Department for Business, Energy & Industrial Strategy

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Dear Mr Taylor,

PLANNING ACT 2008

APPLICATION FOR THE TEES COMBINED CYCLE POWER PLANT ORDER

1. Introduction

1.1 I am directed by the Secretary of State for Business, Energy and Industrial Strategy ("the Secretary of State") to advise you that consideration has been given to the report dated 10 January 2019 of the Examining Authority ("the ExA"), David Richards BSocSci, Dip TP, MRTPI, who conducted an examination into the application ("the Application") submitted on 22 November 2017 by Sembcorp Utilities (UK) Limited ("the Applicant") for a Development Consent Order ("the Order") under section 37 of the Planning Act 2008 ("the 2008 Act") for the Tees Combined Cycle Power Plant generating station ("the Development").

1.2 The Application was accepted for examination on 18 December 2017. The examination began on 10 April 2018 and was completed on 10 October 2018.

1.3 The Order, as applied for, would grant development consent for the construction and operation of a Combined Cycle Gas Turbine ("CCGT") generating station with a gross electrical output of up to 1,748 megawatts ("MWe") and a net electrical output of up to 1,700 MWe on the site of the former Teesside Power Station, which forms part of the Wilton International site on Teesside.

1.4 The Development would comprise:

- Work No.1A - up to two separate Combined Cycle Gas Turbine ("CCGT") units of up to 850 MWe net electrical output each, with each generating unit including a gas turbine, steam turbine and electricity generator, heat recovery

steam generators ("HRSG"); condensers; emission stacks; and main and auxiliary transformers;

- Work No.1B – cooling infrastructure including up to two banks of hybrid cooling towers; pumps; and sampling and dosing plant;
- Work No. 2A - associated development in connection with the project including a permanent laydown area, vehicle parking area, internal roadways and footpaths, lighting and signage;
- Work No. 2B – associated development including an area reserved for carbon capture, compression and storage, to be laid out as vehicle parking and used for open and covered storage and laydown during construction.

1.5 Construction of the project would proceed under either one of the two following scenarios: i) two CCGT trains of up to 850 MWe net electrical output are built in a single phase of construction to give a total net capacity of up to 1700 MWe; or ii) one CCGT train of up to 850MW net electrical output is built and commissioned and within an estimated 5 years of its commercial operation the construction of a further CCGT train of up to 850 MWe net electrical output commences [ER 1.1.4].

1.6 Published alongside this letter on the Planning Inspectorate's website[1] is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the ExA Report"). The ExA's findings and conclusions are set out in Chapters 4 to 8 of the ExA Report, and the ExA's summary of conclusions and recommendation is at Chapter 9.

2. Summary of the ExA's Report and Recommendation

2.1 The ExA assessed and tested a range of issues during the Examination, which are set out in the Report under the following broad headings:

- Legal and Policy Context, including the relevant National Policy Statements, European, National and Local law and policy (Chapter 3);
- Main planning issues arising from the Application and during examination (Chapter 4); which includes consideration of the DCO; Environmental Impact Assessment ("EIA"); air quality and emissions; biodiversity, ecology and natural environment; Habitats Regulations Assessment ("HRA"); economic and social impacts; historic environment; infrastructure; landscape and visual; noise and vibration; transportation and traffic; and water environment ;
- Findings and Conclusions in relation to the Habitats Regulations Assessment (Chapter 5);
- Conclusions on the case for Development Consent/the Planning Balance (Chapter 6);
- Compulsory Acquisition and Related Matters (Chapter 7); and

[1] https://infrastructure.planninginspectorate.gov.uk/projects/north-east/tees-ccpp/

- Draft Development Consent Order and Related Matters (Chapter 8).

2.2 For the reasons set out in the Summary of Findings and Conclusions (Chapter 9) of the ExA Report, the ExA recommends that the Order be made as set out in Appendix D to the ExA Report [ER 9.1.3].

3. Summary of the Secretary of State's Decision

3.1 The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in the Application. This letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the Planning Act 2008 and regulation 23(2)(d) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 ("the 2009 Regulations") – which apply to this application by operation of regulation 37(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

4. Secretary of State's Consideration of the Application

4.1 The Secretary of State has considered the ExA Report and all other material considerations. The Secretary of State's consideration of the ExA Report is set out in the following paragraphs. All numbered references, unless otherwise stated, are to paragraphs of the ExA Report.

