

PART 10

FOR THE PROTECTION OF RWE GENERATION UK PLC

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

127. In this Part of this Schedule—

“alternative apparatus” means any apparatus, plant or equipment installed by RWE from time to time 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 that the apparatus referred to in either case is proposed to be within the area shaded brown on sheet 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 being in land, includes a reference to apparatus under, over or on land;

“the jetty” means the existing river jetty;

“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 asset transfer, or in such other manner as may be agreed with the Company;

“plan” 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 UK 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

128. This Order does not authorise the acquisition of any of the existing apparatus by the Company, except with RWE’s agreement.

129. The authorised development must be carried out, operated and maintained so as not to damage, interfere with, move or destroy the existing apparatus except with RWE’s agreement.

130.—(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 in accordance with 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 those 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) 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.

(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 will 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 reasonable 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 for a power station on land adjacent to the Order limits.

131.—(1) Subject to sub-paragraph (2) and paragraph (132), 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 any part of that apparatus whose repair 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.

132.—(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-

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

(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.

133.—(1) The Company agrees that it will not withhold its consent under article 3(7) to any licence proposed to be granted by the PLA under section 66 (licensing of works) or 73 (licensing of dredging etc.) of the 1968 Act in so far as it relates to the existing apparatus, nor require any modifications or impose any terms or conditions under article 3(9) that are in addition to the standard terms of any such licence as are published on the PLA’s website from time to time.

(2) If at the relevant time the Company has 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 (licensing of works) of the 1968 Act relating to the existing apparatus, the Company agrees that it will for no consideration give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists and will for no consideration grant such rights to RWE as are necessary to enable RWE to carry out dredging works in accordance with the terms of its licence.

Alternative apparatus

134.—(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 the 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.

135.—(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 reasonable and proper costs as the Company would incur in accommodating those requirements.

136.—(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 at the relevant time the Company has a proprietary interest is licensed by the PLA under section 66 (licensing of works) of the 1968 Act, or if dredging works associated with any alternative apparatus are licensed under Section 73 (licensing of dredging works) of the 1968 Act the Company agrees that it will for no consideration give its consent under article 3(8) so that the grant of the licence to RWE will, pursuant to section 66(1)(b) of the 1968 Act, be deemed to confer on RWE such rights in, under or over the land concerned as are necessary to enable RWE to enjoy the benefit of the licence for as long as the licence subsists and will for no consideration grant such rights to RWE as are necessary to enable RWE to carry out dredging works in accordance with the terms of its licence.

Highway access

137. The Company must construct Work Nos. 4 and 10 so that they afford a clearance under Work No.10 of at least 6 metres.

138. At all times following the stopping up of the private means of access noted at Part 3 of Schedule 4 the Company must at its cost provide RWE with either an 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 or such other means of transporting loads of that size from the Port of Tilbury to RWE’s retained land.

Dust Management

139. 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.

General

140. 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.

141. Subject to the provisions of this Part of the Schedule, RWE's and the Company's rights and interests under the jetty asset transfer continue to subsist and to have effect and except in so far as provided for in this Part of this Schedule this Order does not authorise any activity which would conflict with such rights and interests .

142. The Company and RWE must each act reasonably in connection with the implementation of this Part of this Schedule.

143. Other than in respect of rights and interests under the jetty asset transfer and as provided for in this Part of the Schedule the Company shall not exercise any of the powers in Part 3 of this Order to compulsorily acquire, possess, extinguish, suspend, override or otherwise interfere with any interest or right in, on or over any land within the Order limits that is at the relevant time vested in RWE