



Department for
Business, Energy
& Industrial Strategy

Mr Rob Booth
Dalton Warner Davis
21 Garlick Hill
London
EC4V 2AU

**Department for Business, Energy &
Industrial Strategy**
3 Whitehall Place,
London SW1A 2AW
T: +44(0)300 068 5770
E: giles.scott@decc.gsi.gov.uk
www.gov.uk/beis

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ELECTRICITY ACT 1989

ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS) (ENGLAND AND WALES) REGULATIONS 2013

GATEWAY ENERGY CENTRE (“GEC”), THE MANORWAY, STANFORD-LE- HOPE, ESSEX

I. THE APPLICATION

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy (“the Secretary of State”) to refer to the application dated 25 February 2016 (“the Application”) on behalf of Gateway Energy Centre Limited (“the Company”) to vary the consent of the Secretary of State under section 36 of the Electricity Act 1989 dated 4 August 2011, as varied on 18 November 2014 under section 36C of the Act (“section 36 consent”) to construct and operate a 1250 MW combined cycle gas turbine (“CCGT”) generating station at The Manorway, Stanford-Le-Hope, Essex (“the Development”). It also seeks to vary a direction under section 90(2) of the Town and Country Planning Act 1990 (“section 90 direction”) that planning permission for the Development be deemed to be granted.

1.2 The variation being requested (“section 36C variation”) is to:

- a) allow for construction and operation of either:
 - i) up to two Combined Cycle Gas Turbine (“CCGT”) units (including for each CCGT unit: a gas turbine; a heat recovery steam generator; steam turbine plant; and associated equipment); or
 - ii) one CCGT unit (including a gas turbine; a heat recovery steam generator; steam turbine plant; and associated equipment) and one or more Open Cycle Gas Turbine (“OCGT”) plants, with the OCGT units

having a combined electrical output of less than 300MW (including for each OCGT unit: a gas turbine; a heat recovery steam generator; steam turbine plant; and associated equipment).

- i) air cooled condensers and auxiliary cooling;
 - ii) gas receiving facility;
 - iii) one or more electrical switchyards;
 - iv) the necessary buildings (including administrative buildings) and civil engineering works; and
- b) extend the time limit for the commencement of the Development to allow a further 5 years from the date of the varied consent.

1.3 The Application for the section 36C variation was published in accordance with the Electricity Generating Stations (Variation of Consent) (England and Wales) Regulations 2013 (“the Variation Regulations”) and served on Thurrock Council (“the relevant planning authority”).

1.4 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 (“the EIA Regulations”), which apply to the variation of a consent by virtue of regulation 7 of the Variation Regulations, the documents titled “Environmental Statement Further Information Document” dated 25 February 2016 and “Non-Technical Summary Environmental Statement Further Information Document” were submitted with the Application. The documents describe the Development and updates the analysis of the environmental effects set out in the Environmental Statement dated February 2010 and Environmental Statement Further Information Document dated August 2014 (the Environmental Statement and Further Information Documents are herein after collectively referred to as “the updated Environmental Statement”).

1.5 In accordance with the EIA Regulations, the updated Environmental Statement was advertised and placed in the public domain to give people an opportunity to comment.

II. SECRETARY OF STATE’S CONSIDERATION OF THE REVISED PLANNING CONDITIONS

2.1 The Secretary of State has considered the revised planning conditions. The Secretary of State agrees they are suitable for inclusion in a section 90 direction which the Secretary of State may give, subject to the modifications noted below and the minor drafting variations as set out in the Explanatory Memorandum which accompanies the revised consent and planning conditions.

III. SECRETARY OF STATE’S DECISION ON THE HOLDING OF A PUBLIC INQUIRY

3.1 Regulation 8 of the Variation Regulations gives the Secretary of State

discretion to hold a public inquiry into a variation application. In considering whether to hold a public inquiry, the Secretary of State must consider any representations which have been made to the Secretary of State by a relevant planning authority or any other person where those representations are not withdrawn and all other material considerations.

3.2 No objections were received by the Secretary of State to the proposed variation from the relevant planning authority or any other person. However, the Secretary of State has given consideration to the representations received from consultees, including the relevant planning authority, Natural England, the Environment Agency and Port of London Authority and taken account of their comments in the varied planning conditions.

Conclusion

3.3 The Secretary of State has considered the views of the relevant planning authority and consultees and all other material considerations. The Secretary of State considers there is nothing further that needs probing and that it would not be appropriate to cause a public inquiry to be held into the section 36C application.

