



RWE GENERATION UK PLC

THE HIGHWAYS ACT 1980

**THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS
INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT
ROUNDAABOUT), A4197 DIDCOT TO CULHAM LINK ROAD, AND A415 CLIFTON
HAMPDEN BYPASS) SIDE ROADS ORDER 2022**

AND

**THE OXFORDSHIRE COUNTY COUNCIL (DIDCOT GARDEN TOWN HIGHWAYS
INFRASTRUCTURE – A4130 IMPROVEMENT (MILTON GATE TO COLLETT
ROUNDAABOUT), A4197 DIDCOT TO CULHAM LINK ROAD, AND A415 CLIFTON
HAMPDEN BYPASS) COMPULSORY PURCHASE ORDER 2022**

STATEMENT OF EVIDENCE OF

MATTHEW TRIGG

**Development Planning Manager
RWE Generation UK Plc**

30 January 2024

1. Qualifications and Experience

- 1.1 My name is Matthew Trigg and I am a Development Planning Manager for RWE Generation UK Plc (RWE). I have worked for RWE for over 20 years in its Property Team managing operational and non-operational sites across the UK.
- 1.2 I am a Chartered Town Planner with over 25 years' experience in the utilities sector.

2. Scope of Evidence

- 2.1 This Statement of Evidence sets out the reasons for RWE's objection and concern about the use of compulsory acquisition powers at its Didcot Power Station site. It also provides a summary of the engagement that has taken place with Oxfordshire County Council (OCC) to date. The evidence sets out why a private agreement is necessary and concludes that despite the lack of engagement from OCC, RWE remains committed to reaching agreement to ensure that suitable protections are provided and that the Scheme can be delivered.

3. Land affected by the orders

- 3.1 A Statement of Case was previously submitted on 4 October 2023, setting out RWE's objection to the use of compulsory acquisition powers over its landholding at Didcot. My evidence seeks to expand on the operational impacts that could occur if these powers are granted.
- 3.2 RWE is the holder of an electricity generation licence under Section 6 of the Electricity Act 1989 (entitled to exercise the powers under Schedule 3 of the Act) and a deemed statutory undertaker under section 8(1) of the Acquisition of Land Act 1981. RWE is also a statutory undertaker under section 262(6) of the Town and Country Planning Act 1990 and Didcot Power Station is operational land as defined under section 263 of that Act.
- 3.3 RWE's landholding at Didcot comprises Didcot Power Station site (Site) which is made up of the land containing the former Didcot A Power Station (Didcot A) and the still operational Didcot B Power Station (Didcot B).
- 3.4 Didcot B is a 1440MW combined cycle gas fired power station which will remain operational for the foreseeable future. The operation of Didcot B is subject to conditions pursuant to a Section 36 Consent under the 1989 Act and an Environmental Permit. Apparatus, access routes, services (including sewerage, electricity and telemetry), drainage, lagoons and landscaping relating to the operation of Didcot B are located throughout the Site.
- 3.5 Didcot A was a coal fired power station which has recently been demolished. The Didcot A land includes a surface water drainage system, which discharges to the Moor Ditch in close proximity to land affected by the Orders. This discharge is the subject of a Surface Water Discharge Licence.
- 3.6 While a significant section of the land previously occupied by Didcot A will be retained by RWE for the ongoing use and future operational development purposes; circa 27 hectares is now being proposed for redevelopment as a Data Centre campus. RWE has applied for planning permission (reference P22/V1857/O) for this Data Centre campus and it is anticipated that the application will now be determined by officers in the 2nd

quarter of 2024. The local planning authority is supportive of the proposals and as such, RWE sees no reason why the application will not be approved subject to the completion of a section 106 agreement.

