Department for
Business, Energy
& Industrial Strategy

Ms Hannah Thomas-Davies
Dalton Warner Davis
21 Garlick Hill
London
EC4V 2AU

Department for Business, Energy & Industrial Strategy
1 Victoria Street,
London SW1H 0ET
T: +44(0)300 068 5677
E: gareth.leigh@beis.gov.uk
www.gov.uk/beis

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ELECTRICITY ACT 1989

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

SPALDING ENERGY EXPANSION GENERATING STATION AT WEST MARSH ROAD, SPALDING, LINCOLNSHIRE

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 11 August 2017 ("the Application") on behalf of Spalding Energy Expansion Limited ("the Company") to vary the consent of the Secretary of State under section 36 of the Electricity Act 1989 ("the Act") dated 11 November 2010, as varied on 30 October 2015 under section 36C of the Act ("section 36 consent") to construct and operate the Spalding Energy Expansion generating station at West Marsh Road, Spalding, Lincolnshire ("the Development"). The Application also seeks to vary the direction of the Secretary of State made under section 90(2) of the Town and Country Planning Act 1990 ("TCPA") dated 11 November, as varied by the Secretary of State on 30 October 2015 under s.90(2ZA) TCPA and by South Holland District Council on 7 August 2017 under s.96A TCPA, that planning permission for the Development be deemed to be granted ("the Section 90 direction").

1.2. The section 36 consent and section 90 direction granted on 11 November 2010 was for a 900MW combined cycle gas turbine ("CCGT") generating station. The variation under section 36C granted on 30 October 2015 was to construct and operate either a CCGT generating station of up to 945MW or a generating station consisting of a CCGT unit of 645MW with an open cycle gas turbine ("OCGT") unit(s)

of up to 300MW. On 7 June 2017, as required by the section 36 consent, the Company notified the Secretary of State and South Holland District Council that the gas turbine technology selected was the CCGT/OCGT option. The Secretary of State confirmed discharge of Conditions 4(2) of the section 36 consent and (53) of the section 90 direction covering the technology option choice and capacity of each gas turbine technology to be used on the same date.

1.3 The Secretary of State notes that the 300MW OCGT unit secured a 15 year contract in the 2016 T-4 Capacity Market Auction, and is expected to commence construction in time to meet its commitments under the contract (principally to be operating by 1 October 2020). Accordingly the Company's intention would be for a phased construction of the Development with the first phase being construction of the OCGT unit(s) and associated equipment. In order to give effect to the phasing contemplated, the Company applied on 22 June 2017 under Section 96A TCPA to make non-material changes to the section 90 direction as varied in 2015. The non-material changes granted by South Holland District Council on 7 August 2017 were to allow for details to be submitted prior to commencement of a specified phase of the Development.

1.4 The reasons given for the current variations now sought are based on influencing factors, including electricity market changes and technology advancements. The Company's application sought approval for a generating station up to 945MW comprising the following key elements:

either: (a) up to two CCGT units with a total capacity of 945MW ;
or

(b) i) one CCGT unit of up to 645MW;
ii) a Battery Energy Storage System ("BESS") of up to 175MW; and
iii) OCGT unit(s) of less than 300MW;
but with a total combined capacity of i), ii) and iii) of up to 945MW.

1.5 However, following discharge by the Secretary of State of the gas technology choice and capacity conditions on 7 June 2017, clarification was sought from the Company that option (a) (i.e. up to two CCGT units with a total capacity of 945MW) would not now be pursued and could be removed from the varied consent, and that Condition 4(2) of the varied consent and Condition 53 of the Section 90 Direction relating to the selection of gas turbine technology were no longer required and could also be removed from any varied section 36 consent and deemed planning permission that may be granted.

1.6. The varied Development would comprise:

(a) one Combined Cycle Gas Turbine ("CCGT") unit (including: a gas turbine; a heat recovery steam generator; ~~a~~ steam turbine plant; and, associated equipment) with a rated electrical output of up to 645 MW;

(b) a Battery Energy Storage System ("BESS") (including:

batteries; associated enclosures; control and protection systems; temperature control systems; and, power conversion systems) having a total rated electrical output of up to 175 MW; and

(c) open cycle gas turbine ("OCGT") unit(s) (including for each OCGT unit: a gas turbine; and, associated equipment) with a total rated electrical output of less than 300 MW.

The total combined electrical output of (a), (b) and (c) will be up to 945 MW.