IV. SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

4.1 Regulation 3 of the 2000 Regulations as applied by regulation 7 of the Variation Regulations prohibits the Secretary of State from granting a variation of a section 36 consent unless the Secretary of State has first taken into consideration the environmental information, as defined in the EIA Regulations.

4.2 The Secretary of State is satisfied that the updated Environmental Statement is sufficient to allow him to make a determination on the Application and that the Company has followed the applicable procedures in the EIA Regulations.

4.3 The Secretary of State has considered the environmental information; in addition to the updated Environmental Statement, the Secretary of State has considered the comments made by the relevant planning authority, those designated as statutory consultees under regulation 2 of the EIA Regulations and other consultees.

4.4 Taking into account the extent to which any environmental effects will be modified and mitigated by measures the Company has agreed to take or will be required to take either under the conditions attached to the variation to section 36 consent or the planning conditions or by regulatory authorities including Natural England and the Environment Agency, the Secretary of State believes that any remaining adverse environmental effects will not be such that it would be appropriate to refuse the variation to the section 36 consent for the Development or the deemed planning permission.

4.5 The Secretary of State also has regard, in accordance with section 40 of the Natural and Rural Communities Act 2006, to the purpose of conserving biodiversity, and considers that the matters specified in paragraph 1(2) of Schedule 9 to the

Electricity Act 1989 have been adequately addressed by means of the Environmental Statement.

V. SECRETARY OF STATE'S CONSIDERATION OF POSSIBLE EFFECTS ON DESIGNATED SITES

A) Habitats Regulations Assessment

5.1 The Conservation of Habitats and Species Regulations 2010 (“the Habitats Regulations”) require the Secretary of State to consider whether the proposed Development would be likely to have a significant effect on a European Site, as defined in the Habitats Regulations and if so, to undertake an Appropriate Assessment (“AA”) of the implications for the European Site in view of its conservation objectives. In the absence of imperative reasons of overriding public interest, consent may only be granted if it can be shown that the development will not have an adverse effect on the integrity of the European Site (regulations 61(5) and 62). Regulation 61(6) provides that when considering whether the proposed development will adversely affect the integrity of a European Site, the competent authority can take into account measures proposed to mitigate such impacts.

5.2 In respect of internationally and nationally designated sites, the Secretary of State notes Natural England advised that the Application site is in close proximity to the Thames Estuary and Marshes Special Protection Area (SPA) and Thames Estuary and Marshes Ramsar site.

5.3 Natural England also advised that the Secretary of State, as competent authority under the provisions of the Habitats Regulations, should have regard to any potential impacts that a plan or project may have on any European Site when considering its Habitats Regulations Assessment (“HRA”).

5.4 On the proposed variations, Natural England has noted that the existing planning conditions would remain unchanged and, in particular, no changes are proposed to the existing conditions covering: prevention of contamination to watercourses, landscaping, biodiversity enhancement measures and air pollution monitoring.

5.5 Natural England has advised that based on the information available the proposal is not necessary for the management of the European Site and is unlikely to have a significant effect on any European site, and can therefore be screened out of any assessment. Natural England has recommended that the following information be referred to when justifying the Secretary of State’s conclusions regarding the likelihood of significant effects:

“The information provided within the Air Quality chapter of the Environmental Statement Further Information Document demonstrates that, even under ‘worst case’ scenario 2C-2 (one CCGT unit and five OCGT units all operating continuously), the process contributions to the average atmospheric contributions of NO_x at each of the internationally and nationally designated sites would be either insignificant or only marginally greater than those from the consented CCGT option. The process contributions to the atmospheric deposition of nitrogen at these sites under the ‘worst

case' scenario 2C-2 would not be significant. Similarly, the process contributions to the atmospheric deposition of acidity at these sites under the 'worst case' scenario 2C-2 would also be insignificant.

Therefore any effects upon the internationally and nationally designated sites resulting from the Gateway Energy Centre as envisioned by the proposed consent variations would not be significantly different from those resulting from the Gateway Energy Centre as currently consented."

5.6 Having considered the environmental information, the planning conditions already imposed and the advice of Natural England, the Secretary of State is satisfied that the varied Development is not likely to have a significant effect on any European Site, either alone or in-combination. The Secretary of State therefore considers that no Appropriate Assessment, pursuant to Regulation 61 of the Habitats Regulations, is necessary and finds no reason for refusing the variation application on the grounds of adverse effects on the integrity of a European Site.

