tilbury B (and proposed TEC site) is essential.
- 4.6.3 The Applicant intends to provide a revised access to the TEC site passing under a new overbridge at Fort Road and forming part of Work No. 10 to be provided as shown on the Applicant's Rights of Way and Access Plans. As RWE Generation currently has no certainty that its rights to access the TEC site will be maintained and / or diverted to its satisfaction by the Applicant, RWE Generation has identified on a plan the area over which rights will be required for the access if it is to follow this alignment (see Appendix 2). RWE Generation notes that the height of the new bridge is, however, unacceptable as it will not accommodate the abnormal loads necessary in connection with construction, operation and maintenance of the proposed TEC thus preventing unfettered access.
- 4.6.4 RWE Generation is also concerned with the implications of the proposed Rail Spur forming part of Work No. 8C to be provided as shown on the Applicant's Rights of Way and Access Plans, which will cross its access to the Tilbury B site.
- 4.6.5 Preservation of a continuous means of access on to the site at all times and for all purposes is essential.

## **Services**

- 4.6.6 RWE Generation has reserved rights to connect into existing conduits including sewers, drains, watercourses, pipes, cables, wires and other channels or conduits for the passage of services onto the Tilbury B site (and proposed TEC site) for the purposes of the supply or removal of electricity, gas, water, sewerage, energy, telecommunications, data and all other services and utilities (and in respect of all structures, machinery and equipment ancillary to those media). These rights extend to the right to install and use new conduits.
- 4.6.7 Specifically, these rights extend to laying a new foul drainage connection from the Tilbury B site across the Tilbury 2 site. Again, as RWE Generation has no certainty that its rights relating to services will be retained in situ / or diverted it has identified on the plan appended to this Representation at Appendix 2 the area of land over which rights would be required to facilitate this drainage connection, within the Tilbury 2 Order Limits.

## **Cooling Water Intake Infrastructure / River Works Licence**

- 4.6.8 RWE Generation has reserved rights relating to existing cooling water intake structures and associated main and ancillary transfer pipework between the cooling water intake structures and the Tilbury B site (and proposed TEC site). These rights extend to rights of access to the Jetty for the purposes of maintaining or replacing the infrastructure referred to. RWE Generation also has an Option with the Port of Tilbury which will enable it to acquire rights to go on to and take possession of one end of the Jetty temporarily, to carry out refurbishment works and to keep equipment installed thereafter.
- 4.6.9 RWE Generation will also have the benefit of a River Works Licence pursuant to the Port of London Act 1968 authorising the existing cold water intake infrastructure under the Jetty (within the Tilbury 2 and TEC's proposed Order limits) serving the Tilbury B power station.
- 4.6.10 Suitable protection must be afforded within the Tilbury 2 DCO to ensure that the intake for the proposed TEC can encompass and make use of the existing infrastructure if required. It is also essential that RWE Generation is not prevented from obtaining a further River Works Licence for new intake infrastructure within the Applicant's proposed extended harbour limits, if required. Again, in the absence of certainty, the plan appended at Appendix 2 to this Representation identifies the land over which rights would be required to facilitate the construction, operation and maintenance of new intake infrastructure within the Tilbury 2 Order Limits, if needed.
- 4.6.11 The River Works Licence will also authorise the associated outfall, but which lies outwith the extended harbour limits. The outfall is shown on the Applicant's land, special category land and crown land plans; a diagonal 'T' positioned directly adjacent to the north east tip of the Order limits surrounding the Jetty. RWE is concerned with the implications of the dredging and construction activity in this area in the absence of any buffer zone between the Order limits and the outfall.
- 4.7 In the context of the reserved rights as set out in this section 4, and the dDCO, RWE Generation has significant concerns that the development of Tilbury 2 could frustrate the TEC project and prevent it from coming forward.
- 4.8 RWE's existing rights of access and its rights in respect of and cooling water intake / outfall and services to the proposed TEC site are essential and were secured in contemplation of the TEC project. If the rights outlined above are not adequately preserved, then the grant of the Tilbury 2 Order could have a direct consequence of preventing this nationally significant infrastructure project from coming forward on a site which is prime for its type of development.