4.2 The Secretary of State has had regard to the Local Impact Report ("LIR") as submitted by Redcar and Cleveland Borough Council ("RCBC") [ER 3.9.1- ER 3.9.3], the Development Plan [ER 3.10.1 – ER 3.10.2], environmental information as defined in Regulation 2(1) of the 2009 Regulations and to all other matters which are considered to be important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

4.3 The Secretary of State notes 12 Relevant Representations were received on the application from: Tees Valley Combined Authority; South Tees Development Corporation; Historic England; National Grid Electricity Transmission ("NGET"); Environment Agency; Natural England; RCBC; North East Process Industry Cluster Ltd; BNP Paribas Real Estate (on behalf of Royal Mail); Health and Safety Executive ("HSE"); the Tees Valley Mayor; and one local resident. All were invited to become involved in the ExA's examination as Interested Parties and the Relevant Representations have also been fully considered by the ExA [ER 1.4.20].

4.4 The Applicant and Interested Parties were provided with opportunities to make written representations, respond to questions and oral submissions during the examination and were taken into account by the ExA [ER 1.4.22].

4.5 It is noted that the following principal issues identified for examination by the ExA were: the Environmental Impact Assessment; Air Quality and Emissions;

Biodiversity, Ecology and Natural Environment; Habitats Regulations Assessment; Economic and Social Effects; Historic Environment; Infrastructure; Landscape and Visual; Noise and Vibration; Transportation and Traffic; and Water Environment. No other issues or areas of concern were raised by any Interested Parties. The Secretary of State notes that the examination subsequently focussed on the environmental effects of the proposed development, principally the effects on Air Quality, Biodiversity, Historic Environment, Landscape and Visual effects, and Noise and Vibration [ER 4.1.2 -4.1.3].

4.6 Except as indicated otherwise in the paragraphs below, the Secretary of State agrees with the findings, conclusions and recommendations of the ExA as set out in the ExA Report, and the reasons for the Secretary of State's decision are those given by the ExA in support of his conclusions and recommendations.

National Policy Statements, Need for the Development and Examination of Alternatives

4.7 After having regard to the comments of the ExA set out in Chapter 3 [ER 3.2] of the ExA Report, and in particular the conclusions both on the need for the proposed Development and examination of alternatives and case for development consent in Chapters 4 and 6, the Secretary of State is satisfied that in the absence of any adverse effects which are unacceptable in planning terms, making the Order would be consistent with energy National Policy Statements ("NPS") EN-1 (the Overarching NPS for Energy) and EN-2 (the NPS for Fossil Fuel Electricity Generating Infrastructure). Taken together, these NPSs set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by the Applicant.

4.8 The Secretary of State notes that the Applicant's intention is to take advantage of the reconnection of the existing 24" Natural Gas Pipeline to the national transmission system at Billingham Above Ground Installation ("AGI"), which served the previous power station on the site. The Applicant owns the pipeline and connection point to the Development and upon completion of a technical study will be in a position to apply for a Full Connection Offer for National Grid Gas plc ("NGG") to supply the capacity required for the Development. The Secretary of State notes that the ExA is therefore satisfied there are no ancillary land implications relevant to the achievement of a suitable gas supply to the Development and agrees accordingly that EN-4 (Gas Supply Infrastructure and Gas and Oil Pipelines) is not relevant to the Application [ER 1.8.1 and ER 3.2.9 – ER 3.2.11].

4.9 Similarly, the Secretary of State also notes the Development would require to be connected to the grid to export electricity and would make use of existing substations within the site which are connected to the grid and served the previous power station. The Secretary of State understands that the Applicant has had discussions with National Grid Electricity Transmission plc ("NGET") and has submitted a completed Connection Application and has secured a bilateral connection agreement for a 1,700 MWe directly connected generating station (Tees CCPP Power Station at Greystones A & B 275kV substations Reference A/SUUL/18/1909/TEE-1EN(0)). As there is no ancillary land requirement for the electricity connection, the

Secretary of State agrees with ExA that EN-5 (the NPS for Electricity Networks Infrastructure) is not relevant to this Application [ER 1.8.1 and ER 3.2.12].

