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11 August 2009

Dear Sir

**ELECTRICITY ACT 1989
TOWN AND COUNTRY PLANNING ACT 1990**

**APPLICATION FOR CONSENT TO CONSTRUCT AND OPERATE A REFUSE
DERIVED FUEL GENERATING STATION AT LAND ADJACENT TO THE
MANCHESTER SHIP CANAL, INCE, CHESHIRE**

1. THE APPLICATION

- 1.1 I am directed by the Secretary of State for Energy and Climate Change ("the Secretary of State") to refer to the application dated 30 January 2006 (as formally amended on 26 July 2007) by Peel Environmental Ince Ltd ("the Company") for consent under section 36 of the Electricity Act 1989 ("section 36 consent") to construct and operate a Refuse Derived Fuel generating station of 95 MW at land adjacent to the Manchester Ship Canal, Ince, Cheshire ("the Development"), and for a direction under section 90(2) of the Town and Country Planning Act 1990 ("section 90 direction") that planning permission for the Development be deemed to be granted.
- 1.2 The application for section 36 consent was published in accordance with the Electricity (Applications for Consent) Regulations 1990 ("the 1990 Regulations") and served on the relevant persons.
- 1.3 In accordance with the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000 as amended

("the 2000 Regulations") an environmental statement ("Environmental Statement") was submitted with the application. The Environmental Statement describes the Development and gives an analysis of its environmental effects. In accordance with the 2000 Regulations the Environmental Statement was advertised and placed in the public domain to give people an opportunity to comment on it.

2. PUBLIC INQUIRY

- 2.1 Following objections from Cheshire County Council, Ellesmere Port and Neston Borough Council and Chester City Council, to the application, the Secretary of State was obliged to cause a public inquiry to be held under Schedule 8 to the Electricity Act 1989. A public inquiry into the application was held from 15 April to 29 May 2008 by the Inspector, Simon Gibbs MA MSocSc MRTPI.
- 2.2 The inquiry also considered an appeal under Section 78 of the Town and Country Planning Act 1990 against a failure of Cheshire County Council to give notice within the prescribed period of a decision on an application for outline planning permission for the development of a Resource Recovery Park (RRP) on 127.2 hectares of land adjacent to the Manchester Ship Canal, Ince, Cheshire, ref 3/P/2007/111/564, dated 20 July 2007. This appeal falls to be decided solely by the Secretary of State for Communities and Local Government and a separate decision letter has been issued for this appeal.

3. INSPECTOR'S RECOMMENDATION AND SUMMARY OF THE DECISION

- 3.1 The Inspector recommended that consent be given for construction and operation of a 95MW Refuse Derived Fuel (RDF) Generating Station with a direction that planning permission be granted subject to conditions. A copy of the Inspector's Report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report. The Secretary of State accepts the Inspector's findings of fact on the section 36 application and agrees with his conclusions and recommendation subject to the comments made below.
- 3.2 The Secretary of State agrees with the Inspector's assessment of relevant matters to be addressed at the inquiry (IR1.2 and 1.4) and the revised list of matters set out in his report (IR1.3). He notes the Inspector announced at the inquiry that the list of matters should be taken as applying both to the RDF generating station application under the Electricity Act 1989 and to the planning appeal for the

Resource Recovery Park (IR1.5). He has determined the RDF generating station application on that basis.

- 3.3. The Secretary of State has taken into account those matters relating to the application set out in IR2.10-2.15. He notes that a boundary modification was proposed at the inquiry (IR11.5-11.6) to exclude an area of some 0.13 hectares from the combined development site extending over 100 hectares. He also notes that Cheshire County Council accepted that this was a minor change. He agrees with the Inspector's view that anyone opposing the application would not be prejudiced in anyway by this boundary alteration.
- 3.4 After the close of the inquiry, a letter from an official at the Department for Communities and Local Government was sent to Addleshaw Goddard LLP (the Company's agents) on behalf of both Secretaries of State on 5 December 2008 (copied to interested local authorities) noting that the proposed section 106 Unilateral Undertaking offered by the Company did not include the Environment Agency (EA) as signatories, despite them having an interest in the application land. The letter invited the Company to submit a suitably revised UU to which the EA were also signatories, principally in order to ensure that all relevant land be covered by the provisions of the Habitats Creation and Management Plan (HCMP). A response was received from Addleshaw Goddard LLP dated 6 January 2009 notifying that the EA had agreed to be joined as a party to a slightly revised UU. A signed copy of this revised UU has since been received and the Secretary of State has taken full account of this further information in reaching his decision. He is satisfied that the EA have been appropriately incorporated as a party to the UU, and that all relevant land within the application site would be included in the HCMP. He is satisfied the amendments to the UU are not such that they raise new issues that affect his decision, or that they are so substantive that they require reference back to parties for further representations before reaching a decision. This is because those issues relating to the provisions of the UU that have been amended (principally in order to ensure adequate delivery of the HCMP), were considered at the inquiry and do not change the fundamental aim or outcome of the UU in this respect.
- 3.5 In reaching that decision, the Secretary of State has also taken into account a written representation from Residents Against Incineration (RAIN) dated 20 June 2008 received after the close of the inquiry. The Secretary of State has considered the content of this correspondence, but is of the view that it does not appear to constitute new evidence or raise new issues relevant to this