## **5. Tilbury 2 Draft Development Consent Order**

- 5.1 In the absence of an agreement with the Applicant it is imperative that suitable amendments can be made to the provisions of the dDCO and that suitable protective provisions can be introduced to enable RWE Generation to continue using its operational site, now and in the future, in an unfettered manner.
- 5.2 As drafted the dDCO does not adequately protect RWE Generation's interests and risks prejudicing the ability for RWE Generation to deliver the TEC project.
- 5.3 RWE Generation's concerns are three-fold:
- 5.3.1 The powers sought under parts of Article 3 ("Disapplication of legislation, etc.") and Article 4 ("Application of enactments relating to the Port of Tilbury") would enable the Applicant to terminate an existing River Works Licence and frustrate the process of obtaining a further River Works Licence at a later date in respect of future infrastructure that may be required in the river;
  - 5.3.2 The compulsory acquisition powers sought within Articles 23 – 41 (Part 3 of the dDCO) authorise the extinguishment of property rights belonging to RWE Generation which are essential for RWE Generation's existing operational site and for the delivery of the TEC; and
  - 5.3.3 The protective provisions in favour of Statutory Undertakers (including RWE Generation) at Part 1 of Schedule 10 of the dDCO relate to the protection of existing statutory apparatus but do not extend to cover RWE Generation's concerns.

### **Operation of Articles 3 and 4**

- 5.4 The effect of Article 3 (2) would be to revoke, as at the date on which the Order comes into force (irrespective of the scheme progressing), existing River Works Licences in respect of the cold water intake infrastructure under the Jetty serving the existing Tilbury B power station site.
- 5.5 The RWE Generation River Works Licence, for the existing infrastructure, will also cover the outfall, which lies outside the extended port limits. The terms of Article 3(2) would purport to operate as a variation of the licence. No provision is made within the terms of the licence for an alienation of part of the works licensed, nor are there any provisions within the licence allowing RWE Generation to terminate it in the absence of a transfer of ownership or removal of the works. RWE Generation would have to rely on the good will of the Port of London Authority to regularise the position.
- 5.6 Article 3 (3) means that RWE Generation would not require a new River Works Licence for the existing structures (within the extended port limits), however, this provision does not replicate existing River Works Licences and is stated to be subject to the terms of the dDCO, as detailed below.
- 5.7 Article 3 (4) has the effect of potentially giving the Applicant a right of veto over the grant of any future licences which would be required from the Port of London Authority to bring forward RWE Generation's TEC project where new infrastructure in the river is required.
- 5.8 When coupled with the powers that would then benefit the Applicant within the extended harbour limits by virtue of the operation of Article 4 under the 1991 Transfer Scheme, the Applicant would potentially be able to frustrate the ability for the TEC project to come forward.

## **6. Compulsory Acquisition powers**

- 6.1 The Applicant's compulsory acquisition powers which would result from the dDCO could potentially be used to override certain RWE Generation rights, to the extent they are

within the Tilbury 2 Order Land / Order Limits as appropriate. These rights are set out at section 4 above and summarised here:-

- 6.1.1 access along the alignment of the new Fort Road overbridge to the Tilbury B site (proposed TEC site);
  - 6.1.2 connecting services; and
  - 6.1.3 retained infrastructure located under the Jetty, and the potential for replacement infrastructure.
- 6.2 The implications of the compulsory acquisition powers afforded to the Applicant in the dDCO could compromise the delivery of the TEC.