(d) one or more transformers;

(c) air cooled condensers;

(e) a 400kV electrical sub-station;

(f) ancillary plant and equipment; and

(g) the necessary buildings (including administration offices) and civil engineering works.

1.7. The Application was published in accordance with the Electricity Generating Stations (Variation of Consent) (England and Wales) Regulations 2013 ("the Variation Regulations") and served on South Holland District Council and Lincolnshire County Council ("the relevant planning authorities").

1.8. 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 document titled "2017 Further Information Document" dated August 2017 was submitted with the Application. The document describes the Development and updates the analysis of the environmental effects set out in the Environmental Statement provided in support of the 2015 variation application (the Environmental Statement and 2017 Further Information Document are hereinafter collectively referred to as "the updated Environmental Statement").

1.9. 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 authorities or other BEIS consultees, The Secretary of State has given consideration to the representations received from BEIS' statutory and non-statutory consultees and others consulted by the Company, including the relevant planning authorities, Natural England, the Environment Agency and Anglian Water and taken account of their comments in the varied planning conditions. One representation received from an individual member of the public requested that the Secretary of State consider imposing additional requirements relating to Combined Heat and Power ("CHP"), which is considered in section IX below.

Conclusion

3.3. The Secretary of State has considered the views of the relevant planning authorities, BEIS consultees, other interested parties and all other material considerations. The Secretary of State considers there is nothing further that needs examining 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 authorities, 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 considers 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 2017 ("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 63(5) and 64). Regulation 63(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. The Convention on Wetlands of International Importance 1972 ("the Ramsar Convention"), which provides for the listing of wetlands of international importance ("Ramsar sites") is also of relevance. United Kingdom Government policy is to afford Ramsar sites in the United Kingdom the same protection as afforded to European Sites.

5.3. The Development site is in close proximity to The Wash and North Norfolk Coast Special Area of Conservation ("SAC") and The Wash Special Protection Area ("SPA") European Sites. The sites are also listed as The Wash Ramsar site.

5.4. In respect of the 2015 variation application, the Secretary of State notes that Natural England 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"). Natural England's advice was that the proposed varied Development would be unlikely to have a significant effect on any European site and as such could be screened out from any requirement for further assessment. Having considered the environmental information, planning conditions already imposed and advice from Natural England, the Secretary of State was satisfied that the 2015 varied Development was not likely to have a significant effect

on any European Site, either alone or in-combination and no Appropriate Assessment was necessary.

5.5. The Secretary of State notes that the Company considers that the baseline environmental conditions are materially the same as those described in the 2015 variation and the likely effects on the environment are the same as those previously described during construction, operation and decommissioning. In its response to the 2017 variation application, Natural England has stated that it has no further comments to make on the application.

5.6. Having considered the environmental information, the planning conditions already imposed and advice of Natural England, the Secretary of State is satisfied that the further varied application is not likely to have a significant effect on any European Site, either alone or in-combination. The Secretary of State therefore considers no Appropriate Assessment pursuant to regulation 63 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. The Development site is also in close proximity to The Wash Site of Special Scientific Interest ("SSSI"). The Secretary of State is satisfied that providing the varied Development is carried out in accordance with details of the application, the varied Development will not damage or destroy the interest features for which the SSSI has been notified.

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

6.1. Representations in response to the consultation on the variation application were received from: South Holland District Council ("SHDC"); Lincolnshire County Council; Historic England; Natural England (as referred to in section V above); the Environment Agency ("EA"); the Civil Aviation Authority ("CAA"); National Air Traffic Service ("NATS"); Health and Safety Executive ("HSE"); Anglian Water; and one member of the public.

6.2. The Secretary of State notes that SHDC, Natural England; Historic England, NATS and HSE, have raised no concerns or objections nor made any substantive comments. The EA, whilst offering no substantive comments on the variation application, has also commented on the separate Environmental Permit that would be required for the Development, which is considered in paragraph 11.3 below.

CAA

6.3. CAA has confirmed that provided the maximum height of associated structures remain 80-85m, its position remains the same (i.e. that the Development should be equipped with low intensity steady red aviation warning lighting, requiring approval by the relevant planning authority in consultation with the CAA). The

Secretary of State notes that the maximum height of the tallest structure, the stack, would be up to 85m and stack lighting condition 50, which was included under the 2015 variation, would also remain under the current variation application and therefore adequately covers this matter.

