

The Eggborough CCGT Project

Document Ref: 9.6
PINS Ref: EN010081

The Eggborough CCGT (Generating Station) Order

Land at and in the vicinity of the Eggborough Power Station site,
near Selby, North Yorkshire, DN14 0BS

**Written Summary of Applicant's Oral Case - Issue Specific Hearing
on Compulsory Acquisition 23 November 2017**

The Planning Act 2008



Applicant: Eggborough Power Limited
Date: November 2017

DOCUMENT HISTORY

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|-----------------------|--------------------------|-------------|----------|
| Document Ref | 9.6 | | |
| Revision | 1.0 | | |
| Author | Pinsent Masons | | |
| Signed | Emma Cottam-Clough (ECC) | Date | 30.11.17 |
| Approved By | ECC | | |
| Signed | ECC | Date | 30.11.17 |
| Document Owner | Pinsent Masons | | |

GLOSSARY

| ABBREVIATION | DESCRIPTION |
|---------------------|---|
| Applicant | Eggborough Power Limited |
| CAH | Compulsory Acquisition Hearing |
| CRT | Canal and River Trust |
| DCO | Development Consent Order |
| EPL | Eggborough Power Limited |
| ExA | Examining Authority's |
| ISH | Issue Specific Hearing |
| MW | megawatts |
| NSIP | Nationally Significant Infrastructure Project |
| PA 2008 | Planning Act 2008 |
| SoR | Statement of Reasons |
| SoS | Secretary of State |
| the Order | Eggborough CCGT (Generating Station) Order |

CONTENTS

| | |
|--|----------|
| 1.0 INTRODUCTION | 1 |
| 2.0 WRITTEN SUMMARY OF APPLICANT'S ORAL CASE | 2 |
| Introductory Remarks | 2 |
| Introduction of Participating Parties | 2 |
| Update on Progress Of Negotiations By The Applicant | 2 |
| The Tests of The Planning Act 2008 And Other Discussion Points | 3 |
| Update on Protective Provisions | 7 |

1.0 INTRODUCTION

- 1.1 This document (Document Ref. 9.6) has been prepared on behalf of Eggborough Power Limited ('EPL' or the 'Applicant') in respect of its application (the 'Application') for a Development Consent Order (a 'DCO') for the Eggborough CCGT Project (the 'Proposed Development'). The Application was submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy on 30 May 2017 and was accepted for examination on 27 June 2017.
- 1.2 The Proposed Development comprises the construction, operation and maintenance of a new gas-fired electricity generating station with a gross output capacity of up to 2,500 megawatts ('MW'), including electrical and water connections, a new gas supply pipeline and other associated development, on land at and in the vicinity of the existing Eggborough coal-fired power station, near Selby, North Yorkshire.
- 1.3 A DCO is required for the Proposed Development as it falls within the definition and thresholds for a 'Nationally Significant Infrastructure Project' (a 'NSIP') under Sections 14 and 15(2) of The Planning Act 2008 (the 'PA 2008'). The DCO, if made by the SoS, would be known as the 'Eggborough CCGT (Generating Station) Order' (the 'Order').
- 1.4 The document provides a written summary of the Applicant's oral case put at the Issue Specific Hearing ('ISH') on Compulsory Acquisition held on 23 November 2017. The document has been submitted for Deadline 3 of the Examination.

2.0 WRITTEN SUMMARY OF APPLICANT'S ORAL CASE

Introductory Remarks

- 2.1 The Compulsory Acquisition Hearing ("**CAH**") was held on 23 November at Knottingley Town Hall, Hilltop, Headlands Lane, Knottingley, WF11 9DG.
- 2.2 The CAH concerns the application made by Eggborough Power Limited ("**EPL**" or the "**Applicant**") for an order granting development consent for the construction, operation and maintenance of a new gas fired electricity generating station with a gross output capacity of up to 2,500 megawatts ('MW') and associated works (the "**Proposed Development**") on land at and in the vicinity of the existing Eggborough coal-fired power station, near Selby, North Yorkshire.
- 2.3 The CAH took the form of running through the Examining Authority's ("**ExA**") agenda, published on 15 November 2017.

