
RWE Generation UK plc

TILBURY 2 Examination – TR030003

Submission of Comments on behalf of Interested Party RWE Generation UK plc

Submitted at Deadline 2

4 April 2018

1. **Background**

1.1 This submission comprises comments of RWE Generation UK PLC (RWE) pursuant to Deadline 2 in accordance with the timetable at Annex C of the Examining Authority's Rule 8 letter dated 26 February 2018. Comments are submitted in respect of the following:

1.1.1 Written Representations;

1.1.2 Revised draft DCO;

1.1.3 Comments on Responses to ExA First Written Questions; and

1.1.4 Other documents from the Applicant submitted at Deadline 1

2. **Written Representations**

Port of London Authority (PLA)

2.1 RWE wishes to respond to comments made by the PLA in its Written Representations submitted at Deadline 1. This is in the context of RWE retaining responsibility for the existing water intake infrastructure in the River Thames serving the former Tilbury B Power Station and the requirement to licence possible new water intake infrastructure necessary to operate Tilbury Energy Centre (TEC).

2.2 The PLA sets out concerns regarding overlapping jurisdictions between itself and the Applicant and the complexity that will likely be involved in dividing powers (section 4 of PLA's Written Representation). RWE has similar reservations and it remains unclear how existing and proposed licencing and property rights will be adequately managed. As recorded in RWE's Written Representations submitted at Deadline 1, preservation of these rights is essential to the delivery of TEC.

2.3 RWE is supportive of the PLA's comments at section 5 of its Written Representations and agrees that the PLA should retain permanent ownership of the River bed. In circumstances where the Applicant takes ownership (either freehold or leasehold) of the River bed RWE would require rights to ensure that the TEC development's existing or proposed assets in the River could be constructed, modified, operated and maintained. Such rights would normally flow automatically as a matter of law as a result of holding a river works licence, but the proposed acquisition of the River bed by the Applicant would prevent that from happening and therefore frustrate the TEC development. Further details are set out below.

2.4 RWE is also concerned about the extent of the area highlighted for temporary possession and the period of time for which the possession powers are sought, as highlighted in section 6 of the PLA's Written Representations. As stated, RWE retains existing infrastructure in the proposed temporary possession area and it also proposes to either improve its existing infrastructure or develop new infrastructure to the North of the Jetty (in front of the Tilbury B site) which the exercise of temporary possession powers could frustrate

2.5 RWE agrees with the comments made by the PLA in Section 7 of its Written Representation regarding the status of existing and future licensed works in relation to infrastructure in the River (in the context of the submission draft DCO), and is in agreement that Article 3 of the submission draft DCO needs amendment to ensure the existing licensed works are not left unregulated and to ensure that future works can be licensed. RWE's position with regard to the Deadline 1 draft DCO is set out in section 3 of this submission.

3. **Comments on revised draft DCO**

3.1 Revision 1 of the draft DCO submitted by the Applicant at Deadline 1 contains proposed amendments to Article 3(2) and (3). It is assumed that these amendments are proposed

to address the comments of the PLA at section 7 of its Written Representations submitted at Deadline 1.