B) Effects on other protected Sites

5.7 Natural England advised that at national level the Application site is in close proximity to Mucking Flats and Marshes SSSI and South Thames Estuary and Marshes SSSI. Also in close proximity are Vange and Fobbing Marshes SSSI, Holehaven Creek SSSI and Canvey Wick SSSI. Pitsea Marsh SSSI, Northward Hill SSSI, Chattenden Woods and Lodge Hill SSSI and Thundersley Great Common SSSI are at greater distances from the application site, but have been considered within the Applicant's air quality assessment.

5.8 Natural England also noted that no changes are proposed to the two ecological projects (or the triggers that initiate these projects), included in the agreement entered into on 7 July 2011 between the Company and the relevant planning authority pursuant to section 106 of the Town and Country Planning Act 1990 ("the section 106 agreement") covering regeneration of acid grassland at Thundersley Great Common Site of Specific Scientific Interest (SSSI) and increasing the population of least lettuce at Vange and Fobbing Marshes SSSI..

5.9 The Secretary of State also notes that Natural England raised no objections and requested no new conditions in respect of the SSSIs. The Secretary of State is satisfied with Natural England's advice that the proposed Development being carried out in strict accordance with the details of the Application, as submitted, will not damage or destroy the interest features for which these sites have been notified. The Secretary of State also agrees with Natural England and therefore advises that the SSSIs do not represent a constraint in determining the Application.

VI. SECRETARY OF STATE'S CONSIDERATION OF ISSUES RAISED DURING CONSULTATION

Natural England

6.1 The Secretary of State has noted from Natural England's response that they have not assessed the Application and associated documents for impacts on

protected species. The Secretary of State has considered the issue and is satisfied that Condition 54 (covering biodiversity enhancement measures) provides a route to secure and enhance the welfare of any protected species on the site.

6.2 Natural England also highlighted the need for the Secretary of State to consider the possible impacts of the varied Development on local sites, local landscape character and local biodiversity priority habitats and species. The Secretary of State notes that several local wildlife groups including Essex Wildlife Trust and Thurrock Wildlife Society were notified and consulted on the Application by the Company, but did not make any representations to the Secretary of State. The Secretary of State is therefore satisfied that the impact on local sites has been considered.

Relevant Planning Authority

6.3 The Secretary of State notes the relevant planning authority, Thurrock Council, has stated that it has no objection to the proposed variation to the section 36 consent and planning conditions. The Secretary of State also notes the relevant planning authority's view that the section 106 agreement is still in force and there is no need to amend this. It considers that the agreed obligations: i) remain necessary to make the development acceptable in planning terms; ii) are related to the development; and iii) are fairly and reasonably related in scale and kind to the development.

The Port of London Authority

6.4 The Port of London Authority had no objection to the section 36C variation application subject to there being no amendment to Condition 15, which requires an investigation into use of the river for the transportation of material and plant associated with the construction and decommissioning of the Development. The Secretary of State also considers it would not be appropriate to amend the condition.

Other parties

6.5 The Secretary of State notes that no objections to the section 36C variation Application have been raised by any other party.

VII. SECRETARY OF STATE'S CONSIDERATION OF THE REQUEST TO VARY THE EXISTING CONSENT AND DEEMED PLANNING PERMISSION DIRECTION TO EXTEND THE PERIOD WITHIN WHICH THE DEVELOPMENT MUST COMMENCE

7.1 The Secretary of State notes that the Company requested that the time limit for commencement of the Development be extended to allow for a further five years from the date of the varied consent. The Company considers that the proposed development relies on securing a capacity market award from the UK Government to proceed to construction. Given the capacity market award is secured at auction, the Company considered there is therefore considerable uncertainty as to whether it will be successful and a five year extension affords the opportunity to re-bid as necessary. The Company also stated that it has expended significant time and costs

in promoting the proposed development. It has highlighted that the proposed development, together with the matters secured by the Section 106 agreement it has entered into with the relevant planning authority offers a major benefit to the UK Economy by providing significant generating capacity, and is also designed to realise opportunities for electricity supply, heat and cooling within London Gateway. The Company considered those arrangements are consistent with both planning and energy policy and that if the time period for commencement were not extended, those benefits would be jeopardised and it is most unlikely that they would be realised.