Introduction of Participating Parties

- 2.4 The ExA, Mr Richard Allen;
- 2.5 The Applicant;-
 - 2.5.1 Mark Westmoreland Smith; Barrister at Francis Taylor Building;
 - 2.5.2 Emma Cottam-Clough; Solicitor at Pinsent Masons LLP;
 - 2.5.3 Jonathan Riley; Partner at Pinsent Masons LLP; and
 - 2.5.4 Ian Cunliffe; Director at Ardent Management Limited.
- 2.6 The following parties participated in the CAH;-
 - 2.6.1 Melissa Flynn, Solicitor at Ward Hadaway LLP on behalf of the Canal and River Trust ("**CRT**"); and
 - 2.6.2 Mr Bob Tams, Hensall Parish Council.

Update on Progress Of Negotiations By The Applicant

- 2.7 Mr Cunliffe, on behalf of the Applicant, provided the following update:-
 - 2.7.1 The Applicant has actively sought out and engaged with all those with an interest in land affected by the scheme and has sought to acquire the rights and agree temporary possession of land required for the project through negotiation.
 - 2.7.2 There has been a series of meetings with affected parties and their agents to discuss the Development Consent Order process, and the associated compulsory acquisition procedures and compensation provisions. The Applicant has also encouraged affected parties to appoint appropriate advisors, and has put in place agreements to allow those parties to recoup reasonable costs associated with those discussions.
 - 2.7.3 The Applicant has also sought to understand the impacts of the scheme on residential properties and the operation of the land for the farming businesses. This has resulted in design changes throughout the pre-application process. Much of the negotiations with

landowners have centred on these design changes to ensure that the impact of the scheme is minimised. The Heads of Terms resolve not only the commercial aspects of the proposed acquisition but also capture those solutions and provide clarity on how the scheme will interface with the retained land. The intention has always been to mitigate the impact of the scheme, as far as possible, both during construction and once the scheme is operational. The above approach is putting this into effect.

- 2.7.4 The consequence of the positive engagement is the agreement and signing of comprehensive Heads of Terms for the significant majority of affected parties, as demonstrated by the Table included at **Appendix 1** to this Written Summary. The Heads of Terms, where signed, will be imminently issued to instruct solicitors to enter into formal agreements, with the intention that those agreements will be completed within twelve weeks of instruction.
- 2.8 The Applicant then proceeded to explain, by reference to all relevant landowners, the status of negotiations to date (the ExA is referred to the **Appendix 1** in respect of this).
- 2.9 For those landowners with whom the Applicant does not have signed Heads of Terms in place, the following explanation was provided:-
- 2.9.1 **Webster Family Trust and Staynor Farms Limited:** Heads of Terms, which are believed to be agreed and in final form, have been issued to the agent representing both parties; however the agent is awaiting further instructions on these Heads of Terms before they can be signed. Further updates will be provided to the ExA throughout the Examination.
- 2.9.2 **The Crown Estate:** Terms are agreed but not yet signed.
- 2.9.3 **CRT:** The Applicant and CRT confirmed to the ExA that the CRT did not own any land within the Order limits.
- 2.9.4 **The Environment Agency:** The Environment Agency sought to agree the technical provisions before concluding the land and commercial negotiations. Those negotiations have been run in parallel, and now that the Statement of Common Ground has been sufficiently progressed the commercial negotiations can continue with a view to reaching agreement as soon as possible. Principal terms are therefore not yet agreed, for the reasons explained by Mr Cunliffe; however it is expected that an agreement will be reached by the close of the Examination.
- 2.9.5 **UK Hydro Limited / Haddlesey Lock Limited:** The parties have agreed how the shared use of the access will be managed. No further agreement is required.
- 2.9.6 **Chequered Chef Catering Limited:** This is managed pursuant to existing landlord and tenant relationships.
- 2.9.7 **I M J Wood:** The lease has expired and a new interest has been taken by C R Platt (with whom terms are agreed).

The Tests of The Planning Act 2008 And Other Discussion Points

[Whether Section 6 of the Statement of Reasons adequately justifies the need for Compulsory Acquisition](#)

- 2.10 The ExA explained that its initial concerns relating to whether the Statement of Reasons ("SoR", Document Reference 3.2) adequately justifies the need for compulsory acquisition (given its reliance on policy) had now been addressed following a more detailed review of the SoR and

Chapter 5 of the Environmental Statement. However, notwithstanding this, the ExA requested that the Applicant set out, for the benefit of the Hearing participants, how the tests in the Planning Act 2008 had been met and that the compulsory acquisition for the Proposed Development is justified.