Lincolnshire County Council

6.4. The Secretary of State notes that Lincolnshire County Council has confirmed that the proposed variations are not expected to have any materially harmful impact upon the local highways network or to increase unacceptably flood risk to the site or to adjacent land or property. This is due to the fact that the permanent highway and drainage infrastructure, necessary to facilitate the proposed development, was provided when the first phase of the Spalding site was constructed.

6.5. Lincolnshire County Council has also stated in a separate response that "*it mentions in the documentation that this is an amendment to previous applications including planning permission H16-0135-10* [which the Secretary of State notes covered the gas pipeline and associated Above Ground Installation and which was subsequently amended by planning permission H16-0293-15 on 11 June 2015], *where we said that the route of the pipeline crosses a landscape largely reclaimed in the medieval and post medieval period. During the prehistoric and Roman periods large areas of the fens were populated and there is much evidence of settlements and industry, such as salt making here. Many of the settlements still survive under deep layers of alluvium and are not visible from the ground and dependent on the conditions do not necessarily show in aerial photography.*" Following on from this, Lincolnshire County Council "*recommended that conditions should be placed on the planning consent to secure the recording of this archaeology in the most appropriate way*". However, Lincolnshire County Council also acknowledged that the current variation on the consent is only concerned with the actual generating station and is in an area, which has been heavily disturbed and no archaeological work will be required on this Development.

6.6. The Secretary of State understands that planning permission H16-0293-15 already includes conditions covering archaeological investigation and monitoring for the gas pipeline. In view of the above, and given that the gas pipeline is outside the scope of the section 36 consent, the Secretary of State does not consider it necessary or appropriate to seek to duplicate the archaeological conditions for the gas pipeline.

Anglian Water

6.7. Anglian Water has confirmed that it is supportive of the proposed development. However, as the statutory sewage undertaker, it has also requested that it is consulted on the method of foul drainage/disposal in the event that a connection to the public sewage network is required. The Secretary of State notes that Condition 27 of the Section 90 Direction requires the submission to, and approval by SHDC of a site drainage scheme, in consultation with the EA. The condition has been revised accordingly to also include consultation with the statutory sewage undertaker.

6.8. Anglian Water has also suggested that the Environment Agency and the relevant Internal Drainage Board be consulted on the suitability of the proposed method of surface water management. The Secretary of State notes that Welling and Deepings and South Holland Internal Drainage Boards were also consulted on the variation application and offered no comment.

Other Parties

6.9. One representation was made by a member of the public. The representation referred to what the individual considered to be wasted heating opportunities in respect of the existing generating station at Spalding. The individual questioned whether a newly built Community Hospital (which the Secretary of State understands to be 'the South Holland Community Hospital') could be heated from the proposed development. The individual noted that the OCGT and CCGT split in the development means that the initial OCGT phase does not require heat capture and considers there is no guarantee that the CCGT phase will go ahead, which is considered an oversight. Retrofitting of a hood on the cooling stack of the existing Spalding generating station was considered a good compromise if heat recovery from the proposed development cannot go ahead. The Secretary of State's consideration of Combined Heat and Power is set out in section IX below.

VII. SECRETARY OF STATE'S CONSIDERATION OF THE REQUEST TO VARY THE CONSENT

Relevant Guidance

7.1. The Secretary of State notes that the Growth and Infrastructure Act 2013 introduced provisions to permit the variation of consents issued under section 36 of the Electricity Act 1989 and deemed planning permissions under section 90 of the Town and Country Planning Act 1990. As set out in "Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales" issued in 2013 ("the Guidance Note"), the aim of the provisions is to make it possible for the designs of generating stations to be modified in ways which the relevant section 36 consent would not otherwise permit (and, in the case of those projects that would otherwise require development consent under the Planning Act 2008) without the developer having to apply for a development consent order under the 2008 Act.

7.2. Paragraph 22 of the Guidance Note sets out two broad categories of case in which the Secretary of State may consider it appropriate to exercise the power to vary consents. One of the categories (in paragraph 22(a)) is particularly pertinent to the current case as it deals with the construction of generating stations, which have not yet been completed, along different lines from those set out in the consent.

7.3. Paragraph 25 of the Guidance Note sets out that "the scope of what can be authorised under the variation procedure will depend on the provisions of the existing consent, the specific circumstances of the project, and the nature and extent of the proposed changes and their environmental impacts". The Guidance Note continues by setting out that it is not possible to give definitive guidance on the scope of the variation procedure.