Carbon Capture Readiness ("CCR")

4.10 As set out in NPSs EN-1 and EN-2, all commercial scale fossil fuel generating stations with a gross generating capacity of 300 MWe or more have to be 'Carbon Capture Ready' ("CCR"). Applicants are required to demonstrate that their proposed development complies with guidance issued by the Secretary of State in November 2009[2] or any successor to it.

4.11 The Secretary of State notes that the Application was accompanied by a CCR Statement from the Applicant, which also included an assessment of possible land requirements, the technical feasibility of retrofitting CCR equipment, identification of suitable areas for offshore storage of CO_2, assessment of the feasibility of its transportation to the storage area and economic assessment. Further information was also produced during the examination. The Secretary of State understands that Teesside has a well-publicised and documented plan for a 15 million tonnes per annum Carbon Capture and Storage ("CCS") network proposed by the Tees Valley Combined Authority and supported by the Teesside Collective (a cluster of multinational companies including the Applicant). The Wilton International Site is considered to be well place to connect to the proposed network [ER 4.18.2].

4.12 The Secretary of State notes there was some disagreement in the examination on the estimated land required for CCR. The Environment Agency and the ExA were not satisfied by the evidence produced by the Applicant during the examination on the adequacy of the space set aside by them for the retrofitting of CCS equipment. The Applicant's CCR Statement indicates that an 8 hectare site for CCR would be required based on International Energy Agency estimates, but estimated that based on other studies the requirement may only be 4.6 hectares for a generating station of up to 1,700 MWe net electrical output. The area available for CCR at the application site is 5.4 hectares. However, on the basis of further information provided by the Applicant, the Environment Agency was satisfied that the retrofitting of CCS equipment for generating station with a net electrical output of up to 1,520 MWe generating station was technically feasible, but considered further evidence would be needed to demonstrate feasibility for a generating station with a net electrical output capacity of up to 1,700 MWe. The Environment Agency and Applicant therefore agreed that a new requirement (Requirement 29) that the generating capacity be limited to 1,520MWe until such time as the Applicant can demonstrate to the relevant planning authority (i.e. RCBC), in consultation with the Environment Agency, that the carbon capture and storage requirements for the full 1,700 MWe can be achieved and accommodated at the site [ER 4.18.1 – 4.18.10]. A slightly revised version of the requirement was subsequently submitted by the Applicant, which the ExA considers does not substantively alter what it is set out to achieve and has recommended its inclusion in the draft Order. Whilst the Applicant considers that lesser land take might be achievable in the future due to improvements in technology, on the evidence submitted to date and in the context of current guidance, the ExA concludes that the generating capacity should be limited to 1,520 MWe until such time it can be

[2] Carbon Capture Readiness A guidance note for Section 36 Applications URN09D/810 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

demonstrated that the full 1,700 MWe can be accommodated within the Order boundary [ER 4.18.10].

4.13 In considering this matter, the Secretary of State identified that the Applicant had been inconsistent in references to the electrical capacity of the proposed generating station in the application documentation submitted. For example, the Application Form refers to a generating station of "*up to 1,700 MW gross output capacity*", whilst its covering Application Letter of 22 November 2017 refers to a generating station with "*a nominal net electrical output capacity of up to 1,700 MW*". Further, the Environmental Statement Non-Technical Statement does not specifically refer to either "*net*" or "*gross*", but describes the development as having "*an output capacity of up to 1,700 MWe*".

4.14 In order to inform the Secretary of State's decision, a consultation related to this matter (and also seeking the information referred to in Section 5 below) was issued to the Applicant and the Environment Agency on 4 February 2019. The consultation letter noted that the inconsistencies in the use of gross and net electrical capacity in the application documents were not raised by any party during the examination. It was not clear, therefore, if the references to net capacity were simply drafting errors. However, if the references to net capacity were intentional, there was also no indication of what the gross electrical capacity of the proposed development would be and how this relates to the net capacity. Clarity on these points was necessary in order to understand the basis of the CCR assessment and other assessments contained in the Environmental Statement which refer to capacity of the proposed development. The Applicant was offered the opportunity to comment on this.