- 2.10.1 The Applicant began by briefly summarising the relevant statutory provisions. The Applicant noted that Sections 122 and 123 of Planning Act 2008 allow for the inclusion in a DCO of a provision authorising compulsory purchase if the Secretary of State is satisfied that certain conditions are met. Section 122(2) states (in so far as relevant) that the land must be: (a) required for the development to which the development consent relates; or (b) required to facilitate or be incidental to it. Section 122(3) requires that there must be a compelling case in the public interest for compulsory acquisition.
- 2.10.2 The Applicant explained that the DCLG "Planning Act 2008: procedures for the compulsory acquisition of land" guidance states that the land to be taken must be no more than is reasonably required and be proportionate. To that end the Applicant has ensured that the land take is no more than is required to enable the delivery of the project.
- 2.10.3 Section 123 requires that one of three conditions is met by the proposal. The Applicant explained that the condition in section 123(2) is met in the current circumstances because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 2.10.4 The Applicant further explained that a number of general considerations also have to be addressed either as a result of applicable guidance or in accordance with legal duties on decision-makers: (a) reasonable alternatives to compulsory acquisition must be explored (b) the applicant must have a clear idea of how it intends to use the land and to demonstrate that funds are available; and (c) the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the rights of third parties.
- 2.10.5 The Applicant went on to consider these issues. It explained that there is there a compelling case in the public interest for the powers sought. Part of that case relates to national policy. Section 104(3) of the Planning Act 2008 requires as a starting point for decisions to be taken in accordance with any relevant national policy statement. In turn, paragraph 3.1.3 of EN-1 states that applications for development consent for a project such as this should be assessed on the basis that "on the basis that the Government has demonstrated a need".
- 2.10.6 The scale and urgency of that need is set out at paragraph 3.3.7 of EN-1 where in broad terms the Government states that a quarter of existing generation capacity needs to be replaced by 2020. Further, paragraph 3.3.15 states that in order to secure energy supplies that enable the UK to meet its climate change obligations in 2050, there is an urgent need for all new (particularly low carbon) energy NSIPs to be brought forward as soon as possible, and certainly in the next 10 to 15 years, given the crucial role of electricity as the UK decarbonises its energy sector. Whilst the Applicant does not seek to suggest that what is proposed is low carbon development, (a) the urgent need applies to all generating capacity and (b) the proposal is materially better in carbon dioxide terms than the existing generation on site.
- 2.10.7 The Applicant then referred to paragraph 6.12 of the Statement of Reasons [APP-009] which summarises the various elements to the need case, namely:

- (a) To assist in reducing CO2 emissions;
- (b) Replacement of existing generating capacity as it closes;
- (c) Supporting renewable energy by providing dispatchable energy generating capacity for period in which renewable installations are not generating;
- (d) To address the underlying increase in demand for electricity; and
- (e) To provide energy security and resilience which requires a diverse range of generating stations.

2.10.8 In summary there is a clear and urgent need established at the highest level of policy and that need relates to climate change - one of the biggest challenges of our time, and to energy which is a cornerstone of all economic activity as well as a necessity to enable the country's population to live their normal lives. Its importance cannot be overstated.

2.10.9 The Applicant then considered whether there was another way of delivering this project. Reference was made to Chapter 6 of the ES [APP-044] which considers alternatives. It was explained that this chapter looks at alternative designs, locations, technology, route corridors for the gas and water connections, and sites for the AGI. The proposed design represents the optimal solution in all these respects such that there is no better alternative.

2.10.10 The Applicant concluded by confirming that in the absence of CA powers the Order Land might not be assembled and the project would not be able to be delivered. This would be a failure to achieve the Government objectives that underpin the need case already set out above.

2.11 In response to a further question from the ExA as to why powers of compulsory acquisition were included given the progress made with landowners, the Applicant confirmed that notwithstanding that signed Heads of Terms were in place with the majority of landowners, until the actual agreements are entered in to, there cannot be absolute certainty that the land will be appropriately secured. Furthermore, there can be unknown restrictions, unknown landowners, and land owners can fail to follow through on their obligations in agreements, and therefore compulsory acquisition provides a justified 'safety net'. Finally, the Applicant explained that the powers sought would grant the Applicant (or the undertaker pursuant to the Order) to appropriately deal with any rights that are created between agreeing Heads of Terms and the implementation of the Proposed Development.

2.12 Mr Cunliffe, on behalf of the Applicant explained that an exhaustive "due diligence" exercise had been carried out; for example reviewing Land Registry information; advertising within the area, and erecting site notices. The Applicant confirmed that it was confident that it had used all reasonable endeavours to ascertain and engage with all relevant land owners and those with an interest in the land.

