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Date: 26 June 2018
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Dear Sirs

Planning Act 2008

Application by Port of Tilbury London Limited for an Order granting Development Consent for a Proposed Port Terminal at the former Tilbury Power Station ('Tilbury 2') - TRO30003

We act on behalf of RWE Generation UK plc (RWE) in connection with the examination of the Tilbury 2 Application.

We note that the Panel would appreciate RWE's attendance at the second Compulsory Acquisition hearing (27 June). However, as RWE's position with regard to the scope of compulsory acquisition powers remains unchanged, we feel that RWE do not need to be represented at this hearing. We are therefore notifying you that RWE will not be in attendance tomorrow.

The Applicant confirmed at the first Compulsory Acquisition hearing on 20 April that it has no intention to acquire or extinguish RWE's reserved rights or interests. RWE's concerns therefore relate only to the operation of the dDCO and how it gives effect to this intention, and not to the scope of the powers being sought by the Applicant.

Discussions between RWE and the Applicant as to the provisions of Article 3 and a protective provision for the benefit of RWE are ongoing. RWE's position in the examination is now dependent on the wording of this protective provision and RWE will be present at the DCO hearing on 28 June to address specific questions raised by Panel in this regard.

To assist the Panel in advance of the DCO hearing on 28 June we attach a track change version of the draft protective provision which was submitted by the Applicant on 18 June as part of revision 3 of the dDCO. Although some progress has been made towards agreement, RWE wishes to note to the Panel that there are still some areas of the current drafting that do not satisfactorily address RWE's concerns.

Yours faithfully

Eversheds Sutherland (International) LLP

Enclosure

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TILBURY2 DCO

DRAFT PROTECTIVE PROVISIONS FOR RWE

RWE: 11/06/18

PoTLL: 15/06/18

RWE : 22/6/18

1. The provisions of this Part have effect for the protection of RWE Generation plc unless otherwise agreed in writing between the Company and RWE Generation plc.

2. In this Part of this Schedule—

“alternative apparatus” means any apparatus, plant or equipment installed by RWE within the extended port limits—

- (a) to replace or perform substantially the same function as the existing apparatus; or
- (b) otherwise in connection with the construction of any power station by RWE on land adjacent to the Order limits, ~~to the extent the apparatus referred to in (a) or (b) is proposed to be or is within the area hatched [in red] on sheet no. 3 of the works plans;~~

“the existing apparatus” means the former Tilbury B power station cold water intake culverts and cold water intake structures, to the extent that they are for the time being owned by RWE, as shown on sheet 3 of the works plans **and as more particularly defined as the “Transferor’s Jetty Fixtures” in the jetty asset transfer;**

“functions” includes powers and duties;

“in” in a context referring to the existing apparatus or alternative apparatus in land includes a reference to apparatus under, over or upon land;

“the jetty” means the existing jetty superstructure shown shaded blue on sheet 3 of the works plans;

“the jetty asset transfer” means **an agreement for the transfer of the jetty from RWE to the Company dated 31 March 2017;**

“the land access” means access by RWE to the existing apparatus by passing over the jetty **in accordance with the jetty transfer** or in **such other** manner as may be agreed with the Company;

“plan” or “plans” includes all designs, drawings, specifications and method statements necessary to describe the works to be executed;

“the river access” means access by RWE to the existing apparatus by use of the river Thames within the extended port limits; and

“RWE” means RWE Generation Plc, company number 03892782 of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB or any of its entities or successor entities **and includes any assignee of the jetty asset transfer.**

Existing apparatus

3. This Order does not authorise the acquisition of the existing apparatus, by the Company, except with RWE’s agreement (such agreement not to be unreasonably withheld or delayed).

4. The authorised development must be carried out, **operated and maintained** so as to not damage, interfere **with**, move or destroy the existing apparatus except with RWE’s agreement (such agreement not to be unreasonably withheld or delayed).

5.—(1) If, for the purpose of constructing any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 14 days’ advance written notice of that requirement,

together with a plan of the works proposed and a date by when the temporary interference will end.

(2) If, for the purpose of maintaining any works comprised in the authorised development the Company requires the ability temporarily to interfere with the land access or the river access, it must, except in emergencies, give to RWE 28 days' advance written notice of that requirement, together with a plan of the works proposed and a date by when the temporary interference will end.

(3) The Company must end the temporary interference with the land access or the river access on the date given pursuant to sub-paragraph (1) or **sub-paragraph (2)** unless otherwise agreed in writing between RWE and the **Company**.

(4) Those works must be executed in accordance with the plan submitted under sub-paragraph (1) or sub-paragraph (2) and such reasonable requirements as may be made by RWE for the protection of RWE's access to the existing apparatus.

(5) At all times during execution of the works RWE must be afforded by the Company sufficient emergency access to the existing apparatus.

(6) Any requirements made by RWE under sub-paragraph (4) must be made within a period of 7 days beginning with the date on which a plan under sub-paragraph (4)(4) is submitted to it and within a period of 14 days beginning with the date on which a plan under sub-paragraph (2) is submitted to it

~~(6)-~~

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(7) Nothing in this paragraph precludes the Company from submitting at any time or from time to time, but in no case less than 14 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The Company is not required to comply with sub-paragraph (1) or sub-paragraph (2) in emergencies but in those circumstances it must give to RWE notice and a plan of the works concerned as soon as reasonably practicable and the Company must comply with sub-paragraph (4) in so far as is reasonably practicable in the circumstances.