- 3.2 At present RWE hold the benefit of a river works licence granted by the PLA under s66 Port of London Authority Act 1968, in respect (inter alia) of its existing cooling water intake infrastructure lying beneath and physically attached to the Jetty and connecting to the foreshore.
- 3.3 Ownership of that infrastructure remains with RWE under the provisions of an agreement with the Applicant, but ownership of the Jetty itself has been transferred to the Applicant. That agreement also reserved rights over the Jetty which RWE require to maintain that infrastructure and to enable its future use in connection with the development of TEC.
- 3.4 The provisions of the submission draft DCO sought to extinguish RWE's licence upon the date on which the DCO comes into force, and provided authority for the associated works to remain subject to the terms of the DCO. RWE outlined its concerns in relation to those proposals in its Deadline 1 submission.
- 3.5 Revision 1 of the draft DCO amends Article 3(2) and (3) to the effect that RWE's licence would be terminated only to the extent to which it relates to assets in the ownership of the Applicant (i.e. the Jetty), but in all other respects, the licence would remain extant, and in particular in respect of the infrastructure attached to and underlying the Jetty.
- 3.6 The existing cooling water intake infrastructure covered by the licence falls within Plots 06/09, 06/10, 06/11 and 06/12 identified on the Land Plans. These plots are proposed for permanent acquisition, with the exception of plot 06/09 which is required for temporary works.
- 3.7 RWE noted in its Deadline 1 submission that the operation of Articles 3(2) and (3) of the submission draft DCO could potentially frustrate TEC's proposals coming forward. This is explained in further detail below and comments are made in respect of the proposed amendments in the Revision 1 draft DCO and on the PLA's written representation on the associated issues:
- 3.7.1 A river works licence granted under s66(1)(a) of the Port of London Authority Act 1968 carries with it the rights set out in section 66(1)(b) which states as follows:
- A works licence granted under paragraph (a) of this subsection to carry out, construct, place, alter, renew, maintain or retain works in, under or over land belonging to the Port Authority shall be deemed to confer on the holder of the licence such rights in, under or over land as are necessary to enable the holder of the licence to enjoy the benefit of the licence.*
- 3.7.2 As a consequence of holding a licence, RWE therefore benefits from these land rights in relation to its existing cooling water intake infrastructure. In the event that its licence is terminated, it will no longer do so. The terms of Article 3(3) of the submission draft DCO only provided for the existing works to remain and subsist in the River and "subject to" the terms of the Order. RWE will therefore be left without the necessary rights, for example, to "alter, renew or maintain" its works as referred to in section 66(1)(b) above. RWE does not agree with the Applicant that the provisions of Article 41(1) provide a "seamless transition" (see the Applicant's response to Agenda item 12 in its summary of case of the first DCO hearing at Deadline 1) following the extinguishment of the licences since the provisions of Article 41(1) are solely for the benefit of the Applicant. The existing protective provisions at Schedule 10 Part 1 of the draft DCO do not provide any related protection for RWE.
- 3.7.3 In order to recover the necessary rights RWE would either need to reapply for a licence and/or be granted the necessary rights by the Applicant dependent upon the nature and extent of their land interest at the relevant time. In either case, the Applicant would enjoy a veto by virtue of the provisions of

Article 3(4) and/or its control of the land interest. This is not a satisfactory position for RWE and prejudices its ability to bring forward its proposals for TEC. Accordingly, RWE would support the amendments to Articles 3(2) and (3) in the Deadline 1 draft DCO as it preserves its existing rights. However, RWE would still have residual issues which it trailed in its Deadline 1 submission and which it would seek to address via protective provisions if agreement cannot be reached with the Applicant.

3.8 With regard to new works within the River which might be required as part of TEC (for example a new cooling water intake), these would also require a new licence from the PLA. The concerns outlined at paragraph 3.7.3 above would then equally apply. RWE shares the view of the PLA as set out in paragraph 7.6 of its Written Representations that there is no clarity of the basis on which the Applicant might withhold its consent to the grant of such a licence, and no provisions indicating how the section 66(1)(b) rights would be conferred on RWE once a future licence is granted, nor how such rights would be preserved in the event that a licence is granted to RWE prior to the Applicant acquiring a land interest over the area subject to the licence. As above, the Applicant therefore has the ability to prevent the TEC proposals coming forward. RWE's concerns are heightened in this regard by the Applicant's undertaking being commercially driven in comparison to the PLA's wider statutory remit.

3.9 RWE views the resolution of these issues as a tri-partite discussion between itself, the Applicant and the PLA and RWE remains committed to meeting with them to reach a mutually acceptable arrangement.