4.15 The consultation letter noted that the Carbon Capture Readiness Guidance[3]: which is applicable to the application, is relevant to applications for generating stations of the type proposed with "*an electrical generating capacity at or over 300 MW (gross capacity…)*"[4] [underlining added]. The Secretary of State's consideration of the CCR assessment of an application for a generating station made under the Planning Act 2008 should, it was suggested, also be carried out on the basis of its gross electrical capacity rather than its net capacity so that it is assessed on a worst-case scenario. In particular, the consultation letter also noted that Requirement 29 in the draft Order referred to "*net electrical output*" [underlining added]. In order to inform the Secretary of State's decision, the Environment Agency was also requested to confirm the basis for its assessment of CCR requirements to enable consideration of whether the draft Requirement 29 is appropriately drafted and suitable for inclusion in any Order which may be granted. The Applicant was also invited to comment.

4.16 The Secretary of State notes that the representation received from the Applicant to the consultation confirmed that inconsistencies with respect to gross and net electrical outputs were drafting errors. It is also noted that the Applicant's CCR calculations were based on the net electrical output and that this would be the output available for export to the National Grid after parasitic load (e.g. power used for the

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43609/Carbon_capture_readiness_-_guidance.pdf

[4] https://www.gov.uk/guidance/consents-and-planning-applications-for-national-energy-infrastructure-projects#carbon-capture-readiness-ccr

cooling system) has been subtracted from the gross electrical output capacity. The Applicant also confirmed that the calculations of carbon dioxide emissions were based on the gross thermal input (i.e. the total fuel burnt) and the net and gross electrical outputs were considered by them to be immaterial to the CCR assessment results and to the dispersion modelling results in terms of air quality effects on people and habitats predicted in the ES.

4.17 The representation received from Environment Agency also confirmed they consider it appropriate to use net electrical capacity in both assessing the land set for carbon capture and also in requirement 29 of the draft Order.

4.18 Although the Secretary of State considered it should be possible to limit capacity of the proposed power plant by either gross thermal input or gross electrical capacity, a further consultation letter to the Applicant explained that it would be more consistent with other previous consents if the gross electrical output capacity was specified in any Order that may be granted. The further consultation asked the Applicant to provide a further explanation therefore of: the relationship between the gross electrical capacity, gross thermal input and net electrical capacity; confirmation of the gross electrical capacity figure; and any reasons why it would not be appropriate or possible to use the gross electrical capacity figure in this case, both within the description of the authorised development and in requirement 29 of the draft Order.

4.19 Following the Secretary of State's request for information from the Applicant on this matter, the Applicant (via PINS) sought a meeting to gain further clarification from the Secretary of State on the information requested. On a without prejudice basis, a teleconference meeting between BEIS officials and the Applicant was held on 12 March 2019 to clarify the request for information. The Applicant's subsequent representation confirmed that the gross electrical output of the generating station would be 1,748 MWe and this has accordingly been reflected elsewhere in this letter and also in the description of Work No.1 in Schedule 1 and requirement 29 of the Order.

4.20 The Secretary of State is satisfied that the Statement of Common Ground between the Applicant and the Environment Agency [AS-003], and subsequent clarification by both parties, provides sufficient assurance that the Environment Agency has not ruled out the viability/technical feasibility of retrofitting appropriate CCR equipment on the site to allow the generating station be able to operate at a net electrical output of 1,700 MWe at a future date. On this basis, the Secretary of State is therefore content that the inclusion of Requirement 29 in the Order, as modified to require sign-off by the Secretary of State, will ensure compliance with CCR guidance by limiting the capacity of the generating station to a level at which the viability/technical feasibility of retrofitting appropriate CCR has been demonstrated and until such time as it has been demonstrated that CCR plant for an operational net electrical output capacity of 1,700 MWe can be accommodated. The Secretary of State is further satisfied that the discrepancy in the Application documents between gross and net electrical output capacity does not have any implications for the environmental assessments which support the Application.

Combined Heat and Power ("CHP")

