

The Eggborough CCGT Project

Document Ref: 9.16 - Rev. 1.0

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

**Planning Performance Agreement with Selby District Council –
Discharge of requirements - Rev. 1.0 (Final Version)**

The Planning Act 2008



Applicant: Eggborough Power Limited

Date: March 2018

DOCUMENT HISTORY

Document Ref	9.16		
Revision	1.0		
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Approved By	Nick McDonald (NM)		
Signed	NM	Date	14.03.18
Document Owner	PM		

DATED _____ **2018**

(1) SELBY DISTRICT COUNCIL

(2) NORTH YORKSHIRE COUNTY COUNCIL

(3) EGGBOROUGH POWER LIMITED

PLANNING PERFORMANCE AGREEMENT
relating to the Discharge of Requirements for the
proposed Eggborough CCGT Project at
Eggborough Power Station, Eggborough, Goole, East
Yorkshire DN14 0BS



Pinsent Masons

BETWEEN:-

- (1) **SELBY DISTRICT COUNCIL** of Civic Centre, Doncaster Road, Selby, North Yorkshire, YO8 9FT ("**SDC**");
- (2) **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall, Racecourse Lane, Northallerton, DL7 8AD ("**NYCC**");
- (3) **EGGBOROUGH POWER LIMITED** (No 03782700) whose registered office is at Eggborough Power Station, Eggborough, Goole, East Yorkshire DN14 0BS ("**EPL**");

RECITALS:-

- (A) On 30 May 2017 EPL submitted its Application for the Project.
- (B) The Authorities are local authorities for the area in which the Site is located and are statutory consultees in relation to pre-application consultation on the Project and in relation to the examination of the Application.
- (C) On the terms of the draft DCO, SDC will be responsible for the discharge of Requirements and NYCC is a consultee in respect of a number of Requirements.
- (D) The Parties enter into this agreement to set out the terms agreed between them as to the resourcing of SDC's approval of submissions and NYCC's involvement in those submissions.
- (E) This agreement is made pursuant to Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 93 of the Local Government Act 2003.
- (F) Nothing in this Agreement shall be taken to predetermine or prejudice the proper consideration and determination of any consent or application or fetters or overrides neither the Authorities' discretion nor the exercise of each of the Authorities' statutory duties or functions.
- (G) The Authorities consider that the proper discharge of the Authorities' various statutory functions arising as a result of and relating to the Project will occupy considerable resources of the Authorities, which the Authorities consider will be managed better and in the public interest by entering into this agreement.
- (H) The Authorities have powers under the Planning Act 2008 and associated planning legislation, section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and Section 93 of the Local Government Act 2003 to enter into this Agreement and to charge for certain activities associated with the proposed Application as set out in this Agreement.

IT IS AGREED as follows:-

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement (which includes the Recitals to it) the following words and expressions have the following meanings unless the context requires otherwise:-

- "**2008 Act**" means the Planning Act 2008
- "**Application**" means the application for development consent for the Project submitted to the Secretary of State pursuant to the 2008 Act
- "**Authorities**" means SDC and NYCC for the purpose of this

Agreement

"DCO"	means the development consent order for the Project as made by the Secretary of State
"Parties"	means the parties to this agreement
"Programme"	means the programme for the discharge of the Requirements to be submitted by EPL to the Authorities
"Project"	means the construction and operation of a combined cycle gas turbine (CCGT) power station, separate peaking plant and such other associated development and infrastructure as provided for in the Application and set out in Schedule 1 of the DCO
"Requirements"	means a requirement contained in Schedule 2 of the DCO
"Site"	means land at Eggborough Power Station, Eggborough, Goole, East Yorkshire DN14 0BS, and such other land which may be the subject of the Application

1.2 In this Agreement, unless otherwise indicated, reference to any:-

1.2.1 words importing the singular meaning include the plural meaning and vice versa;

1.2.2 words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, other corporate bodies, firms or legal entities and all such words shall be construed interchangeably in that manner; and

1.2.3 Act of Parliament shall include any amendment, modification, extension, consolidation or re-enactment of that Act for the time being in force and in each case shall include all statutory instruments, orders, regulations and directions for the time being made, issued or given under that Act or deriving validity from it.

1.3 Headings where they are included are for convenience only and are not intended to influence the construction and interpretation of this Agreement.

1.4 Any notice, notification, consent, approval, agreement, request or statement or details to be made, given or submitted under or in connection with this Agreement shall be made or confirmed in writing.

2. **AGREEMENT OBJECTIVES AND CORE PRINCIPLES**

2.1 The Agreement is entered into by the Authorities under the 2008 Act and associated planning legislation, Section 111 Local Government Act 1972, Section 1 Localism Act 2011, and Section 93 Local Government Act 2003 and shall be governed by and construed in accordance with English law and its provisions shall be binding and enforceable by the law of contract.

2.2 This Agreement seeks to provide:

2.2.1 a collaborative project management framework for the Project and discharge of the DCO requirements;

2.2.2 commitments from the Parties to constructively engage with the Programme and to enter into pre-application discussions, where necessary; and

2.2.3 certainty in relation to the Authorities' resourcing of their respective involvement in the discharge of the Requirements.