7.4. However, the Guidance Note does set out some broad principles against which an assessment of any variation application can be made. Paragraph 26 of the Guidance Note states that:

> *"The key point to note is that the variation procedure is **not** intended as a way of authorising any change in a developer's plans that would result in development that would be fundamentally different in character or scale from what is authorised by the existing consent. Such changes should be the subject of a fresh application for consent in the form of a development consent order under the 2008 Act or (offshore between 1 and 100MW) a section 36 consent. However, beyond that, it is very hard to lay down any meaningful general statements of principle, because of the variety of consented generating station projects and the range of circumstances in which applications to vary them may be made. The appropriateness or otherwise of granting a variation therefore has to be considered by reference to what has been consented already and the changes that are contemplated in each case where a variation is proposed. However, without prejudice to such case-by-case consideration of individual applications, we would expect to start from the following broad assumptions as regards what it is and is not appropriate to authorise under the section 36C variation procedure.*
>
> - *Changes in the plant's main fuel or other power source are unlikely to be considered suitable subject-matter for a variation. In the case of an existing generating station, this could involve constructing again substantial parts of the plant (see below). In the case of a plant that has been consented but not yet constructed, such changes could well result in the modified plant having fundamentally different environmental impacts from those that would have been likely to arise from the originally consented design.*
>
> - *Some less significant changes to the particular type and/or operation of technology used may, however, be suitable for consideration under the variation procedure (for example different boiler or turbine designs, or operating a combined cycle gas turbine (CCGT) generating station in open-cycle (OCGT) mode). However, as regards existing generating stations, it should be noted that since section 36 consent to construct a generating station is granted on a "one-off" basis, to construct a particular project, it does not entitle the holder of the consent to construct a series of new generating stations on the same site over a period of time.*
>
> - *Changes in the design of generating stations which have been consented but not constructed which would allow them to generate an amount of power that would be inconsistent with the original consent are likely to be appropriate subject matter for a variation application, provided there are no major changes in the environmental impact of the plant. Similar changes to an existing plant could be appropriate subject matter for a variation application only if they did not involve physical extension of the generating station, relocation of generating plant, or the installation of new equipment that would amount to the construction of a new generating station.*

- *It should generally be possible to consider authorising changes which only affect the operation of an existing station (and do not involve construction of a new generating station or extension of an existing one) under the section 36 consent variation procedure."*

7.5. The Secretary of State notes that the Company has requested that the original consent as varied should be further varied to allow for the additional construction and operation of a Battery Energy Storage System as referred to in paragraphs 1.4 and 1.6 above. He notes that the Company's rationale for installing the co-located Battery Energy Storage System alongside the CCGT unit and OCGT unit(s) is to compliment and provide essential support to the electricity system by storing and discharging energy, delivering significant benefits in ensuring security of supply, decarbonising, and containing cost.

7.6. Although not defined within the Act, Ofgem and the Government's position is that storage is to be treated as a type of generation. In '*Upgrading Our Energy System - Smart Systems and Flexibility Plan July 2017*[1], the Government confirmed this position and also committed to amend the Act to define electricity storage as a subset of generation, when Parliamentary time allows.

7.7. The Secretary of State considers that, in the case of the variation application, the capacity of the proposed Battery Energy Storage System that would be permitted by any variation of consent is appropriate in comparison to the total installed generating capacity of the generating station which is currently authorised to be built. It is noted that no overall increase in generating capacity is sought and, even if the full 175MW storage capacity was taken up, gas generation from the CCGT and OCGT units could still account for 770MW of the total generating station's capacity.

7.8. The Secretary of State considers that a Battery Energy Storage System would complement the electricity system through its ability to store electricity generated and by discharging it to the Grid. The Secretary of State is satisfied that the addition of the proposed Battery Energy Storage System and its shared physical location alongside the CCGT and OCGT units would not result in the development being fundamentally different in character or scale in comparison with the gas generation previously consented or result in fundamentally different environmental impacts.. As such, the Secretary of State considers the proposed change is suitable for consideration under the variation procedure.

7.9. The Secretary of State is satisfied that the varied Development will not differ from the generating station to which the current consent referred to the extent that this could be considered a new project. The Secretary of State also considers that any difference in construction, operation or likely environmental effects would not be such as to require authorisation by a new consent.