4.21 NPS EN-1 requires that applications for thermal generation stations under the Planning Act 2008 should either include CHP, or evidence that opportunities for CHP have been fully explored. In accordance with Departmental guidance, as also referred to in Part 4.6 of Overarching National Policy Statement for Energy (EN-1) and Part 2 of National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2), any application to develop a thermal generating station over 50 MW must include either CHP or contain evidence that the possibilities for CHP have been fully explored. The Application was accompanied by a CHP Assessment, which included an assessment of potential heat users, a heat export feasibility study and an assessment of Best Available Techniques ("BAT"). Given the variety of energy intensive manufacturing at the Wilton International site using heat and power, it already has extensive utilities infrastructure and established CHP generating equipment. The Secretary of State notes that the CHP Assessment show the Applicant's existing heat producing assets substantially exceed current demand for heat users at the Wilton International site. However, it is understood that the Applicant is actively marketing the Wilton International site to attract other companies to set up there. The Applicant has also expressed an interest in supporting the proposed South Tees District Heating scheme covered by RCBC and Middlesbrough Council, which is at an early stage and currently completing its feasibility study. The BAT Assessment acknowledges that, although there are no immediate opportunities for supplying heat, the growth of business in the medium to long term will require new steam raising capacity. Minimal modifications would be required to the Development to allow for steam offtake and, while some new pipelines may be required, there is an existing steam pipeline in place that could be utilised. The Applicant is committed to carrying out periodic reviews of opportunities to supply heat [ER 4.17.1- 4.17.5].

4.22 The Environment Agency and ExA are satisfied that the Applicant has adequately demonstrated CHP readiness and agrees that Requirement 21 in the Order secures sufficient space and routes for the provision of CHP over the lifetime of the Development should it become viable in the future [ER 4.17.9 – 4.17.10]. The Secretary of State is satisfied that the proposed development adequately makes provision for CHP, accords with all legislation and policy requirements and CHP is adequately provided for and secured in the Order.

5. Biodiversity and Habitats

5.1 The Development is not directly connected with or necessary to the management of any European Site. Therefore, under Regulation 63 of the Conservation Of Habitats And Species Regulations 2017 ("the Habitats Regulations"), the Secretary of State is required to consider whether the Development would be likely, either alone or in-combination with other plans and projects, to have a significant effect on a European site. If likely significant effects cannot be ruled out, then the Secretary of State must undertake an Appropriate Assessment ("AA") addressing the implications for the European Site in view of its conservation objectives. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the Development will not, either on its own or in-combination with other plans and projects, adversely affect the integrity of such a site, unless there

are no feasible alternative or imperative reasons of overriding public interest apply. The complete process of assessment is commonly referred to as a Habitats Regulations Assessment ("HRA").

5.2 In undertaking the HRA, the Secretary of State considered the following European Sites:

- Tees and Cleveland Coast Special Protection Area ("SPA");
- Tees and Cleveland Coast potential SPA ("pSPA");
- Tees and Cleveland Coast Ramsar site and proposed Ramsar Extension;
- North York Moors Special Area of Conservation ("SAC"); and
- North York Moors SPA

5.3 Habitats and species protected by all of the above listed sites were considered by the Applicant to have the potential to be impacted by air emissions during the Development's operational phase, specifically by increases in nutrient nitrogen deposition, acid deposition and atmospheric concentrations of oxides of nitrogen (NOx).

5.4 The Development has been designed to include turbines and a stack height that have the effect of minimising the impact of air emissions to the surrounding environment. Mindful of recent caselaw [5], the views of Natural England expressed in the course of the examination, and the ExA's assessment of the information provided by the Applicant to inform an HRA, the Secretary of State proceeded to assess the potential impacts of the Development in the framework of an Appropriate Assessment.

5.5 The Secretary of State's Appropriate Assessment relies on the air quality modelling undertaken by the Applicant and comparisons made between these modelling outputs and significance criteria (as outlined in guidance released by DEFRA and the Environment Agency[6]). It also incorporates a qualitative in-combination assessment provided by the Applicant.

5.6 In view of the DEFRA / Environment Agency guidance the Secretary of State has determined that the operational emissions from the development alone will fall within the category considered as insignificant. From the applicant's in-combination assessment he has also been able to satisfy himself that there is limited scope for the impacts from the development alone to cumulate with impacts from any other developments assessed.

5.7 Therefore, the Secretary of State has concluded that the Development alone and in-combination would not have an adverse effect on any of the above listed sites. This conclusion was consistent with the advice from the Statutory Nature Conservation Adviser, Natural England, and the recommendation of the ExA.