7.2 The Secretary of State is required to be satisfied that all variations requested to a section 36 consent and deemed planning permission are appropriate. The Secretary of State has considered the reasons put forward by the Company and, in the circumstances of this variation application, considers that a five year extension is required in order to give the Development a reasonable prospect of commencement within the consent period. The Secretary of State also notes that there were no objections to the section 36C variation application and the relevant planning authority supports the extension of the time limit for commencement. In reaching this view, the Secretary of State has also considered the need for nationally significant gas infrastructure as set out in *Overarching National Policy Statement for Energy EN-1* and considers it is therefore relevant to take into consideration the viability of the Development and its prospects of commencement in order to meet that need when assessing the section 36C variation application. The Secretary of State is satisfied that on balance the variation to extend the consent and deemed planning permission direction by five years is appropriate.

VIII. SECRETARY OF STATE'S CONSIDERATION OF THE REQUEST TO VARY THE EXISTING CONSENT TO ALLOW FOR CONSTRUCTION USING EITHER (I) CCGT OR (II) CCGT AND OCGT

8.1 The Secretary of State notes that the Company has requested that the consent be varied to allow for construction using either: (i) up to two CCGT units including for each CCGT unit a gas turbine, a heat recovery steam generator, a steam turbine plant and associated equipment with a generating capacity of up to 1250MW; or (ii) one CCGT unit including for each CCGT unit a gas turbine, a heat recovery steam generator, a steam turbine plant and associated equipment and together with one or more OCGT units with the OCGT units having a combined rated electrical output of less than 300MW (including for each OCGT unit a gas turbine and associated equipment).

8.2 The Secretary of State notes that the Company has sought consent for the proposed two gas turbine technology options in order to provide greater flexibility. The Secretary of State is satisfied that including these options in relation to the gas turbine technologies is an appropriate variation. Whichever technology option is taken forward, the Secretary of State considers that the varied Development will not differ significantly from the generating station to which the original consent referred. The Secretary of State considers that any difference in construction, extension, operation or likely environmental effects would not be such as to require authorisation by a new consent. The Secretary of State is satisfied that giving flexibility in gas turbine technology helps to fulfil the need for nationally significant

gas infrastructure as set out in Overarching National Policy Statement for Energy EN-1. The Secretary of State has included a condition (Condition 1A) in the varied consent that requires notification to the Secretary of State and relevant planning authority of which one of the gas technology options have been selected prior to commencement of the Development and to provide details of the gas turbine configuration to be used.

IX. SECRETARY OF STATE'S CONSIDERATION OF CARBON CAPTURE READINESS ("CCR")

9.1 The Secretary of State considered in relation to determination of the original application for section 36 consent for the Development that *"the Company has adequately demonstrated that the proposed Development, to the extent that CCR policy so requires, will be able to retrofit carbon capture plant and equipment as and when carbon capture becomes technically and economically viable"*. The Secretary of State included in the section 36 consent conditions relating to CCR which were modelled on those contained in Annex G of the CCR Guidance.

9.2 The Secretary of State has considered whether the proposed variation to the section 36 consent would have any impact on the previous conclusions in relation to CCR for the Development. The Secretary of State notes that the Company has relied on the historic CCR documents from February 2010 and August 2014 in support of the latest section 36C variation application. The Secretary of State has consulted the Environment Agency and officials in the Office of Carbon Capture and Storage about the requirements for CCR in relation to the proposed variation and the information submitted by the Company.

9.3. As part of their application for section 36 consent, applicants are required to demonstrate the following (and the Secretary of State considers such demonstration equally relevant to a variation application):

- that sufficient space is available on or near to the site to accommodate carbon capture equipment in the future;
- the technical feasibility of retrofitting their chosen carbon capture technology;
- that a suitable area of deep geological storage offshore exists for the storage of captured CO₂ from the proposed generating station;
- the technical feasibility of transporting the captured CO₂ to the proposed storage area; and
- the likelihood that it will be economically feasible within the generating station's lifetime, to link it to a full Carbon Capture and Storage ("CCS") chain, covering retrofitting of capture equipment, transport and storage.

9.4. The Secretary of State notes that the Environment Agency has confirmed that sufficient space is available to house the necessary carbon capture and storage infrastructure. The Environment Agency has also indicated that it accepts the technical feasibility of retro-fitting the infrastructure should the need arise to do so.

9.5. The Company has indicated in the August 2014 updated CCR Feasibility Study that its preferred option is to utilise spare capacity at Leman Field for the CO₂ produced and captured during the operation of the Development.

9.6. In determining the original application for section 36 consent and the previous variation application, the Secretary of State considered that these approaches were acceptable and no information has subsequently been received which causes the Secretary of State to consider the matter differently in relation to the current variation application.