4. **Response to the Examining Authority's First Written Questions (PoTLL/T2/EX/49)**

4.1 The Applicant's response to the written questions includes a high level cumulative effects assessment of Tilbury 2 with the addition of TEC (Appendix C). RWE agrees with the Applicant that the majority of effects are unlikely to be significant but that on the whole insufficient detail is available to undertake a meaningful assessment of the cumulative impact at this time. The assumptions and judgements used to inform the assessment are not based on any quoted evidence.

4.2 RWE reserves the right to respond on matters relating to the Tilbury 2 cumulative assessment once it has had time to properly consider its assumed findings. RWE will consider the cumulative impact of TEC with Tilbury 2 in the ES accompanying the TEC application (depending on the status of Tilbury 2 application at the time of submission of TEC). It will be for the Applicant, the Examining Authority, and the Secretary of State to determine whether Tilbury 2 should provide a further cumulative assessment with TEC once further information about the TEC is released

5. **Comments on other documents/submissions from the Applicant submitted at deadline 1**

Applicant's Summary of Port of Tilbury London Limited's Submissions made at the Preliminary Meeting (PoTLL/T2/EX/34)

5.1 At section 5 of its submission, the Applicant set out its comments on the need and ability for it to undertake cumulative assessment of Tilbury 2 with TEC with regard to the timing of the TEC submission.

5.2 To assist the Examining Authority on the timing of submission of the TEC DCO application, RWE will submit its Scoping Report to the Planning Inspectorate during w/c 9 April 2018. The Scoping Report will provide more detailed information on the TEC, in terms of the development size, where it will be located within RWE's retained land and how it will be assessed from an EIA perspective. It is RWE's intention to undertake statutory consultation on its proposals during September 2018 and the DCO application will be submitted to PINS at the beginning of 2019.

Applicant's Operational Management Plan (PoTLL/T2/EX/40)

- 5.3 RWE is concerned that the Operational Management Plan submitted at Deadline 1 makes no reference to RWE's proposed TEC development. As noted in its Relevant Representation and Written Representation, RWE is concerned about the following impacts on its future operation of TEC:
- 5.3.1 potential for dust to impact on future operation of TEC given its sensitivity and close proximity to the Tilbury 2 construction materials and aggregates terminal. Operational effects may potentially include increased maintenance of air intake apparatus or unplanned shutdown of power generation due to blocked filtration equipment. These risks are considered more acute given that TEC is located downwind of Tilbury 2 in the prevailing wind direction.
 - 5.3.2 pollutants from ships (water pollution) potentially impacting on RWE's cooling water intake;
- 5.4 RWE requests that the detailed design of Tilbury 2 equipment and the Operational Management Plan are amended to incorporate further air quality, dust mitigation and water quality measures to limit the potential impact of Tilbury 2 on the operation of TEC. Measures could include design requirements to enclose potential sources of dust such as open conveyors and transfer points which may release dust towards the proposed TEC. RWE will also wish to ensure that there are suitable pollution control measures incorporated into the OMP should water pollution occur as a result of accidental fuel spillage from moored ships. Alternatively, the issue could be addressed in protective provisions to be proposed by RWE in the absence of agreement with the Applicant.

Applicant's Summary of Case made at DCO Hearing (PoTLL/T2/EX/48)

- 5.5 The Applicant has recorded against ExA's Question 93 (a) in its summary of its case made at the DCO Hearing that commercial discussions with RWE are ongoing and that a commercial agreement is the best way forward. Whilst RWE does not disagree, in circumstances where such an agreement cannot be concluded, and as previously recorded in its Written Representations at Deadline 1, RWE will seek to promote amendments to the draft DCO to secure adequate protective provisions to protect its interests by Deadline 4.
- 5.6 RWE is a Statutory Undertaker for the purposes of the Planning Act 2008 by virtue of having a s6 (1) (a) Electricity Act 1989 electricity generating licence. RWE refers to the Applicant's response against ExA's Question 93 and wishes to emphasise that the fact that there is not currently an operational power station on the Tilbury B site (proposed TEC site) does not affect its status as a statutory undertaker nor the status of the Tilbury B site as operational land.