
RWE Generation UK plc

TILBURY 2 Examination – TR030003

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

**Submitted at Deadline 3
30 April 2018**

1. **Background**

1.1 This submission comprises comments of RWE Generation UK PLC ("RWE") pursuant to Deadline 3 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 Information submitted by the Applicant or Interested Parties at Deadline 2; and

1.1.2 ExA Hearing Round 2 Agendas

1.2 The Compulsory Acquisition Hearing was held on Friday, 20 April 2018. Eversheds Sutherland attended the Hearing on behalf of RWE. The Issue Specific Hearings, held on Wednesday, 18 April 2018 and Thursday, 19 April 2018, were attended by RWE in a non-speaking capacity. A written submission of the oral case put forward at the Compulsory Acquisition Hearing is submitted under separate cover.

2. **Comments on information submitted by the Applicant or Interested Parties at Deadline 2**

Draft DCO

2.1 RWE's position with regard to Article 3 of the dDCO in the context of its existing infrastructure in the River and any future infrastructure which may be required for the operation of the Tilbury Energy Centre ("TEC") remains as set out in section 3 of its Deadline 2 submission. RWE is aware from the Deadline 2 responses that the Port of London Authority ("PLA") shares RWE's concerns particularly with regard to preserving the licencing regime in the River (see PLA's response at paragraph 2 in its "Comments on Written Representations" at Deadline 2).

2.2 RWE understands from the information submitted at Deadline 2 that the revised dDCO to be submitted at Deadline 3 may go some way towards addressing RWE's residual concerns with the Revision 1 dDCO (see the PLA's response at paragraph 2 in its "Comments on Written Representations" at Deadline 2 and the Applicant's response to the PLA's written representation at paragraph 7.1-7.5 of its "Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions" at Deadline 2). RWE is therefore reserving its position in this regard until it has had sight of the further revised dDCO. If the amendments in the revised version remain unsatisfactory, and separate agreement cannot be reached with the Applicant, RWE will seek an appropriate protective provision by Deadline 4 in order to protect its interests.

Compulsory Acquisition

2.3 In its Deadline 2 responses the Applicant confirmed that there are no compulsory acquisition powers sought other than in respect of the Order Land (see the Applicant's responses to RWE's written representations in its "Response to the Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions" at Deadline 2, see in particular paragraph 6.3-6.9). The Applicant's position at Deadline 2 was therefore that no RWE rights falling within the land shown coloured green on the Land Plans are required to be recorded in the Book of Reference and that it does not need to address RWE's concerns with regard to the protection of those rights.

2.4 At the Compulsory Acquisition Hearing on 20 April 2018, RWE welcomed the Applicant's clarification that it has no intention of acquiring or extinguishing RWE's reserved rights and that there will be a number of amendments made to the Revision 1 dDCO in order to give effect to this intention. RWE reserves the right to comment on such proposed amendments to the dDCO after Deadline 3.

2.5 The ExA raised a question ahead of the Compulsory Acquisition Hearing relating to Plot 06/10, the Jetty, over which RWE has reserved rights, and which does lie within the Order Land, asking the Applicant to clarify its position in this regard. RWE confirm that discussions are currently ongoing between the Applicant and RWE in relation to any

interference by the Applicant with RWE's rights reserved over Plot 6/10. The Applicant's position was that such rights were contractual and therefore did not need to be included within the Book of Reference. However, it appears to RWE that in the absence of any agreement between it and the Applicant, then the Applicant would seek to rely on the compulsory acquisition powers in the dDCO to authorise any interference with those rights. As such, it remains RWE's position that the nature of RWE's rights in respect of plot 06/10 is something that should be reflected in the Book of Reference

Reserved Rights

- 2.6 RWE enjoys a right of way to the proposed TEC site via Fort Road at all times and for all purposes. Preservation of a suitable and continuous means of access (including with or without abnormal loads) for the purposes of maintenance, construction and operation of the TEC is essential.

Overbridge at Fort Road

- 2.6.1 The Applicant intends to provide a revised access to the TEC site passing under a new overbridge at Fort Road (forming part of Work No. 10).
- 2.6.2 In its Deadline 2 responses the Applicant acknowledges RWE's concerns that any height restriction resulting from the proposed overbridge may hinder the delivery of power station construction loads to the TEC site. (See the Applicant's responses to RWE's written representations in its "Response to the Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions" at Deadline 2, see in particular paragraph 4.6.1 – 4.6.3).
- 2.6.3 RWE acknowledges that the Tilbury 2 dDCO provides the ability for the Applicant to lower the road under the overbridge (see the Applicant's responses to RWE's written representations in its "Response to the Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions" at Deadline 2, see in particular paragraph 4.6.1 – 4.6.3) which would potentially address RWE's concerns, depending on the resulting bridge height.