application that either affect his decision, or require him to refer back to the parties for further representations before reaching his decision.

- 3.6 Similarly, the Secretary of State has also taken account of the publication by HM Government of *The UK Renewable Energy Strategy July 2009*, *The UK Low Carbon Transition Plan- National Strategy for climate and energy 15 July 2009* and *The UK Low Carbon Industrial Strategy July 2009* in his decision. He is of the view that the publications do not raise new issues relevant to the application that either affect his decision, or require him to refer back to parties for further representations before reaching his decision on the application.

4 SECRETARY OF STATE'S CONSIDERATION OF THE ENVIRONMENTAL INFORMATION

- 4.1 Regulation 3 of the 2000 Regulations prohibits the Secretary of State from granting section 36 consent unless he has first taken into consideration the environmental information, as defined in those Regulations.
- 4.2 The Secretary of State agrees with the Inspector's assessment that the Environmental Statement is adequate and complies with the Regulations (IR11.12). He considers sufficient information has been provided to allow him to make a determination on the Application and that the Company has followed the applicable procedures in the 2000 Regulations.
- 4.3 The Secretary of State has considered the environmental information carefully; in addition to the Environmental Statement he has considered all other evidence brought before the inquiry. Taking account of 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 Planning Conditions or by regulatory authorities, including the Environment Agency and Natural England, the Secretary of State believes that any remaining environmental effects will not be such that it would be appropriate to refuse section 36 consent for the Development.

5. SECRETARY OF STATE'S CONSIDERATION OF THE POSSIBLE EFFECTS ON A EUROPEAN SITE

- 5.1 Regulation 48 of the Conservation (Natural Habitats &c.) Regulations 1994 as amended ("the 1994 Regulations") requires the Secretary of State to consider whether the Development would be likely to have

a significant effect on a European Site, as defined in the 1994 Regulations.

- 5.2 In the event of such an effect he must undertake an appropriate assessment of the implications for the European Site in view of its conservation objectives. The section 36 consent may only be granted if it has been ascertained that the Development will not adversely impact upon the integrity of such a site unless overriding considerations of public interest apply.
- 5.3 The Secretary of State notes that the need for an 'Appropriate Assessment' to consider likely impacts on the Mersey Estuary Special Protection Area pursuant to Regulation 48(2) of the Conservation (Natural Habitats etc) Regulations was an issue between the parties before the inquiry. However, he notes that the matter was fully investigated at the inquiry and a witness from Natural England attended to explain the position they had taken: namely, that the likelihood of a significant effect on the Special Protection Area "can be ruled out" and that Appropriate Assessment is not necessary for the proposals (IR11.13). Accordingly, in view of this advice, the Secretary of State has considered whether an appropriate assessment pursuant to the 1994 Regulations is required and concluded that it is not. These Regulations therefore have no further bearing upon the Application.
- 6. SECRETARY OF STATE'S CONSIDERATION OF MAIN MATTERS CONSIDERED BY THE INSPECTOR**
- 6.1 The Secretary of State agrees with the Inspector's reasoning and conclusions in his report (IR11.1-11.171) including his summary conclusion (IR11.65-11.66) that there is very little of substance raised in relation to any of the potential grounds for objection raised to the RDF generating station proposal, namely in relation to: health impacts (IR11.19-11.28); impacts on flora and fauna (IR11.29-11.32); traffic and impact on local highways (IR11.33-11.35); construction and operational noise (IR11.36-11.38); loss of local amenity including footpaths and bridleways (IR11.39-11.41); landscape and visual impact and light pollution (IR11.42-11.47); flood risk and impact on water courses (IR11.48-11.61); and loss of historical value of Ince Village (IR11.62-11.64). The Secretary of State also notes that there are many points raised as objections to these proposals that are no longer at issue (and no longer pursued as an objection by the County Council).
- 6.2 The Secretary of State has carefully considered the impact on local villages. It is a greenfield site and there would be a loss of local