[5] People Over Wind, Peter Sweetman v Coillte Teoranta ("the Sweetman Judgement")[5],
[6] https://www.gov.uk/guidance/air-emissions-risk-assessment-for-your-environmental-permit

6. Other Matters

Stack Height

6.1 The Secretary of State notes that the Applicant's draft Order had included the option of lower stack heights for the two stacks than the 75m height applied for. A sub-paragraph in Requirement 4 of its draft Order would have allowed RCBC, the relevant planning authority, in consultation with the Environment Agency, to consider a further assessment and to agree a lower stack height if it could be demonstrated that there were no new or materially different environmental effects to those identified in the Environmental Statement. However, it is also noted that the ExA was concerned that a lesser stack height may result in a development which gives rise to effects which have not, or are different to, those assessed in the Environmental Statement (and accordingly, the HRA). Although a reduced stack height would potentially reduce the visual impacts of the Development to some degree, the Applicant's air quality modelling was based on 75m and information has not been provided to assess the effects associated with a lower stack height. The ExA has therefore based his conclusions on a 75m stack height and recommends that the relevant Order requirement be modified to remove the sub-paragraph requested by the Applicant [ER 4.9.44 – 4.9.53, 4.9.66 – 4.9.69]. The Secretary of State is satisfied with the ExA's consideration of this matter and that the Order should be made in the modified form recommended by the ExA which removes the sub-paragraph requested by the Applicant.

Environmental Permit

6.2 The Secretary of State notes that the proposed Development would be subject to the Environmental Permitting regime under the Environmental Permitting Regulations 2010 ('EPR') covering operational emissions from the generating station. The Environment Agency will examine information on air quality (including the air dispersion modelling), noise and other emissions to the environment which will be provided by the Applicant as part of the Environmental Permit application. Although it is noted that the Applicant has yet to submit an Environmental Permit application, the Environment Agency has stated that based on the information submitted to date there is no indication to suggest a Permit would not be issued [ER 1.8.1]. In the circumstances, the Secretary of State considers there is also no reason to believe the Environmental Permit will not be granted in due course.

Section 106 Agreement

6.3 The Secretary of State notes that it was widely held in relevant representations and amongst interested parties that the socio-economic effects of the Development would be beneficial to employment and the economy. The ExA also agrees that the Development would be beneficial to the local, regional and national economy. To ensure that benefit would be experienced locally the Applicant entered into a planning obligation agreement with RCBC on 5 October 2018 under section 106 of the Town and Country Planning Act 1990. This requires the Applicant to use reasonable endeavours to maximise job opportunities for local residents, especially those who live locally within deprived communities, and to provide and implement a Construction Training and Employment Method Statement for the duration of the construction

period. The Applicant must also use reasonable endeavours to open up opportunities for local businesses to bid for development contracts. It is also noted that provision is included for the Applicant to make financial contributions to establish 'Routeways' into employment for local people, and workshops and coaching sessions to develop the capacity of local suppliers. In this respect, the Secretary of State agrees with the ExA that the section 106 agreement will require that best endeavours are used to ensure that local social and economic benefit will be maximised [ER 1.7.1 & 4.11.12].

Electricity and Gas Connections

6.4 As indicated in section 4 above, separate grid and gas connections will also be required [ER 1.8.1]. Although not forming part of the Application for the proposed Development, the Secretary of State has no reason to believe that the relevant agreements with NGET and NGG would also not be forthcoming.

7. Consideration of Compulsory Acquisition

7.1 The Secretary of State notes that no provisions for compulsory acquisition or temporary possession powers were sought by the Applicant. There are also no Affected Persons with interests affected by it. All works will take place on land on which the Applicant holds the freehold. No acquisition or extinguishment or interference with the rights of any other party is required. The Secretary of State understands that NGET owns the existing substations for the site on land leased from the Applicant and runs underground cables through part of the site. Similarly, Northern Powergrid (Northeast) Limited also owns a cable which runs through the site. No request for protective provisions was made by Northern Powergrid. National Grid also wrote shortly before the close of the examination to confirm it had agreed and signed a Statement of Common Ground on 11 May 2018 that protective provisions were not required for the Order, as leases between the parties are being varied and updated to allow the connections to be made. The lease will cover NGET rights and any protections that may be required. The Secretary of State therefore has no reason to disagree with the ExA's conclusion that there is no requirement for Compulsory Acquisition, Temporary Possession or Protective Provisions to be included in the Order and that no individual or corporate body has identified themselves as Affected Persons [ER 7.1.1 – 7.2.1].

8. General Considerations

Equality Act 2010

8.1 The Equality Act 2010 includes a public sector "general equality duty". This requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under the Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect

of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships[7]; pregnancy and maternity; religion and belief; and race. This matter has been considered by the Secretary of State who has concluded that there was no evidence of any harm, lack of respect for equalities, or disregard to equality issues.