Rail Spur

- 2.6.4 RWE is also concerned with the implications of the proposed Rail Spur (forming part of Work No. 8C), which will cross the access to the TEC site.
- 2.6.5 In its Deadline 2 responses the Applicant states that the rail spur will not be altered and that the operation of the rail siding would be dealt with through the mechanisms of existing agreements. (See the Applicant's responses to RWE's written representations in its "Response to the Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions" at Deadline 2, see in particular paragraph 4.6.4).
- 2.7 RWE is actively discussing with the Applicant how its rights relating to its only access can be best protected in the context of the proposed overbridge and rail spur. RWE reserves its position to comment further with regard to any amendments that might be forthcoming within the revised dDCO aimed at addressing its concerns.
- 2.8 For reference the plan attached at Appendix 1 to this Deadline 3 submission ("the Plan") identifies the locations of rights reserved by RWE in a sale agreement with the Applicant in 2015 and in subsequent land transfers in 2016 and 2017. Further rights were reserved by RWE within a transfer agreement relating to the Jetty. These rights are listed for the benefit of the ExA at Appendix 2 to this Deadline 3 submission.

Air Quality

- 2.9 RWE is concerned that the Applicant's Operational Management Plan ("OMP") submitted at Deadline 1 makes no reference to RWE's proposed TEC development and, as noted within its Deadline 1 and Deadline 2 submissions, remains concerned about the potential for dust to impact on the future operation of TEC given its sensitivity and close proximity to the Tilbury 2 construction materials and aggregates terminal ("CMAT"). RWE's concerns are now elevated given the Applicant's comments in its Deadline 2 responses that it does not have to take into account air quality impacts on RWE's land interest and future development upon it. (See the Applicant's responses to RWE's written representations in its "Response to the Written Representations, Local Impact Reports and Interested Parties' Responses to First Written Questions" at Deadline 2, see in particular paragraph WR 8 – page 63).
- 2.10 RWE's land is identified as a suitable power station site (Policy CSTP 13) in the Thurrock Core Strategy and Development Management Policies Development Plan Document (2015) and the TEC is a project registered with PINS with a scheduled submission date of Q1 2019. In this context and on the basis that RWE's land is a significant previously developed site identified as suitable for power station development, it is not tenable for the Applicant to suggest that it does not have to consider potential air quality impacts on such development.
- 2.11 Consequently, both the Applicant's Construction Environmental Management Plan ("CEMP") and Operational Management Plan ("OMP") should include measures to protect development on RWE's land from dust generated by the CMAT.
- 2.12 RWE wishes to see the inclusion of a Dust Management Plan ("DMP") to provide details of appropriate dust mitigation measures that will be required to be implemented as part of the Tilbury 2 development. This DMP should have the aim of ensuring that potential dust sources are identified and controlled at source. The DMP's aim should be to minimise the risk of dust impacting locations outside of the Tilbury 2 development. As a minimum this DMP should include the following elements:
- 2.12.1 an assessment of the risks of dust problems at the TEC site;
 - 2.12.2 identify the appropriate controls to manage the identified risks;
 - 2.12.3 monitoring;
 - 2.12.4 identify actions, contingencies and responsibilities when dust problems arise;
and
 - 2.12.5 regular review of the effectiveness of the dust control measures.
- 2.13 RWE requests that a Requirement is included within the DCO to prepare and agree a DMP based on the principles set out above.
- 2.14 RWE also wishes to see 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 suitable protective provisions in the absence of agreement with the Applicant.

Cumulative Assessment with TEC

- 2.15 RWE notes the comments of other parties in the Deadline 2 responses with regard to cumulative assessment. The TEC Scoping Report was submitted to PINS on 13 April 2018 and shown as registered on the PINS website on 16 April 2016. The Scoping Report contains detail on the proposed TEC including the general locations of built development and associated infrastructure. RWE has already provided its comments on the very high level and uniformed cumulative assessment provided by the Applicant to support its Tilbury 2 proposal. RWE does not propose to make any further comment on this assessment. As stated at Deadline 2, RWE will properly consider cumulative impacts as

part of the TEC environmental impact assessment. It is for the ExA to consider what information the Applicant should provide in terms of a Tilbury 2 and TEC cumulative assessment.

3. ExA Hearing Round 2 Agendas

3.1 Responses to the questions raised in the ExA's Hearing Round 2 Agendas which have some relevance to RWE are submitted below.