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/633442/upgrading-our-energy-system-july-2017.pdf

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

8.1. The Secretary of State notes that the section 36 consent includes conditions relating to CCR which were modelled on those contained in Annex G of "Carbon Capture Readiness (CCR): a guidance note for section 36 Electricity Act 1989 consent applications" ("CCR Guidance"), which sets out the factors that need to be considered in making an assessment about CCR.

8.2. The Secretary of State notes that the Company has indicated that there will be no change to the proposals for CCR and further notes that neither the CCR Guidance nor the Carbon Capture Readiness (Electricity Generating Stations) Regulations 2013 ("the CCR Regulations") require compliance in the case of a variation to an existing section 36 consent where there is no increase in capacity.

Conclusion on CCR

8.3. The Secretary of State has considered whether the proposed variation would be subject to the CCR Guidance and the CCR Regulations, and has determined that, as the Company is not seeking an increase in the generating capacity of the Development through the Variation Application, there is no requirement to apply either the CCR Guidance or the CCR Regulations.

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

9.1. The Secretary of State notes that the Section 90 Direction already includes requirements for combined heat and power ("CHP"). The Secretary of State considers that the CHP conditions (Condition 48 and 49) remain appropriate and should be retained in the varied section 36C consent.

9.2. Whilst the Secretary of State notes that South Holland Community Hospital has been suggested by a member of the public as an option for the use of heat from the Development and also remains the Company's preferred option, such use of heat would be a commercial decision reliant on a number of factors, including demand from the user, environmental considerations and the cost of installing the necessary pipework network outside the boundary of the development site. Such a commercial decision and also the suggested changes to the existing generating station at Spalding should heat recovery not go ahead, are outside the scope of the current variation application.

X. EQUALITY ACT 2010

10.1. 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.

10.2. 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.

10.3. 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.

XI. OTHER MATTERS

11.1. 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. The Secretary of State considers that the variation application is consistent with the policies set out in the National Policy Statements (EN-1 and EN-2). In particular, the Secretary of State considers that the variation application is consistent with the policies set out in the National Policy Statement (EN-1) which state: "*Developing our infrastructure…..will help us maintain and improve our security and access to competitive suppliers, particularly for electricity generation and storage*".

11.2. The Secretary of State also notes that currently storage is not defined within the legislative framework, which has meant that it has not been clear in how storage technologies should be classified. However, as indicated in paragraph 7.6 above, Ofgem and the Government's position is that storage is to be treated as a type of generation and the Government has committed to amend the Act to define electricity storage as a subset of generation, when Parliamentary time allows. The Government and Ofgem's *'A Small Flexible Energy System – A call for evidence November 2016'*[2] sets out the benefits of electricity storage within GB's energy system (while seeking views on how to address barriers to its deployment). The National Infrastructure

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576367/Smart_Flexibility_Energy_-_Call_for_Evidence1.pdf

Commission's report on *'Smart Power'*[3] published in March 2016 also noted that, "[n]*ot only can storage help reduce the impact on peak demand and provide demand for power stations at other times of day, it also has the potential to ease constraints on our grids"* and recommended that *"the UK should become a world leader in energy storage systems*". The Secretary of State is satisfied that the inclusion of the proposed Battery Energy Storage System would be consistent with Government's aims for storage.

Environmental Permit

11.3. 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 the operation of the Development.

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

12.1. 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.

12.2. The Secretary of State also believes the planning conditions, as revised, form a sufficient basis on which the varied Development might proceed. The Secretary of State has therefore decided to make a direction under section 90(2ZA) TCPA to vary the Section 90 Direction on the basis of the conditions specified in the annex to that direction. This incorporates the previous variations to the Section 90 Direction made by the Secretary of State on 30 October 2015 under s.90(2ZA) TCPA and by South Holland District Council on 7 August 2017 under s.96A TCPA.

12.3. Following consultation on the proposed development, the Secretary of State has further revised Condition 2 of the consent to delete the "up to two CCGT unit(s)" option. Planning Condition 27 has also been revised to require consultation with the statutory sewerage undertaker on the drainage scheme to be agreed by SHDC.

12.4. The Secretary of State has also deleted Condition 4(2) in the varied consent and Condition 53 in the Section 90 Direction as the Company has discharged the conditions by notifying the Secretary of State and relevant planning authority of the gas turbine technology option it has selection.

12.5. 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.

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/505218/IC_Energy_Report_web.pdf

XIII. GENERAL GUIDANCE

13.1. 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).

13.2. 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

Gareth Leigh
Head of Energy Infrastructure Planning