[ExA queries on specific plots](#)

2.13 The ExA explained that it was seeking clarity on certain plots shown on the Land Plans. This is explained in greater detail below:-

(i) Plots 145, 120 and 125

2.14 The Applicant explained that the "green" land is land which is not required for the acquisition of new rights; however it is land owned by the Applicant in which it is proposed to extinguish easements, servitudes and other private rights in land. The Applicant therefore requires the ability to interfere with those rights (for example, the right of access currently enjoyed by Mr Platt), but nothing further.

(ii) Plot 190

2.15 The Applicant explained that schedule 8 of the dDCO details which plots are subject to the creation of new rights (in column 1) and what new rights are proposed to be acquired in relation to those plots (column 2). In the context of plot 190, this is required in respect of Work No 6 and Work No 4.

2.16 The ExA asked the Applicant to explain whether the blue shading in plot 190, beneath plot 195, is required for Work No 4 or Work No 6 (or both). The Applicant explained that, in the context of that particular part of plot 190, the only relevant work number is Work No 4; however that the acquisition of new rights across plot 190 as a whole was required in respect of **both** Work No 4 **and** Work No 6.

2.17 The ExA asked the Applicant to consider clarifying schedule 8 to put beyond doubt that these plot numbers are required for both Work No 4 and Work No 6. The Applicant refers the ExA to the revised dDCO (schedule 8) which clarifies that plot numbers 90, 165, 170, 175 and 190 are required in respect of Work No 4 **and** Work No 6. The Applicant explained that 190 was required to be "blue" and not "yellow", as a right to construct, install, maintain etc the apparatus is required, not just access for temporary construction works.

(iii) Why additional rights are required for the discharge of water (Work No 4)

2.18 The Applicant explained that additional rights were required as, at this time, it is not known how much construction work will be necessary; for example there will be a need to install a cofferdam, and there may be a need to do some work around the outfall, however this cannot yet be determined. The detailed design by the contractor, post-grant of the DCO, will confirm this.

2.19 In respect of Plots 265, 270, 275, 285, 295, 300, 310, 315 and 320, the existing cooling water pipelines (from the water intake point to the existing coal-fired power station) run through these plots of land - as noted in the Statement of Reasons, it appears that the pipelines may have been laid outside the land owned by the Applicant (the adjacent "Pink" land plots). The Applicant may repair, upgrade or modify these existing pipelines, or it may install new pipelines there or in the adjacent plots of land (currently the "pink" land) - however this decision cannot be taken until the existing works have been surveyed and the Proposed Development designed in detail. The rights sought are appropriate in that context and the minimum required. In all scenarios the infrastructure that will be in place is the same - it is simply the final location that is not known at this point, given the historical anomaly. The Applicant will only utilise the powers under the DCO to the extent necessary to construct and operate the Proposed Development.

(iv) Cooling Water Plots and Plots 135 / 165

2.20 The Applicant confirmed that it was undertaking a process of review in respect of those plots, to understand whether a lesser interest could be sought; for example whether those plots which are listed as "pink" could become "blue" land and which would therefore be subject only to the acquisition of rights rather than the compulsory acquisition of land.

2.21 The Applicant has considered this point further, as follows:

2.21.1 The plots which are currently "Pink" land and which form part of Work No. 4 are 135, 180, 205, 210, 215, 230, 240, 250, 260, 280, 290 and 305;

2.21.2 The Applicant considers that the case for the compulsory acquisition of all interests (i.e. as "Pink" land) in this land exists, as per the Statement of Reasons. To the extent that the use of those powers would have led to the compulsory acquisition of tenants' interests, the Applicant would have entered into discussions with the tenants as to the potential re-grant of a lease, on appropriate terms. It is also noted that the terms of Article 20 (Compulsory acquisition of rights) enable the undertaker to only acquire new rights, rather than acquiring all interests in land pursuant to article 17 - the undertaker would have considered whether that would be sufficient at the relevant time, and utilised that power where appropriate;

2.21.3 Notwithstanding the above, the Applicant does however propose to submit amendments to the Land Plans and the dDCO (at Deadline 4) which provide for the undertaker to only be permitted to acquire new rights in these plots. The Land Plans will therefore show these plots as "Blue" land, and the dDCO will include the form of new rights which the undertaker may acquire (in Schedule 8). The Applicant considers that the Proposed Development can be delivered if such amendments are included, and that a compelling case in the public interest for the acquisition of new rights in these plots exists.

