
RWE Generation UK plc

TILBURY 2 Examination – TR030003

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

**Submitted at Deadline 4
22 May 2018**

1. **Background**

1.1 This submission comprises comments of RWE Generation UK PLC ("RWE") pursuant to Deadline 4 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 3;

1.1.2 Responses to the ExA's Second Written Questions and requests for information;

2. **Comments on information submitted by the Applicant or Interested Parties at Deadline 3**

Applicant's draft DCO 'Revision 2'

River Works Licence and Article 3

RWE refers to responses set out at section 3 below in respect of the ExA's second written questions.

RWE Reserved Rights and interests

Overbridge at Fort Road

2.1 As set out within its Deadline 3 submission, and with reference in particular to the plan provided at Appendix 1 of that submission, RWE enjoys a right of way to the proposed TEC site via Fort Road at all times and for all purposes.

2.2 The Applicant's proposed overbridge at Ford Road (Work No. 10) causes RWE concerns in terms of the resulting height restriction of 5.3m, which would hinder delivery of power station construction loads to the TEC site. RWE acknowledges that the Tilbury 2 dDCO provides the ability for the Applicant to lower the road under the overbridge at Fort Road (Work No. 10). This would potentially address RWE's concerns providing the resulting height restriction is a minimum of 6.3m and providing the Applicant is able to identify an alternative suitable unrestricted access to the TEC site through the Port capable of accommodating abnormal loads.

Rail Spur

2.3 RWE remains concerned with the implications of the Applicant's proposed Rail Spur (Work No. 8 C), which will cross the access to the TEC site, and in particular how the Applicant will ensure, in the context of the Rail Spur, that RWE's right of access at all times and for all purposes will be upheld.

Compulsory Acquisition

2.4 The Applicant indicates in its Explanation of Changes to Draft Development Consent Order (PoTLL/T2/EX/64) Table of Changes that Articles 27, 28 and 33 have been amended in its Revision 2 dDCO in response to RWE's Deadline 1 Submission.

2.5 RWE welcomes the amendments, however these amendments do not fully address its concerns:

2.5.1 Article 27 would still operate so as to permit the extinguishment of RWE's private rights reserved over such part of the Jetty (Plot 6/10) that is proposed to be compulsorily acquired. The details of RWE's rights in this respect are set out in Appendix 2 to its Deadline 3 Submission. It is noted that the Applicant contends that these rights are not proprietary in nature but are instead contractual (see paragraph 3.13 on page 9 of the Applicant's Written Submission of Case at CAH PoTLL/T2/RX/96). RWE continues to dispute this for the reasons previously given. In any event, RWE notes that the scope of Article

27(8) is sufficiently wide so as to encompass RWE's reserved rights in respect of the Jetty even were these to be categorised as contractual;

2.5.2 The revised Article 27(3) would still operate so as to permit the suspension of, and render unenforceable, RWE's reserved rights over such part of the Jetty and the river bed that is proposed to be possessed temporarily;

2.5.3 Article 28 would still operate so as to permit the interference with and/or breach of RWE's reserved rights over such part of the Jetty that is proposed to be compulsorily acquired. The scope of Article 28(3) is sufficiently wide so as to encompass RWE's reserved rights in respect of the Jetty even were these to be correctly categorised as contractual (which for the avoidance of doubt is not agreed).

2.6 RWE reiterates that it requires protective provisions in order to satisfactorily address its concerns in this respect. Furthermore, RWE reiterates that its rights reserved over Plot 6/10, which are capable of being interfered with pursuant to the Order as drafted, should be reflected in the Book of Reference.

2.7 RWE received a draft protective provision from the Applicant on 16 May and has scheduled further discussions with the Applicant in this regard. It is expected that the Applicant will include its version of any protective provision in its further revision of the dDCO to be submitted one week prior to the June hearings, 19 June 2018. It is RWE's intention to submit its own version of a draft protective provision at the same stage to the extent that any measures have not been agreed by this date.

CEMP (Air quality)

2.8 As set out at Deadline 3, RWE remains concerned with regard to the potential for dust from the Tilbury 2 development to impact on the future operation of the TEC.

2.9 The Applicant's Operational Management Plan ("OMP") makes no reference to RWE's proposed TEC development and whilst the Applicant's Construction Environmental Management Plan ("CEMP") includes a requirement for a Dust Management Plan, a right of consultation for RWE with regard to this plan should be incorporated as a mechanism to ensure potential impact of dust on the future operation of TEC is minimised. RWE suggests this would be best addressed in a protective provision.

2.10 As part of the discussions with the Applicant regarding the draft protective provision, RWE will be seeking the inclusion of a provision to prevent dust emissions from Tilbury 2 adversely affecting the TEC project.