9.10. The decisions on the original section 36 application and previous variation application considered that the economic assessment produced by the Company was in accordance with the requirements of the CCR Guidance insofar as it demonstrated that the fitting of carbon capture equipment would be potentially viable over the lifetime of the proposed Development. In relation to the variation application, the Secretary of State is content that the Company's previous CCR assessments presented reasonable scenarios under which the fitting of CCS equipment would be economically feasible.

Conclusion on CCR

9.11. The Secretary of State has considered the information provided by the Company and the comments of consultees both within and outside the Department for Business, Energy and Industrial Strategy. The Secretary of State notes that the consultees accept the proposals put forward by the Company and concludes, therefore, that the section 36C variation application conforms to the methodology in the Revised Carbon Capture Feasibility Study and that there are no technical or economic obstacles to the grant of the requested variation in relation to CCR.

X. SECRETARY OF STATE'S CONSIDERATION OF COMBINED HEAT AND POWER

10.1. The Secretary of State notes that the deemed planning permission direction already includes requirements for combined heat and power ("CHP"). The Secretary of State considers that the CHP conditions (Conditions 58 and 59) remain appropriate and should be retained in the varied section 36C consent.

XI. EQUALITY ACT 2010

11.1. The Equality Act 2010 requires public authorities to have due regard in the exercise of their functions to:

- (a) the elimination of unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act;
- (b) the advancement of equality of opportunity between people who share a protected characteristic and those who do not; and
- (c) the fostering of good relations between people who share a protected characteristic and those who do not.

11.2. The Secretary of State has considered the potential impacts of granting or refusing the Section 36C variation application in the context of the general equality duty and has concluded that it is not likely to result in any significant differential impacts on people sharing any of the protected characteristics.

11.3. The Secretary of State does not, therefore, consider that either the grant or refusal of the variation application is likely to result in a substantial impact on equality of opportunity or relations between those who share a protected characteristic and others or unlawfully discriminate against any particular protected characteristics.

XII. OTHER MATTERS

12.1. The Secretary of State has also considered policies on the need for and development of new electricity generating infrastructure, as set out in the *Overarching National Policy Statement for Energy (EN-1)* and the *National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2)* in determining this Section 36C variation application.

Environmental Permit

12.2 The Secretary of State is aware that the varied Development would require an Environmental Permit from the Environment Agency before it could operate. The Secretary of State notes that the Environment Agency has indicated that, on the basis of the information available to it, it does not foresee any barriers to a permit being issued for either of the gas turbine configuration options.

XIII. SECRETARY OF STATE'S DECISION ON THE VARIATION APPLICATION

13.1. The Secretary of State, having regard to the matters specified above, has decided to make a further variation to the section 36 consent for the Development pursuant to section 36C of the Electricity Act 1989. The section 36 consent as varied is annexed to the variation decision and subject to the conditions set out in the varied consent.

13.2. The Secretary of State also believes the planning conditions as revised form a sufficient basis on which the varied Development might proceed and therefore has decided to issue a section 90(2ZA) direction to vary the planning permission on the basis of the conditions specified in the annex to that direction.

13.3. The Secretary of State also considers it is appropriate to include the further provision sought (Conditions 60 and 61) to expressly state that the environmental effects of the Development must not exceed those assessed in the Environmental Statement in order to ensure the Development consented does not have a greater environmental impact than that considered in the original and variation applications.

13.4. As indicated in paragraph 8.2 above, the Secretary of State has also included a new condition to ensure the Company notifies the Secretary of State and relevant planning authority which one of the gas turbine technology options is selected prior to

commencement of the Development and what the capacity of each gas turbine technology will be. Other minor drafting amendments have also been made to ensure the section 36 consent and planning conditions are in line with the Environmental Statement.

13.5. I accordingly enclose the Secretary of State's variation of consent under section 36C of the Electricity Act 1989 and a direction under section 90(2ZA) of the Town and Country Planning Act 1990.

XIV. GENERAL GUIDANCE

14.1 The validity of the Secretary of State's decision may be challenged by making an application to the High Court for leave to seek a judicial review. Such application must be made as soon as possible. Parties seeking further information as to how to proceed should seek independent legal advice from a solicitor or legal adviser, or alternatively may contact the Administrative Court at the Royal Courts of Justice, Strand, London WC2 2LL (General Enquiries 020 7947 6025/6655).

14.2 This decision does not convey any approval or consent or waiver that may be required under any enactment, by-law, order or regulation other than section 36 and 36C of, and Schedule 8 to, the Electricity Act 1989 and section 90 of the Town and Country Planning Act 1990.

Yours sincerely

Giles Scott
Head of Energy Infrastructure Planning and Coal Liabilities