#### **Rights relating to access and services**

- 6.3 With regard to the rights relating to access and services, which are derived from land transfers from RWE Generation to the Applicant, RWE Generation is a Statutory Undertaker and it holds these rights for the purposes of its undertaking. These rights cannot be acquired compulsorily without determinant to RWE Generation's undertaking. Section 127 of the Planning Act applies. Further protection must be afforded to these rights to ensure there is no detriment to the carrying on of RWE Generation's undertaking in this capacity.
- 6.4 Furthermore, the existence of these rights is omitted from the Applicant's Book of Reference. Annex D to the Planning Act 2008 guidance (related to procedures for compulsory acquisition of land (September 2013)) is clear that Part 3 of the Book of Reference should note details of all those with rights that are to be extinguished, suspended or interfered with as a result of the provisions of a DCO. Amended plans and an amended Book of Reference should be submitted to the ExA noting RWE Generation's rights and interests so as to ensure that such interests and any resulting prejudice to them are properly taken into account as part of the Examination process.
- 6.5 Such rights are third party rights which may be capable of being overridden pursuant to the Applicant's powers in Articles 27 and 28 of the dDCO (private rights over land / power to override easements and other rights) and interfered with pursuant to Articles 32 and 33 (authorising temporary possession).
- 6.6 Articles 34 and 35 of the dDCO authorising compulsory acquisition of statutory undertakers' land and the removal of statutory apparatus may also affect RWE Generation's rights of way and rights to services, and Article 41 granting wide ranging powers for construction and maintenance authorises potential interference with RWE Generation's rights.
- 6.7 Articles 23 and 25 would also be relevant powers in respect of the rights relating to access and services if the Book of Reference was to be updated.
- 6.8 The Applicant's power to exercise these rights is unacceptable to RWE in the absence of a side agreement protecting its interests (as referred to in section 8) or suitable protective provisions on the basis such interference would frustrate the delivery of the TEC project.
- 6.9 Articles 7, 8, 12, 13 and 16 of the dDCO authorise further potential interference with RWE Generation's rights of way or existing apparatus and have the ability to disrupt the access to the TEC site and the service corridor.

#### **Rights relating to the Jetty**

- 6.10 As with the rights relating to access and services, the rights relating to the jetty are also third party rights which may be capable of being overridden pursuant to the Applicant's powers in Articles 27, 28, 34, 35 and 41. Articles 23 and 25 would also be relevant powers in respect of the rights relating to the jetty if the Book of Reference was to be updated.

- 6.11 Insofar as the jetty rights and rights relating to existing and future infrastructure are concerned, these rights are 'relevant rights' belonging to RWE Generation in its capacity as a Statutory Undertaker for the purpose of it carrying on its undertaking, and the existing infrastructure is 'relevant apparatus' for the same purposes. Section 138 of the Planning Act 2008 therefore applies and RWE Generation resists interference with these rights.
- 6.12 The existence of the rights should be noted against the relevant plots in Part 1 of the Book of Reference on the basis that RWE Generation has an interest in the land, has rights to use the land, including to attach equipment to it, and its equipment 'occupies' the land, (with reference to dclg guidance as noted above).

7. **Protective provisions**

The protective provisions in favour of Statutory Undertakers (including RWE Generation) at Part 1 of Schedule 10 of the dDCO relate to the protection of existing statutory apparatus but do not extend to cover RWE Generation's concerns. Given the property rights that RWE Generation retains on the Tilbury 2 site and its proposal for the TEC, RWE Generation will promote further suitable protective provisions to enable continued use of its operational site now and in the future in an unfettered manner.

8. **Other issues**

The proposed TEC project will be sensitive to dust generated by the Tilbury 2 development in particular arising from the operation of the construction materials and aggregates terminal. RWE Generation would wish to ensure that the Operational Management plan incorporates sufficient provisions for its protection and that it is consulted on any changes or amendments thereto and that such concerns are addressed through a protective provision.

9. **Agreement between the Applicant and RWE GENERATION**

- 9.1 As confirmed at the Issue Specific Hearing on the dDCO, and within the summary of the oral case put forward at that Hearing, RWE Generation is working with the Applicant outside of the Examination process towards concluding an agreement to satisfactorily address its concerns. Heads of Terms in respect of this agreement have been circulated and are being discussed.
- 9.2 In circumstances where such an agreement cannot be concluded before the examination of the Application RWE Generation will seek to promote amendments to the dDCO to secure adequate protective provisions to protect its interests. RWE Generation will commit to submitting draft protective provisions to the ExA by Deadline 4.