Human Rights Act 1998

8.2 The Secretary of State has considered the potential infringement of human rights in relation to the European Convention on Human Rights by the Development and notes there were no human rights concerns raised during the examination. He has no reason to believe therefore that the grant of the Order would give rise to any, or any disproportionate or unjustified, interference with human rights so as to conflict with the provisions of the Human Rights Act 1998.

Natural Environment and Rural Communities Act 2006

8.3 The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006, has to have regard to the purpose of conserving biodiversity, and in particular to the United Nations Environmental Programme Convention on Biological Diversity of 1992, when granting development consent.

8.4 The Secretary of State is of the view that the ExA's report, together with the environmental impact analysis, considers biodiversity sufficiently to inform him in this respect. In reaching the decision to give consent to the Development, the Secretary of State has had due regard to conserving biodiversity.

9. Secretary of State's conclusions and decision

9.1 For the reasons given in this letter, the Secretary of State considers that there is a compelling case for granting consent. Given the national need for the proposed Development, as set out in the relevant National Policy Statements referred to above, the Secretary of State does not believe that this is outweighed by the Development's potential adverse local impacts, as mitigated by the proposed terms of the Order.

9.2 The Secretary of State has therefore decided to accept the ExA's recommendation to make the Order granting development consent [ER 9.1.3]. In reaching this decision, the Secretary of State confirms regard has been given to the ExA Report, the LIR submitted by RCBC and to all other matters which are considered important and relevant to the Secretary of State's decision as required by section 104 of the 2008 Act. The Secretary of State confirms for the purposes of regulation 3(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 that the environmental information as defined in regulation 2(1) of those Regulations has been taken into consideration.

[7] In respect of the first statutory objective (eliminating unlawful discrimination etc.) only.

10. Modifications to the Order by the Secretary of State

10.1 The Secretary of State has made the following modifications to the Order recommended by the ExA:

- References to both the net and gross MWe capacity of the authorised development have been included in the Order where relevant (see paragraphs 4.13-4.20 above).
- Definitions contained within article 2(1) (interpretation) which refer to documents which are to be certified by the Secretary of State have been clarified where they cross-refer to the examination library index compiled by the ExA.
- Article 12 (Certification of plans etc.) has been amended to ensure that the CHP assessment, the CCR assessments and the examination library index (which are now also defined in article 2(1)) are certified by the Secretary of State for the purposes of the Order.
- Article 8 (Application of legislative provisions) has been amended to clarify that it does not apply to development for which development consent is required under section 31 of the 2008 Act.
- Requirement 29 (Electrical output limitation) and associated definitions relating to CCR have been amended to ensure consistency with the model conditions contained in the Secretary of State's CCR guidance and to provide that the requirement may be discharged by the submission of a revised CCS proposal, subject to approval by the Secretary of State in consultation with the Environment Agency.

10.2 The Secretary of State has also made other changes to the draft Order which do not materially alter its effect, including changes to conform with the current practice for statutory instruments (for example, modernisation of language), changes in the interests of clarity and consistency and changes to ensure that the Order has the intended effect.

11. Challenge to decision

11.1 The circumstances in which the Secretary of State's decision may be challenged are set out in the note attached at the Annex to this letter.

12. Publicity for decision

12.1 The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 23 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009.

12.2 Section 134(6A) of the Planning Act 2008 provides that a compulsory acquisition notice shall be a local land charge. Section 134(6A) also requires the compulsory acquisition notice to be sent to the Chief Land Registrar, and this will be the case where the order is situated in an area for which the Chief Land Registrar has

given notice that he now keeps the local land charges register following changes made by Schedule 5 to the Infrastructure Act 2015. However where land in the order is situated in an area for which the local authority remains the registering authority for local land charges (because the changes made by the Infrastructure Act 2015 have not yet taken effect), the prospective purchaser should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority.

Yours sincerely

Gareth Leigh
Head of Energy Infrastructure Planning

ANNEX

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the Planning Court during the period of 6 weeks beginning with the day after the day on which the Order is published. The decision documents are being published on the date of this letter on the Planning Inspectorate website at the following address:

https://infrastructure.planninginspectorate.gov.uk/projects/north-east/tees-ccpp/

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655).