Cumulative Assessment with TEC

2.11 RWE has reviewed the Qualitative Cumulative Effects Assessment submitted by the Applicant at Deadline 3. Whilst RWE notes the content of the Assessment, it maintains its position as set out at Deadline 2 that the Applicant has insufficient information with regard to TEC at this time to deliver on a meaningful cumulative assessment of Tilbury 2 with TEC. RWE will properly consider cumulative impacts as part of the TEC DCO application.

2.12 Although RWE does not intend to comment in any detail on the Applicant's cumulative assessment for the reasons given above, RWE wishes to note its disagreement with the Applicant's baseline characterisation of the TEC site in terms of terrestrial ecology at paragraph 4 of the Qualitative Cumulative Effects Assessment, noting the recent operational nature of the site and its current status as a demolition site.

2.13 Ecological surveys are on-going and data has yet to be assessed although some assumptions can be drawn regarding the ecological interests within the survey area.

2.14 The Applicant has made reference to the habitats present on the TEC site (S41 Open Mosaic Habitat on Previously Developed Land at its margins). The majority of land

required for permanent land take associated with this category is highly disturbed land currently being utilised within the Tilbury B demolition boundary for deposition and storage of demolition arisings. The other main area required for permanent land take is the demolition footprint where demolition activities are currently taking place. These areas will therefore be of minimal ecological interest including invertebrates.

2.15 Outside of these areas the majority of impacts will be associated with the temporary installation of the pipeline and it is anticipated that suitable mitigation will ensure there are no significant long term impacts. This especially applies to the species referenced in 4.51 of the Applicant's assessment: water voles, reptiles and bird species recorded along the pipeline route.

3. Responses to the ExA's Second Written Questions and requests for information

3.1 Responses to the ExA's SWQs to the extent they are relevant to RWE:

Draft Development Consent Order (dDCO) Matters – Article 3

2.8.2	RWE Generation UK (RWE), Anglian Water Authority (AWA)	<p><i>Art 3: Disapplication of legislation, etc.</i> In its summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the Applicant explains the need to disapply works licences in favour of RWE and AWA. Art 3 has been amended in revision 2 of the dDCO at deadline 3 [REP3-002].</p> <p>i. <i>Art 3(2):</i> Are RWE and AWA content with the proposals for the disapplication of works licences granted by PLA to them?</p>
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	Response	<p>RWE is not content with the proposals for the disapplication of works licences granted by PLA to them for the reasons set out in the RWE submission at Deadline 2.</p> <p>However, further discussions, as anticipated at the Compulsory Acquisition Hearing, have now been held between RWE, the Applicant and PLA concerning the terms of Article 3 of the dDCO.</p> <p>It is hoped that a position can be developed and agreed on by all parties with a view to communicating this to the Panel at the DCO Hearing scheduled for 28 June 2018 and such being reflected in the further revision of the dDCO to be submitted by the Applicant by 19 June 2018, one week prior to the June hearings.</p> <p>RWE therefore reserves its position at this stage to comment further on the revised dDCO once submitted.</p>
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Draft Development Consent Order (dDCO) Matters – Protective Provisions

2.8.48	Applicant, Port of London Authority (PLA), Environment Agency (EA), Thurrock Council (TC), Network Rail (NR), Highways England (HE), RWE Engineering (RWE), Anglian Water (AW),	<p><i>Schedule 10: Protective provisions.</i> The Applicant summarises, in the summary of the case made at the DCO hearing on 21 February 2018 [REP1-015], the position with regard to the protective provisions with PLA, EA, TC (drainage interests), NR, HE & TC (highway interests), RWE, AW and Cadent. Revision 2 of the dDCO at deadline 3 [REP3-002] contains amendments to Schedule 10 Parts 3 (PLA) and 7 (TC&HE).</p> <p>i. Would the Applicant and other parties state their positions regarding the protective provisions?</p> <p>ii. The Applicant is requested to provide a revised version of the dDCO to include all the protective provisions in Schedule 10 a week before the hearings scheduled for the end of June 2018;</p>
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	Cadent	<p>iii. With regard to Part 1 of Schedule 10, several of the protective provisions contain a provision similar to paragraph 5 which has the effect of neutralising the compulsory acquisition and temporary possession powers. What is the justification for such a provision in the light of the powers included in Part 3 <i>Powers of acquisition and possession of land</i> of the Order?</p>
	Response	<p>RWE received a draft protective provision from the Applicant on 16 May 2018 and has scheduled further discussions with the Applicant with a view to agreeing the draft as far as possible. It is expected that the Applicant will include its version of any protective provision in its further revision of the dDCO to be submitted one week prior to the June hearings, 19 June 2018. It is RWE's intention to submit its own version of a draft protective provision at the same stage to the extent that any measures have not been agreed by this date.</p>

Eversheds Sutherland (International) LLP