3.2 Issue Specific Hearing, 18 April 2018

Tilbury Energy Centre (TEC)

7.2	Similarly, what documents does RWE suggest should be regarded as representing the current stage of the proposals for the Tilbury Energy Centre (TEC) for the purposes of cumulative assessment and in combination effects?
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Response	<p>As confirmed in RWE's submission on 17 April:</p> <p>"RWE refers to the recent submission of its Scoping Report to the Planning Inspectorate on 16 April 2018 which represents the current stage of the proposals for TEC. A link is provided to this submission below:</p> <p>https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010089/EN010089-000018-TBEC%20-%20Scoping%20Report.pdf"</p> <p>The ExA is referred to paragraph 2.15 of this Deadline 3 submission.</p>
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3.3 Issue Specific Hearing, 19 April 2018

Air Quality Common Ground

1.1	<p>ii. Are all parties content with the provisions for the management of dust during construction via the CEMP, and during operation through the OMP?</p> <p>iii. Do any parties have outstanding issues over air quality?</p>
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Response	<p>As confirmed in RWE's submission on 17 April:</p> <p>"Question 1.1 is directed at Thurrock Council and Gravesham Borough Council, however, RWE maintains concerns regarding the management of dust and the potential for it to impact on the future operation of TEC. A full response will be submitted at Deadline 3."</p> <p>The ExA is referred to paragraphs 2.9 – 2.14 of this Deadline 3 submission.</p>
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3.4 Compulsory Acquisition Hearing, 20 April 2018

3.12	RWE maintains that it has continuing interests over the Tilbury2 sites which are not reflected in the BoR, SoR etc. Will RWE please provide a plan showing the location of these services, utilities, cooling water
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	<p>intake/outfall rights and interests?</p> <p>The ExA is referred to paragraphs 2.3 – 2.5 of this Deadline 3 submission and to the summary of RWE’s oral case put forward at the CA Hearing on 20 April, submitted at Deadline 3 under separate cover.</p>
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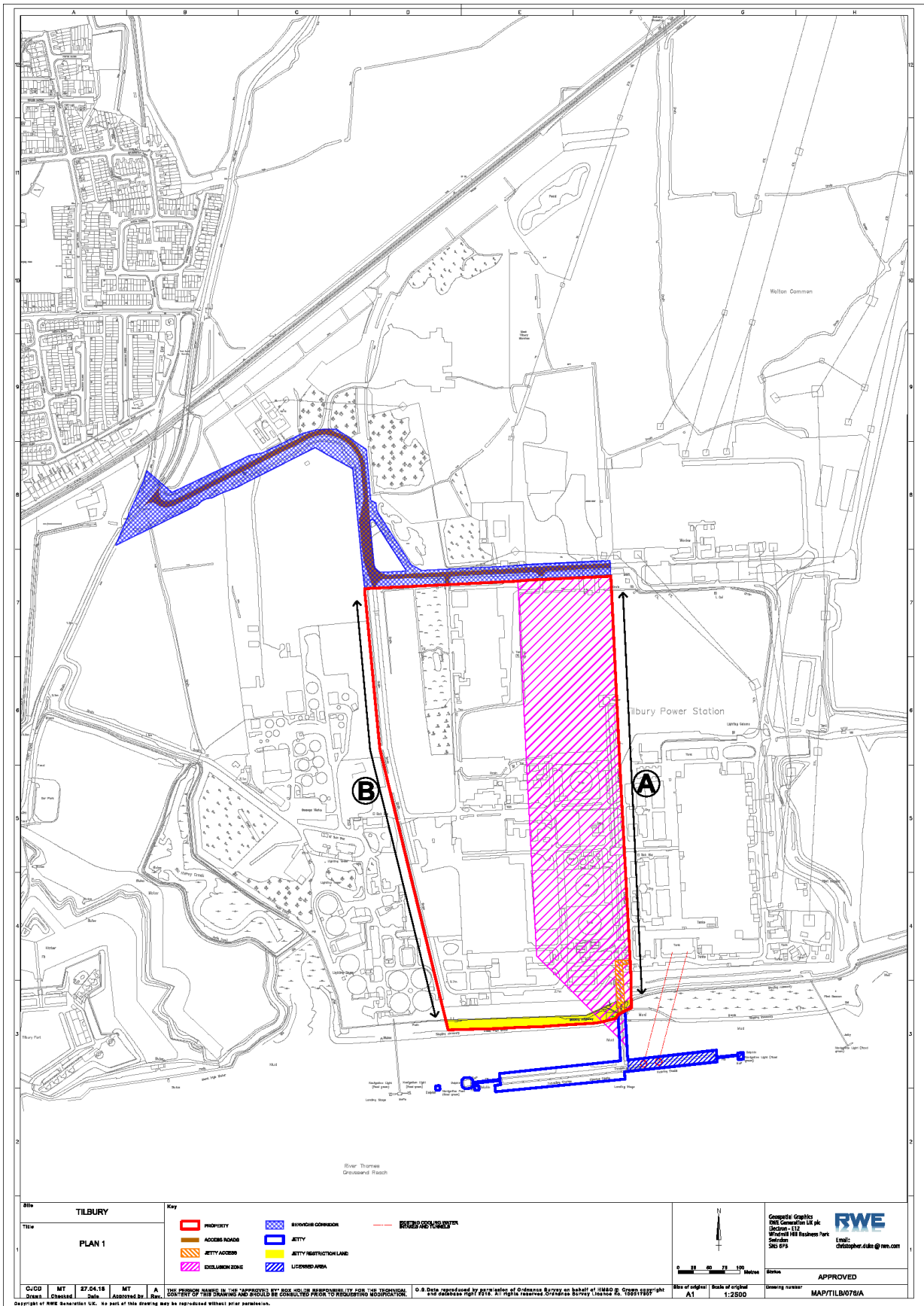
Response	<p>As confirmed in RWE’s submission on 17 April:</p> <p>“RWE confirm that such a plan will be prepared and submitted at Deadline 3.”</p> <p>The ExA is referred to Appendices 1 and 2 to this Deadline 3 submission</p>
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4. **Post hearing submissions including written submissions of oral cases in respect of the Compulsory Acquisition Hearing**