(v) Extent of "Pink" land

2.22 In response to questions raised by the ExA, the Applicant confirmed that the only plot in which the Applicant did not have any interest (i.e. not owned or co-owned by the Applicant) but which would be subject to powers of compulsory acquisition, was plot 610.

Compensation Funding Article

2.23 In response to questions raised by the ExA, the Applicant confirmed that it was content to include an article requiring financial security for compensation due following the use of powers of compulsory acquisition powers in the DCO. The ExA is referred to the revised dDCO (new article 43), which the Applicant notes is similar to that included in the Wrexham Gas Fired Generating Station Order 2017.

Update on Protective Provisions

2.24 Mrs Cottam-Clough, on behalf of the Applicant, provided the following update in respect of progress made with relevant statutory undertakers following its answer given to the ExA's First Written Questions (CA 1.2, Document Ref. 9.1):-

- 2.24.1 **National Grid Gas and National Grid Electricity Transmission:** The parties have made significant progress on the negotiation of the protective provisions following the submissions made at Deadline 2, and are now substantively agreed on the content and terms of those provisions. The Applicant expects to be in a position to include those final form protective provisions in the revision of the dDCO submitted for Deadline 3, and will work with National Grid to complete the separate (confidential) asset protection agreement over the coming weeks. Following completion of the asset protection agreement, National Grid will withdraw its Relevant Representation.
- The ExA is referred to part 4 of schedule 12 of the dDCO submitted at Deadline 3 which now contains the agreed protective provisions, apart from Indemnity and Expenses - the terms of these are agreed and the Applicant and National Grid are discussing further the presentation of these in the dDCO. Reference should be made to the Explanatory Note on Changes to the Draft DCO also being submitted at Deadline 3.
- 2.24.2 **Yorkshire Water:** There are no outstanding issues to be resolved between the parties, and Yorkshire Water has confirmed it is satisfied with the protective provisions included in part 1 of schedule 12 of the dDCO.
- 2.24.3 **Northern Powergrid (Yorkshire):** As set out in its response to the ExA's First Written Questions (CA 1.2), the Applicant has not received any substantive response on the proposed protective provisions, however will continue to seek further engagement with Northern Powergrid (Yorkshire) with a view to reaching agreement. The Applicant does not have any reason to believe that the protective provisions included in part 1 of schedule 12 of the dDCO are unacceptable to Northern Powergrid (Yorkshire).
- 2.24.4 **BT:** As set out in its response to the ExA's First Written Questions (CA 1.2), the Applicant has written to BT on three separate occasions, however has not received any response. The Applicant does not have any reason to believe that the protective provisions included in part 2 of schedule 12 of the dDCO are unacceptable to BT. They are similar to the provisions included in many previous development consent orders.
- 2.24.5 **Northern Gas Networks:** The Applicant understands that Northern Gas Networks' engineers are reviewing the technical proposals put forward by the Applicant as part of the on-going commercial negotiations. The Applicant has also provided comments on the proposed protective provisions put forward by Northern Gas Networks. The Applicant awaits further comments from Northern Gas Networks in respect of the above, and will provide further updates to the ExA throughout the examination.
- 2.24.6 **CRT:** The Applicant confirmed that negotiations are on-going with the CRT in respect of the form of the protective provisions to be included in the dDCO, however that some points remained outstanding.
- 2.24.7 The Applicant noted that the main points remaining to be agreed between the parties are those provisions relating to Indemnity and Costs. This was agreed by CRT.
- 2.24.8 No further summary of the matters raised at the CAH is provided here - an explanation as to the Applicant's position regarding the protective provisions (including those provisions on Indemnity and Expenses) is provided in the Applicant's responses on the Written Representations (Document Reference 9.3), submitted for Deadline 3. This addresses the same points that were discussed in the CAH, as well as those points raised by the CRT in its Written Representation submitted at Deadline 2.

2.24.9 It was agreed at the CAH that the parties would continue to progress these discussions outside of the Hearings, and would keep the ExA informed as to the progress which has been made.

Statements of Common Ground

2.25 The Applicant confirmed that where protective provisions are agreed, that this would be reflected in Statements of Common Ground

APPENDIX 1 – COMPULSORY ACQUISITION SUMMARY UPDATE TABLE