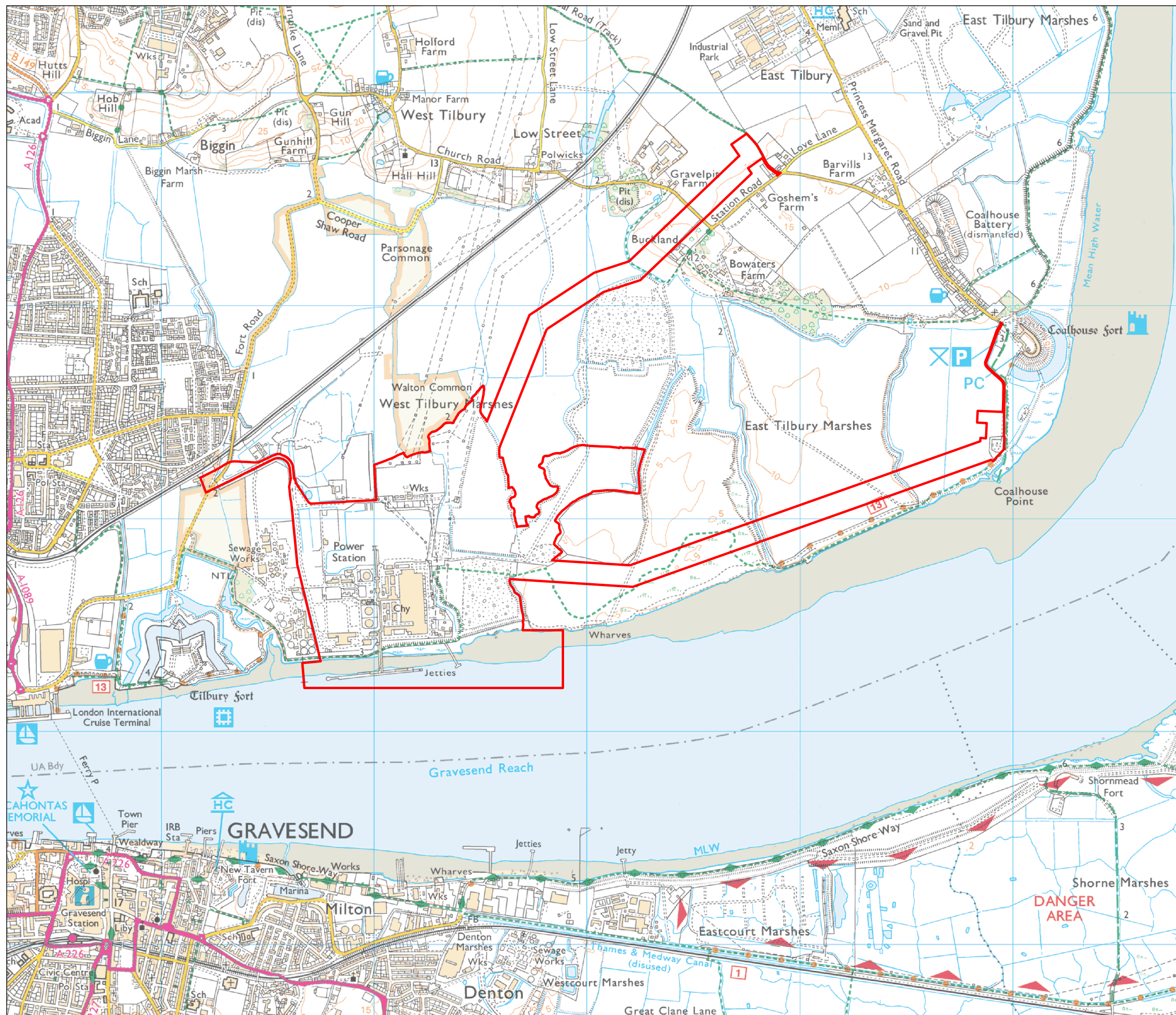
**Eversheds Sutherland (International) LLP**



## **APPENDIX 1**

Key:

 ORDER LIMITS



Scale: 1:17,500  
When printed at A3

0 175 350 525 700  
Metres

SCOPING REPORT

DEVELOPMENT  
ORDER LIMITS

Drawing ref: UKP/TLC/0205/AP4

## **APPENDIX 2**



Key:

- ORDER LIMITS
- PERMANENT AQUISITION (FREEHOLD) / NEW RIGHTS
- TEMPORARY CONSTRUCTION / PERMANENT (NEW RIGHTS)
- PERMANENT NEW RIGHTS (FOUL DRAINAGE CONNECTION)

This plan provides an indication of the land/rights currently required. It does not comprise a land plan for the purposes of Regulation 5 of the Infrastructure Planning (Prescribed Forms and Procedure) Regulations 2009. RWE Generation UK plc reserves the right to amend the detail of the land/rights to be acquired



Scale: 1:17,500  
When printed at A3

0 175 350 525 700 Metres

SCOPING REPORT

INDICATION OF  
LAND RIGHTS  
CURRENTLY REQUIRED

Drawing ref: UKP/TLC/0218/AP1