- 2.3 The Parties will act in good faith and will work collaboratively in order to comply with their respective commitments in this Agreement and to achieve the Agreement objectives set out in clause 2.2.
- 2.4 The Parties agree to meet and/or discuss matters in a spirit of co-operation and where necessary seek early resolution of areas of outstanding concern to one party so as to seek to maintain the Project programme.
- 2.5 The Parties undertake to meet and/or discuss matters by telephone or e-mail in a spirit of co-operation and where necessary to seek early resolution of any areas of outstanding concern to one party.

3. **TERM AND PROJECT PROGRAMME**

- 3.1 This Agreement (other than clauses 1, 2, this clause 3, 7, 8, 9, 10 and 11) is conditional upon and shall not come in to effect unless and until:
- 3.1.1 the DCO has been made by the Secretary of State and is free from legal challenge; and
- 3.1.2 EPL has provided the Authorities with the Programme pursuant to clause 3.3.
- 3.2 Clauses 1, 2, this clause 3, 7, 8, 9, 10 and 11 are conditional on shall not come in to effect unless and until the DCO has been made by the Secretary of State and is free from legal challenge.
- 3.3 EPL shall provide the Programme to the Authorities, as soon as practicable, prior to making any submissions for approval pursuant to any of the Requirements and shall provide the Authorities with regular updates to the Programme to enable the Authorities to understand EPL's intended approach to the timetable for the discharge of the Requirements.
- 3.4 This Agreement is effective from the date specified in clause 3.1 until the date on which SDC has:
- 3.4.1 approved all submissions pertaining to the Requirements; and
- 3.4.2 approved all Requirements in accordance with the procedure set out in Schedule 11 of the DCO.
- 3.5 This Agreement may be terminated before the expiry of the period in clause 3.1 by:
- 3.5.1 EPL by it giving at least one month's notice in writing of the termination of the Agreement to both NYCC and SDC and in which case this Agreement shall terminate entirely;
- 3.5.2 EPL by it giving at least one month's notice in writing of the termination of the Agreement to either NYCC or SDC and in which case this Agreement shall terminate only as between EPL and the party receiving the termination notice from EPL;
- 3.5.3 NYCC by it giving at least one month's notice in writing of the termination of the Agreement to EPL and in which case this Agreement shall terminate only as between EPL and NYCC; or
- 3.5.4 SDC by it giving at least one month's notice in writing of the termination of the Agreement to EPL and in which case this Agreement shall terminate only as between EPL and SDC.
- 3.6 In the event of termination of this Agreement:
- 3.6.1 SDC and/or NYCC (as relevant) agree that any work carried out in relation to the Project after the date of termination is no longer pursuant to this Agreement and that the Authorities are not entitled to any reimbursement in respect of such work;
- 3.6.2 EPL and SDC and/or NYCC (as relevant) will agree within 20 Working Days of notice of termination the level of outstanding fees that SDC and/or NYCC (as relevant) have incurred and which they are entitled to reclaim pursuant to this Agreement, and SDC

and/or NYCC will issue an invoice for such agreed amount for EPL to be dealt with pursuant to clause 6 below.

4. **KEY PERSONNEL & TIMESCALES**

4.1 SDC and NYCC must, within 10 working days of a request made by EPL, provide the names and contact details of the relevant personnel who will be dealing with the discharge of the Requirements.

4.2 The Authorities will each use reasonable endeavours to:

4.2.1 make the relevant personnel available to work on the Project for the duration of this Agreement; and

4.2.2 in the event that those people are not available to provide appropriate alternative officers and to promptly inform EPL of such changes.

4.3 The key Project personnel for EPL are (other than where notified to NYCC and SDC by EPL):

4.3.1 Jason Morris, EPL;

4.3.2 Geoff Bullock, DWD (planning and project lead);

4.3.3 Richard Lowe, AECOM (environmental).

4.4 When considering, commenting on, determining or discharging the Requirements SDC and NYCC commit to the timescales and processes as set out in Schedule 11 of the DCO.

4.5 The Parties agree that in the event that the Secretary of State grants the DCO with amendments to Schedule 11 (compared to that proposed by EPL in its draft DCO submitted to the Examining Authority on 28 February 2018), the Parties will meet to discuss the impacts on the Parties and will work co-operatively to agree and document any necessary changes to this Agreement.

5. **RESOURCING AND FUNDING**

5.1 In consideration of the obligations entered into by the Authorities in this Agreement and the terms of Schedule 11 to the DCO, EPL agrees to make available to the Authorities the sum of £30,000 to be used by the Authorities solely for the purposes set out Recital C.