Special Category Land

- 3.7 RWE, as an electricity licence holder under the 1989 Act, is entitled to exercise the powers conferred by Schedule 3 of the 1989 Act and is a statutory undertaker for the purposes of the 1981 Act by virtue of paragraph 2(2) of Schedule 16 to the 1989 Act. The CPO land described above, is operational land for the purposes of this undertaking.
- 3.8 Given the above, a copy of RWE's Statement of Case was served simultaneously on the Department for Energy Security and Net Zero (DESNZ), the department responsible for such undertaking and therefore the appropriate Minister for the purposes of section 16 of the 1981 Act.
- 3.9 The protections within section 16 of the 1981 Act therefore apply such that the CPO cannot be confirmed without a minister for DESNZ providing a certificate to state it is satisfied that RWE's land/rights over its operational land:
- 3.9.1 can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - 3.9.2 that if purchased, can be replaced by other land belonging to, or available for acquisition by, the undertaker (i.e. RWE) without serious detriment to the carrying on such undertaking.
- 3.10 In the absence of a voluntary agreement ensuring adequate protections for RWE's undertaking are in place, RWE consider that neither of the above scenarios apply in this instance for the reasons set out below.

Impacts of the CPO on RWE

- 3.11 RWE is the freehold owner of land affected by the Orders (Order Land) identified on drawings GH-132861001-LO LP-RWE- and GH-132861001-LO LP-RWE-in Appendix 1. Oxfordshire County Council (OCC) seeks to acquire a broad range of temporary and permanent rights over the Order Land across the following plots: 5/2a, 5/2b, 5/2c, 5/2d, 5/2e, 5/2f, 5/2g, 5/2h, 5/2i, 6/1a, 6/1b, 6/1c, 6/1d, 6/1e, 6/1f, 6/1g, 6/1h, 6/1i, 6/1j, 6/1k, 6/1l and 13/6a. It also seeks to acquire rights on Plot 4/3a, 4/3b, 4/3c and 13/6c.
- 3.12 The Order Land is and will remain critical to the operation of the Site as it includes land that:
- 3.12.1 Forms the primary vehicle and pedestrian access into the land previously occupied by Didcot A. This access is also the only access to the operational Didcot B and National Grid's substation for abnormal load vehicles (as the other access to the Site carries weight restrictions). Access for these vehicles is necessary for ongoing operational and maintenance requirements; for example to import transformers and other electricity generating infrastructure into the Site. Temporary access is also sought over Didcot B's primary access for the purposes of construction of the Scheme.

- 3.12.2 Includes a drainage lagoon that will be lost and that currently forms a crucial part of the surface water drainage system which services the land previously occupied by Didcot A. This surface water drainage system is managed by a surface water discharge permit with associated conditions. These predominately relate to requirements to manage water drained from the former power station basement. Management of any impacts on this system (including the drainage lagoon) must be in accordance with the conditions of that discharge permit. This drainage system remains necessary for RWE's ongoing operational works at the Site as well as the future Data Centre development.
- 3.12.3 The Order land also contains services in addition to the surface water drainage (foul water, electricity, telecoms and fibre) that are required for the ongoing operation and maintenance of the Site.
- 3.13 In respect of the Order's provision to manage the above matters:
- 3.13.1 As a statutory undertaker RWE (and National Grid) requires access to the Site on a 24 hour and 7 day a week basis via the access affected by the Order for operational and safety reasons. If access is not provided on this basis there is significant risk that essential equipment required for the ongoing operation of Didcot B and the National Grid substation will be prevented from accessing the Site. This is also the access to the Didcot A land and the National Grid substation and is used daily for maintenance and operations. RWE requires protection through a private agreement to ensure suitable access is maintained throughout the construction of the Scheme.
- 3.13.2 OCC is proposing a replacement lagoon as part of the Scheme. However, given the proposed impacts on the drainage lagoon servicing RWE's Site, RWE requires a secure commitment that this lagoon is constructed and operational in advance of the loss of the existing lagoon to ensure that the Site's drainage system is not adversely affected and can be maintained in compliance with its discharge consent. The CPO does not provide certainty that this sequencing and continuity of service will be protected and provided, and RWE considers this must be confirmed through a private agreement.
- 3.13.3 The services that currently exist must also be suitably protected and provision made for future service corridors to ensure the Site's ability to operate is not impacted or frustrated in future. Similarly, the CPO does not provide certainty that these services will be suitably protected through construction and through the provision for future service corridors, and RWE considers this must be confirmed through a private agreement.
- 3.14 As indicated above, RWE considers the matters set out in paragraph 3.12 – 3.13 are most appropriately dealt with through protections set out in a private agreement, given these primarily relate to sequencing of works, the protection of services and liaison between the parties to agree any temporary closure of roads can occur at agreed times which do not adversely affect RWE's ability to operate or cause damage to the Site. RWE has sought to engage with OCC on this basis. If unrestricted compulsory purchase powers are granted there is a significant risk that RWE as a statutory undertaker will not have access to its Site at critical times, lose access to services which are critical to the operation of the Site and risk breaching its surface water drainage consent for Didcot A.