RWE has prepared a written submission of the oral case put forward at the Compulsory Acquisition Hearing on Friday 20 April. This has been submitted to the ExA at Deadline 3 under separate cover.

Eversheds Sutherland (International) LLP

APPENDIX 1



APPENDIX 2

RWE Reserved Rights

1. This appendix provides a narrative of the rights which RWE currently enjoys over the Tilbury 2 Order Limits as shown on the Plan at Appendix 1. It does not take account of any amendments which the Applicant is proposing to make in its revised dDCO to be submitted as Deadline 3.
2. The following rights are not exhaustive but are the most relevant to RWE:
 - 2.1.1 a right of way over the Jetty Access (shown hatched orange on the Plan)
 - 2.1.2 a right to connect to and use the existing services on, under or over the property (this applies to the land shown edged red and cross-hatched blue on the Plan)
 - 2.1.3 the right to lay, construct, install, use, maintain, repair, renew, replace, decommission and remove a new foul drainage connection through the Property between any points marked A and B on the Plan. The right is subject to provisions relating to the agreement of the Applicant to the route.
 - 2.1.4 a right of way at all times and for all purposes along the Access Roads (shown coloured brown on the Plan).
 - 2.1.5 a right of improvement to the Access Roads.
 - 2.1.6 a right to install new services within the Services Corridor (shown cross-hatched blue on the Plan).
 - 2.1.7 rights of entry associated with the above.
- 2.2 in respect of the Jetty:
 - 2.2.1 the right to keep RWE's existing cooling water intake infrastructure (shown by a dotted red line on the Plan) attached to the Jetty;
 - 2.2.2 the right to use and make connections to the existing cooling water intake infrastructure;
 - 2.2.3 the right to make connections to service media on the Jetty;
 - 2.2.4 a right of access to the Licensed Area (shown hatched blue on the Plan) to survey, and to maintain, repair or upgrade the existing cooling water intake infrastructure and to comply with any statutory obligations; and
 - 2.2.5 Further provisions are included to enable RWE to call for a licence from the Applicant in order to carry out any related works.
- 2.3 There is a further area noted on the Plan which is subject to restrictive covenants in favour of RWE. These state that the Applicant shall not use the Exclusion Zone (shown hatched purple on the Plan) for any activity to which the Control of Major Accidents Hazards Regulations 2015 would apply nor for any other use which may be sensitive to the development of a large scale gas fired power station on RWE's land, nor to use the Exclusion Zone for office use such as porta cabins.

- 2.4 Other terms within the transfer of the Jetty are protected by a restriction which prevents the land coloured yellow on the Plan (the Jetty Restriction Land) from being transferred, charged or leased for term in excess of 60 years without a covenant in favour of RWE being obtained from the transferee, charge or lessee. For the avoidance of doubt it does not denote any restriction on the use of the Jetty.