amenity for some individuals, and some limited landscape and visual impact. He notes that Natural England, the Environment Agency, the Highways Agency, and English Heritage have not objected to the proposal. He also notes that the proposed planning conditions and Unilateral Undertaking will put in place a number of measures to mitigate the impact of the development. In particular, on traffic, these include: road and motorway improvements including road and railway bridge widening, resurfacing and Pool Lane/Kemira Road roundabout improvements; provision of an agreed traffic route that will prevent, except in emergencies, traffic movements through local villages both during construction and operation of the power station, automatic traffic counting and the setting of limits on the number of traffic movements transporting waste to and from the proposed RDF generating station, parking restrictions to prevent off-site overspill parking; measures to promote the use of public transport, cycling and walking; and measures to encourage a shift from road to rail and water modes of transportation. Similarly, conditions are also proposed that will mitigate noise and light pollution including: maximum operational noise limits; external light level limits; and the provision of acoustic barriers along Kemira Road.

- 6.3 He agrees that while there are a number of other points, notably on risks to health and control of pollution where objections are maintained, this is against the background of a clear statement in national policy taking a contrary position. Paragraph 22 of Chapter 5 of the Waste Strategy England states that there is 'no credible evidence of adverse health outcomes for those living near incinerators...'. He also notes that Western Cheshire NHS Primary Health Care Trust's Rapid Health Impact Assessment submitted during consultation on the application did not support concerns about a direct impact on health. In relation to landscape and visual impact, where the Borough Councils have maintained objections, he agrees with the Inspector that the proposals would not have a significant adverse impact and that for other site related impacts, including noise and lighting, any potential adverse impacts can be adequately controlled by conditions.
- 6.4 The Secretary of State has carefully considered the Inspector's assessment of, and conclusions on, relevant national, regional and local planning policies and energy and waste policies in IR11.67-11.112. While noting that the Regional Spatial Strategy, "The North West Plan" (September 2008) now forms part of the development plan, superseding RSS (RPG13) and the Cheshire Structure Plan Alteration 2016), he also notes that the Inspector anticipated that the emerging Regional Spatial Strategy (RSS) would become part of the

development plan and afforded significant weight to its relevant policies. Only minor changes have been made to the final RSS and the Secretary of State is therefore content that adequate weight has been afforded to these policies and there is no need to refer back to parties prior to reaching a decision. He agrees that the need for a study of 'broad locations' (in line with paragraph 12 of PPS10) reflects the acceptance of a large scale capacity gap and need for additional sites (IR11.92). While noting that there is some conflict with policy DP4 of the emerging RSS, he is satisfied with the Inspector's conclusion that there is support for the provision of waste management facilities on a regional scale at Ince Marshes. He also agrees with the Inspector that there are material considerations within national policy that also provide for the granting of consent. With regard to competing proposals in the region (IR11.101-11.105), the Government's policy on energy is set out in the Energy White Paper 'Meeting the Energy Challenge' May 2007 and includes the view that a diverse mix of energy technologies, including energy from waste generation, will be required to combat climate change and provide secure, clean and affordable energy. The market brings forward proposals to meet the needs of those policies, which then need to be considered on their individual merits. While the INEOS Chlor energy from waste proposal at Runcorn, referred to at the inquiry, was granted consent by the Secretary of State on 16 September 2008, there can be no guarantee that the waste facility will be constructed or that other prospective energy from waste facilities will be approved and constructed. At the same time the Secretary of State notes that neither waste nor energy policy places a rigid cap on the development of waste management capacity.

7. EFFECTIVENESS OF THE UNILATERAL UNDERTAKING (UU)

The Environment Agency's interest in the site

7.1. The Secretary of State has addressed the matter of the EA's interest in the site in relation to the UU in paragraph 3.4 above.