- 3.15 RWE also remains concerned that the construction phase of the Scheme will unnecessarily prevent, restrict and/or prejudice the ability to either (depending on when the Scheme comes forward) simultaneously construct and/or operate the Data Centre campus, with the Data Centre campus potentially being “landlocked” during the construction period for the Scheme.
- 3.16 To address these further concerns, OCC must ensure that:
- 3.16.1 there is sufficient capacity within any junction design for the Scheme to accommodate future development, including RWE's operational developments and the proposed Data Centre campus. The land assembly / construction phase of the Scheme must not prevent, restrict and/or prejudice RWE's ability to simultaneously construct new developments including the proposed Data Centre campus; and
- 3.16.2 the land assembly / construction phase of the Scheme does not prevent, restrict and/or prejudice RWE's ability to operate infrastructure on the Site including the proposed data centre campus (should the proposed Data Centre campus be delivered in advance of the land assembly / construction phase for the Scheme).
- 3.17 RWE continues to consider the above management of construction would best be addressed through a direct agreement between the two parties, such that RWE can appropriately input on the details of the development plans for new operational development and the data centre campus.
- 3.18 Finally, RWE's Statement of Case also highlighted a concern that the design of the Scheme would result in:

RWE's existing security gatehouse being segregated making it obsolete and removing RWE's ability to control access into its operational land. It is noted that a replacement gatehouse is proposed but RWE has not received any commitments from the County Council as to how and when the replacement gatehouse will be delivered.

- 3.19 Discussions between OCC and RWE have addressed RWE's concerns as to the design and location of the gatehouse should the Scheme proceed. However, there is still no agreement as to how and when the replacement gatehouse will be delivered given there is no private agreement in place between the parties.

4. Objection and representations

History of objections / representations to Council

- 4.1 Although RWE is generally supportive of the Scheme it objects, as a statutory undertaker, to the use of compulsory purchase powers to acquire land and rights either temporarily or permanently across the Site. I set out below the formal responses that have been provided to OCC in respect of this objection, and provide an update on current

negotiations on a private agreement to deliver the land rights necessary to deliver the Scheme.

- 4.1.1 RWE has engaged with OCC on its Scheme since 2018. This early engagement enabled the design of the Scheme to evolve to take account of some of the concerns that have been raised by RWE.
- 4.1.2 On 30 April 2020, RWE formally responded to the County Council's consultation on the Scheme.
- 4.1.3 On 14 April 2022, RWE objected to the planning application for the Scheme. It was only at this point that land acquisition discussions commenced, at the request of RWE. OCC produced a Heads of Terms document (HOTS) in April 2023, but this did not reflect the discussions that had taken place previously in respect of RWE's concerns. RWE requested a new HOTS in July 2023 so that these concerns could be addressed. This was shortly before the Scheme was refused at Planning Committee.
- 4.1.4 On 22 March 2023, RWE objected to the CPO and SRO.
- 4.1.5 On 26 September 2023, RWE submitted representations supporting the planning application for the Scheme (which has been called-in) but reiterated its concerns and objection in respect of the Orders. At this point, OCC restarted negotiations with RWE and a revised HOTS was received by RWE at the end of November 2023. Comments were provided on this draft by RWE to OCC on 11th January 2024 and unfortunately there has been no further engagement to date.
- 4.2 RWE remains confident that a private agreement can be reached with OCC to enable the Scheme to be developed but the lack of consistent engagement by OCC has made it difficult to progress any type of agreement to give RWE sufficient comfort that its concerns will be addressed. It is RWE's position that the land rights necessary can be provided through a S106 Agreement that will accompany the planning permission for the data campus development at Didcot A.