(9) Any proposed temporary interference with the land access or the river access by the Company after 1 June 2021 must have due regard to any need for RWE to exercise the land access or river access to undertake works to the existing apparatus as part of the development of a power station on land adjacent to the Order Limits and adopt any reasonable requirements that may be made by RWE to ensure that any temporary interference does not prejudice RWE's development programme.

~~(8)(10)~~ The Company shall act reasonably in the exercise of its powers under sub-paragraphs (1) to (9) above

6.—(1) Subject to sub-paragraph (2) and paragraph 7, if by reason or in consequence of the construction, **operation or maintenance** of the authorised development any damage is caused to the existing apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal by RWE) the Company must bear and pay the cost reasonably incurred by RWE in making good such damage.

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage to the extent that it is attributable to the act, neglect or default of RWE or its officers, servants, contractors or agents.

7.(1) In the event that the existing apparatus is used in connection with the operation of a power station by RWE on land adjacent to the Order Limits then subject to sub-paragraph (2) and (3), if by reason or in consequence of the construction, operation or maintenance of the authorised development any damage is caused to the existing apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal by RWE) or there is any interruption in any service provided by the existing apparatus, the Company must-

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(a) bear and pay the cost reasonably incurred by RWE in making good such damage or restoring the service; and

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(b) indemnify RWE against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by RWE.

by reason or in consequence of any such damage or interruption..

(2) Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of RWE its officers, servants, contractors or agents.

(3) RWE must give the Company reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Company which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

8. (1) If the Company has or acquires at any point in time a proprietary interest in the parts of the river Thames situated within the extended port limits in respect of which RWE holds a licence granted by the PLA under Section 66 of the 1968 Act relating to the existing apparatus the Company will for no consideration grant to RWE such rights in, under or over the land concerned as are necessary to enable RWE to retain, use and maintain the apparatus for as long as the licence subsists and in the absence of the grant of such rights the Company shall be deemed to have agreed for the purposes of Article 3(8) that the provisions of Section 66(1)(b) of the 1968 Act shall continue to apply for the benefit of RWE in relation to that licence.

(2) The Company shall not withhold its consent under Article 3(7) to any new licence proposed to be granted by the PLA under section 66 or 73 of the 1968 Act in so far as it relates to the existing structures nor require any modifications to works, or impose terms or conditions on it under Article 3(9) that are additional to the standard terms of such licences issued by the PLA

Alternative apparatus

7. 9. (1) RWE and the Company must use their reasonable endeavours to co-ordinate with each other on the timing and method of construction and maintenance of the authorised development and construction, use and maintenance of any alternative apparatus by RWE, in the interests of health and safety and the efficient and economic —

- (a) construction of the authorised development; and
- (b) construction of any alternative apparatus.

8. 10.(1) In particular, the Company must consult with RWE prior to finalising the detailed design of ~~Work No. 2~~ and will accommodate any reasonable requirements of RWE in relation to the detailed design or construction of Work No. 2 so as to accommodate any alternative apparatus, provided those requirements:(a) are made prior to the Company finalising the detailed design of Work No. 2; (b) would not be detrimental to the construction, operation or maintenance of the authorised development; and (c) RWE pays to the Company such additional ~~sums~~ reasonable and proper costs as the Company would incur in accommodating those requirements.

9. 11-(1) If and to the extent that any alternative apparatus to be placed in the parts of the river Thames situated within the extended port limits and in respect of which the Company has or acquires at any point in time -a proprietary interest is licensed by the PLA under section 66 or 73 of the 1968 Act, the Company will for no consideration grant to RWE such rights in, under or over the land concerned as are necessary to enable RWE to retain, use and maintain the alternative apparatus for as long as the licence subsists.

Highway access

12.—The Company must construct Work No. 10 so that it affords a clearance above the level of the surface of the road of at least 6 metres.

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~~10.~~ 13. At all times following the stopping up of the private means of access noted at Part 3 of Schedule 4 the Company must provide RWE with access capable of accommodating abnormal loads measuring up to 7m (height), 9m (width) and 40m (length) through the Port of Tilbury to a point east of Work No 10 on either the existing private means of access or new private means of access that is to be provided.

Dust Management

14. The Company must, following the date on which a power station on the land adjacent to the Order Limits becomes operational, undertake dust monitoring at the power station site as one of the selected monitoring locations proposed in the operational management plan described in Schedule 11 and must provide the result of such monitoring to RWE within 7 days of them becoming available.

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General

~~11.~~ 15. Any difference or dispute arising between the Company and RWE under this Part of this Schedule must, unless otherwise agreed in writing between the Company and RWE, be determined by arbitration in accordance with article 60 (arbitration) of this Order.

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16. Except in so far as provided for in this Part of this Schedule this Order does not authorise any activity which would conflict with the terms of the jetty asset transfer

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