5.2 The following hourly rates shall apply to all work carried out pursuant to this Agreement:

Person or Work to Which Rate Applies	Applicable Hourly Rate
NYCC	
Highways - internal NYCC highways engineer or external Senior Engineer	£44.50
Highways - external Principal Engineer	£55
Heritage Services - Heritage Manager	£57.70
Heritage Services - Principal Ecologist, Principal Landscape Architect and Archaeologist	£46.50
Legal - external solicitor (of at least 5 years post-qualification experience)	£150 (solicitor) £190 (Partner)

Person or Work to Which Rate Applies	Applicable Hourly Rate
Minerals – Senior Policy Officer	£37.02
Skills and learning – Senior Policy Officer	£37.02
SDC	
All work for or on behalf of SDC (other than legal which is as per the rates set out above for NYCC)	£64

- 5.2.1 The Authorities may submit an invoice (or an invoice each) to EPL no more often than once every three months;
- 5.2.2 Where the Authorities appoint an external firm of solicitors to provide legal advice (rather than using in-house solicitors) and notify EPL of such appointment, that firm may submit invoices to EPL directly or to EPL's appointed solicitors; and
- 5.2.3 EPL will pay the relevant amount to NYCC, SDC or the relevant firm of solicitors following receipt of a valid invoice accompanied by information setting out the work covered by the invoice, the time spent and the applicable rate and shall make payment within:
- (a) 60 days of receipt of the invoice and that information in respect of work or services other than legal advice;
 - (b) 30 days of receipt of the invoice and that information in respect of legal advice and in respect of which EPL has provided or procured an undertaking.

5.3 It is acknowledged that any monies paid by EPL to SDC/NYCC are in addition to those monies anticipated to be paid pursuant to paragraph 3 of Schedule 11 of the DCO.

6. CHARGING PRINCIPLES AND STATUS OF AGREEMENT

- 6.1 The funding arrangements entered into between EPL and the Authorities in this Agreement are to be in accordance with the following charging principles:
- 6.1.1 the charging relates exclusively to the Authorities' recovery of their costs for the provision of services they are respectively authorised but not required (by an enactment) to provide;
 - 6.1.2 the payments are on a not-for-profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost of providing them;
 - 6.1.3 there shall be full transparency with regards to costs incurred; and
 - 6.1.4 the sole basis for charging is that the Authorities can recover resources expended in discharging the Requirement(s).
- 6.2 Any charging by the Council under this Agreement must be carried out in accordance with the provisions of section 93 of the Local Government Act 2003, any relevant Government guidance and the guidance and requirements of the professional codes of practice issued by the CIPFA for time to time.
- 6.3 The Authorities shall keep proper records of the expenditure and allocation of monies paid to it pursuant to this Agreement, will operate in an open and transparent manner in respect of all work done and monies reclaimed pursuant to this Agreement and shall make those records fully available to EPL to audit within 10 Working Days of a request to view them by EPL.

6.4 The Authorities are each authorised by statute and pursuant to their respective constitutions to enter into this Agreement.

6.5 This Agreement does not oblige EPL to proceed with any aspects of the Project.

7. **LEGAL COSTS**

As soon as practicable following completion of this Agreement EPL will pay the Authorities' reasonable and proper legal costs incurred in the negotiation, preparation and execution of this Agreement of no more than £1,500 (VAT is to be invoiced to and paid by the Authorities).

8. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

Nothing in this Agreement will create any rights in favour of or be enforceable by any person who is not a party to this Agreement under the Contracts (Rights of Third Parties) Act 1999.

9. **NOTICES**

9.1 Any notice issued pursuant to this Agreement (including termination) must be in writing and must be served on the following persons at the address set out below:

Notices to EPL:	To Jason Morris, Eggborough Power Limited, Eggborough Power Station, Goole, East Yorkshire DN14 0BS
Notices to NYCC:	To: David Bowe, Corporate Director (Business and Environmental Service), North Yorkshire County Council, County Hall, Racecourse Lane, Northallerton, North Yorkshire, DL7 8AD
Notices to SDC:	To: Dave Caulfield, Director of Economic Regeneration and Place, Selby District Council, Civic Centre, Doncaster Road, Selby, North Yorkshire, YO8 9FT

10. **VAT**

10.1 The Parties agree that the figure set out in clause 5 is exclusive of any VAT payable but that the Authorities will (where lawful) seek to invoice EPL on the basis that SDC or NYCC (as relevant) will pay the relevant VAT and EPL will pay only the base amount.

11. **DISPUTE RESOLUTION**

11.1 In the event of any dispute or difference arising between the Parties concerning any matter arising out of this Agreement the Parties will work together to endeavour to resolve the dispute or difference by mutual agreement and the Parties jointly intend to enter into discussions in good faith to settle any dispute as soon as reasonably practicable.

11.2 In the event that the Parties are unable to resolve the dispute or difference within 20 Working Days, any party to the dispute may refer the dispute or difference to the nominated officers of the Parties as follows:

11.2.1 in respect of EPL: Adam Booth, Chief Executive;

11.2.2 in respect of NYCC: Barry Khan, Assistant Chief Executive (Legal and Democratic Services); and

11.2.3 in respect of SDC: Janet Waggot, Acting Chief Executive;

or such other person of appropriate seniority as a Party may nominate.

11.3 Nothing in this clause prevents any Party from serving a notice of termination under this Agreement at any time.

EXECUTED by the parties on the date which first appears in this agreement

Signed on behalf of Eggborough Power Limited

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Signed on behalf of Selby District Council

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Signed on behalf of North Yorkshire County Council

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