Objection maintained

- 4.3 Whilst RWE is not opposed to the principle of the Scheme, RWE continues to object to the Orders for the reasons set out in its objection letter and this Statement of Case, namely that:
 - 4.3.1 the CPO land in which RWE has an interest, is operational land for the purposes of RWE's undertaking and in the absence of any agreement between RWE and OCC, the powers sought in the CPO would result in serious detriment to RWE's undertaking;
 - 4.3.2 there are alternatives to the use of compulsory purchase powers given RWE has offered (but OCC has yet to accept or secure) the appropriate transfer/rights over/use (as relevant) of the relevant CPO land by voluntary agreement;
 - 4.3.3 OCC has failed to make "reasonable attempts" to acquire RWE's interests by agreement (in particular taking into account RWE's undertaking and development proposals) such that the making of the CPO is not a "last resort"; and

4.3.4 OCC's planning committee resolved to refuse planning permission for the Scheme, creating an impediment to the delivery of the Scheme (although it is noted that the planning application has been called-in by the Secretary of State and is the subject of a conjoined planning inquiry).

4.4 As such, RWE considers that as at the date of this Statement of Evidence:

4.4.1 the appropriate Minister cannot be satisfied that the CPO land in which RWE has an interest can be purchased and not replaced without serious detriment to RWE's undertaking; and

4.4.2 OCC has failed to fully comply with the CPO Guidance and Circulars in the preparation and making of the CPO and SRO.

4.4.3 In the absence of any agreement between RWE and OCC ensuring adequate protections for RWE's undertaking and RWE's development proposals for the data centre campus are in place, the Orders should not be confirmed by the Secretary of State for Transport or should be modified to exclude land in which RWE has an interest.

5. Conclusion

5.1 RWE is not opposed to the Scheme. However, it objects to the proposed CPO which is granted is likely to have a serious detrimental impact on RWE's statutory undertaking. The Site is operational and is used or held for the purposes of electricity generation. The consequences of compulsory purchase rights will jeopardise the future operation of Didcot A and Didcot B for the reasons set out above.

5.2 Compulsory purchase should only be used as a last resort, when negotiations have failed. The Department for Levelling Up, Housing & Communities Guidance on Compulsory purchase process and The Crichel Down Rules (2018) clearly specifies, at sections 17-19, the need for early engagement on negotiations with private landowners. However, although RWE has been in consultation with OCC since 2018 about the design of the HIF 1 scheme, there has been little engagement by the OCC in relation to the land rights needed for its delivery. RWE is willing to enter into an appropriate negotiated agreement with OCC and consequently the use of compulsory purchase powers and direct interference with RWE's land rights is not justified.

5.3 Therefore, as of the date of this evidence, the positions outlined in RWE's Statement of Case stand, being that:

5.3.1 the appropriate Minister cannot be satisfied that the CPO land in which RWE has an interest can be purchased and not replaced without serious detriment to RWE's undertaking;

5.3.2 OCC has failed to fully comply with the above Guidance in the preparation and making of the CPO and SRO; and

5.3.3 in the absence of any agreement between RWE and OCC ensuring adequate protections for RWE's undertaking are in place, the Orders should not be

confirmed by the Secretary of State for Transport or should be modified to exclude land in which RWE has an interest.

6. Statement of Truth

- 6.1 This statement of evidence has been prepared and provided for this inquiry by me and I confirm that the statements and opinions expressed are my true and professional opinions.

A handwritten signature in black ink, appearing to read 'Matthew Trigg', with a stylized flourish at the end.

Matthew Trigg
30 January 2023

APPENDIX 1