7.2 The Secretary of State agrees with the Inspector's reasoning and conclusions on the HCMP, including that it has been well thought out and that the related clauses of the UU would deliver significant benefits, particularly in relation to ecology (IR11.137). He agrees with the Inspector's conclusion that the Employee Travel Plan should help to mitigate the adverse impacts of the site's relative remoteness from urban areas and public transport facilities. However, he also agrees that it will not eliminate the inherent disadvantages of providing significant new employment in a relatively remote location (IR11.139), but has balanced this when

assessing the overall merits of the proposal. He agrees that the Unilateral Undertaking and associated Freight Management Plan can be judged to be an effective mechanism for achieving a modal shift from road to rail and water for the RDF plant application.

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

8.1 The Energy White Paper 2007 ("Meeting the Energy Challenge") makes clear that the Government strongly supports combined heat and power ("CHP"). The Application is covered by the Departmental published guidance¹ for all fossil fuelled power station proposals, requiring developers to demonstrate that opportunities for CHP have been seriously explored before section 36 consent can be granted.

8.2 The Secretary of State notes that the plant is designed as a CHP facility and that the intention is that it that the RDF plant will produce CHP for the benefit of the associated Resource Recovery Park. He also notes that there is a possibility that it would be able to export energy in the form of hot water and steam to industrial users in the future and agrees with the Inspector that it is appropriate to include a condition to facilitate this (see Condition 4(3) in the section 90(2) conditions).

9. SECRETARY OF STATE'S DECISION ON CARBON CAPTURE READINESS

9.1 It has not been considered necessary to explore whether to include a CCR condition as, at 95MW, the Development is substantially below the 300MW threshold for carbon capture readiness provisions in the draft EU Directive on Carbon Capture and Storage.

10. SECRETARY OF STATE'S CONSIDERATION OF THE PLANNING CONDITIONS

10.1 The Secretary of State has considered the Planning Conditions carefully and notes that they were agreed between the Company and County Council. He agrees that they are suitable for inclusion in any section 90(2) direction which he may give subject to some minor drafting changes and the inclusion of conditions relating to cessation of works and the restoration of the development sites (see

¹ This application is covered by DTI guidance relating to CHP dated [March 2001 (URN/01/693)][December 2006 (URN/06/2138)].

conditions 45-47) and a default of agreement condition (see condition 48).

- 10.2 He has considered the Inspector's consideration of the relationship between the RDF plant and Resource Recovery Park proposal and whether a condition is required to link them (IR11.17-11.18 & 11.165-11.171) and agrees that there are strong arguments for granting permission for both schemes independently and that a linking condition is therefore not warranted.

11. SECRETARY OF STATE'S DECISION ON THE APPLICATION

- 11.1 The Secretary of State considers the following issues material to the merits of the section 36 consent application:

- a) the Inspector's report and conclusions;
- b) 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 and the Secretary of State has judged that the likely impacts are acceptable;
- c) The fact that the legal procedures for considering a generating station application have been properly followed;
- d) the views of the relevant planning authorities, the views of Statutory consultees under the 1994 Regulations, the views of objectors, the environmental information and all other relevant matters have been considered; and
- e) the proposed Development is consistent with Government's energy policy as set out in the Energy White Paper 2007, ("Meeting the Energy Challenge") released on 23 May 2007 in respect of meeting diversity and security of supply for power generation.

- 11.2 The Secretary of State having regard to the matters specified in paragraph 11.1 above, has decided to grant section 36 consent subject to the conditions that (1) the Development shall be in accordance with the particulars submitted with the Application, and (2) the time limit for construction shall be 3 years from the date of consent.

- 11.3 The Secretary of State believes that the Planning Conditions as amended form a sufficient basis on which the Development might proceed, and therefore he has decided to issue a section 90(2) direction that planning permission be deemed to be granted subject to the Planning Conditions.

- 11.4 I accordingly enclose the Secretary of State's consent under section 36 of the Electricity Act 1989 and a direction under section 90(2) of the Town and Country Planning Act 1990.
- 11.5 A copy of this letter and enclosure has been sent to Cheshire West and Chester Council (which replaced Cheshire County Council on 1 April 2009) and all parties who appeared at the inquiry.

12. GENERAL GUIDANCE

- 12.1 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 and in any event not later than three months after the date of the decision. 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 6205).
- 12.2 This decision does not convey any approval or consent that may be required under any enactment, bye-law, order or regulation other than section 36 of and Schedule 8 to the Electricity Act 1989 and section 90(2) of the Town and Country Planning Act 1990.

Yours faithfully



Richard Mellish
Head of Development Consents and Planning Reform