



The Abergelli Power Gas Fired Generating Station Order

5.3 Statement of Engagement of Section 79(1) of the Environmental Protection Act 1990

Planning Act 2008
The Infrastructure Planning
(Applications: Prescribed Forms and Procedure) Regulations 2009

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Executive Summary

This Statement of Engagement has been prepared to fulfil regulation 5(2)(f) of the AFFP Regulations, which requires any Development Consent Order (DCO) application to be accompanied by a statement considering whether the proposal would engage one or more of the statutory nuisances set out in Section 79(1) of the Environmental Protection Act 1990 (the EPA 1990).

Detailed assessments have been undertaken to assess: the condition of the site, potential air quality impacts, noise levels, and artificial lighting generated by the Project during construction, operation and decommissioning.

Condition of the Site

Once the embedded mitigation measures have been applied, construction and decommissioning of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(a) or (e) of the EPA 1990.

Similarly, once embedded mitigation measures have been implemented, the operation of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(a) or (e) of the EPA 1990.

Air Quality

The application of embedded mitigation measures will ensure that the impacts of dust during the construction and decommissioning of the Project are negligible/not significant and therefore will not give rise to statutory nuisance pursuant to Section 79(1)(d) of the EPA 1990.

As embedded mitigation will be set out in the Outline Construction Environment Management Plan (CEMP) (Appendix 3.1, Document Reference 6.2) and decommissioning plan and secured by way of a requirement in the DCO, it is considered that with embedded mitigation measures, construction and decommissioning activities of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(d) of the EPA 1990.

Artificial Lighting

With the application of embedded mitigation measures, construction and decommissioning activities and the operation of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(fb) of the EPA 1990.

Noise and Vibration

Construction and decommissioning activities of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(g) or section 79(1)(ga) of the EPA 1990. Compliance with the CEMP, construction hours and decommissioning plan is secured by way of a DCO requirement.

The Environmental Statement (ES) (Document Reference 6.1) predicts that the operation of the Project will have negligible residual effects at all noise sensitive receptors (NSRs), which are not significant. As such, the impact of operational noise from the Project on external noise levels at NSRs is not considered give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(g) or section 79(1)(ga) of the EPA 1990.

1 Introduction

1.1 Background

1.1.1 This statement has been prepared by Peter Brett Associates LLP (PBA) on behalf of Abergelli Power Limited (APL). It considers whether the Project would engage one or more of the statutory nuisances set out in Section 79(1) of the Environmental Protection Act 1990 (as amended) (the EPA 1990).

1.1.2 The requirement for this statement is set out in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations 2009) at regulation 5(2)(f), which states: *“the application must be accompanied by...a statement whether the proposal engages one or more of the matters set out in Section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them”*.

1.2 Project Description

1.2.1 APL proposes to construct, operate and maintain an Open Cycle Gas Turbine (OCGT) peaking power generating station (the Power Generation Plant) and new connections to the gas and electricity networks on land adjacent to the Felindre Gas Compressor Station at Abergelli Farm, Felindre, Swansea, SA5 7NN (the Project).

1.2.2 The Project includes:

- The Power Generation Plant is fuelled by natural gas and is capable of providing a rated electrical output of up to 299 Megawatts (MW). The Power Generation Plant comprises:
 - Generating Equipment including one Gas Turbine Generator with one exhaust gas flue stack and Balance of Plant (BOP) (together referred to as the Generating Equipment) which are located within the Generating Equipment Site;
 - An Access Road to the Generating Equipment Site from the B4489 which lies to the west, formed by upgrading an existing access road between the B4489 junction and the Swansea North Substation (the Substation) and constructing a new section of access road from the Substation to the Generating Equipment Site;
 - A temporary construction compound for the storage of materials, plant and equipment as well as containing site accommodation and welfare facilities, temporary car parking and temporary fencing (the Laydown Area). A small area within the Laydown Area will be retained permanently (the Maintenance Compound);

- Ecological Mitigation Area – area for ecological enhancement within the Project Site Boundary;
 - Permanent parking and drainage to include: a site foul, oily water and surface water drainage system;
 - A Gas Connection will be in the form of a new above ground installation (AGI) and underground gas connection (the Gas Pipeline). This is to bring natural gas to the Generating Equipment from the National Gas Transmission System. The Gas Pipeline will follow an approximate north-south route corridor, between the National Gas Transmission System south of Rhyd-y-pandy Road and the Generating Equipment Site; and
 - An Electrical Connection which is an underground electrical cable to export power from the Generating Equipment to the National Electricity Transmission System (NETS).
- 1.2.3 The Generating Equipment, Access Road, Laydown Area, Maintenance Compound, Ecological Mitigation Area, permanent parking and drainage are together known as the “Power Generation Plant”.
- 1.2.4 The Power Generation Plant, Gas Connection, and Electrical Connection are referred to as the “Project”.
- 1.2.5 The “Project Site” is the entire area covered by or required in order to deliver the Project.
- 1.2.6 The Project is described in more detail in Chapter 3 of the Environmental Statement (ES) (Document Reference 6.1).
- 1.2.7 The Power Generation Plant constitutes a Nationally Significant Infrastructure Project (NSIP) by virtue of section 14 and 15 of the Planning Act (PA 2008) which includes within the definition of an NSIP any onshore generating station in England or Wales of more than 50 MWe capacity. As such, APL is applying to the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) under section 31 of the PA 2008 for a Development Consent Order (DCO) for powers to construct, operate and maintain the Power Generation Plant (the Application). In addition, APL is seeking powers of compulsory purchase in respect of acquisition over the Order Land (which is shown on the Land Plans, Document Reference 2.2), in order to facilitate the construction and operation of the Project. The extent of the works for which development consent is sought in the DCO (together with relevant limits of deviation) is shown on the plans and referred to as the Order Limits.
- 1.2.8 The Gas Connection and Electrical Connection comprise development associated with the NSIP (“associated development”). The PA 2008 restricts associated development for which consent can be sought under a DCO in Wales to development that is associated with a generating station with a capacity in excess of 350 MW. As the Power Generation Plant would have rated

electrical output of up to 299 MW, associated development to the Power Generation Plant cannot be included in any application for DCO under the PA 2008. The application for a DCO therefore does not seek development consent for the Gas Connection or the Electrical Connection.

1.2.9 Separately therefore, APL will seek planning permission for the Gas Connection under the Town and Country Planning Act 1990 (TCPA 1990) and the Electrical Connection under either the TCPA 1990 or as permitted development under the Town and Country Planning (General Permitted Development) Order 1995 (GPDO).

1.2.10 This statement is part of a suite of documents which accompany the Application and should be read in conjunction with those other documents to gain a fuller understanding of the Project.

1.2.11 A glossary of defined terms is provided in Document Reference 1.4.

2 Description of Matters Considered by Section 79 of the EPA 1990

2.1 Introduction

2.1.1 As stated in Section 1 above, regulation 5(2)(f) of the AFFP Regulations requires any DCO application to be accompanied by a statement indicating whether the proposal engages one or more of the statutory nuisances set out in Section 79 of the EPA 1990, and if so what measures are proposed to mitigate or limit them.

2.2 EPA 1990

2.2.1 The following text, extracted from Section 79(1) of the EPA 1990 sets out the matters that constitute statutory nuisances in England and Wales:

“(1)...the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

- (a) any premises in such a state as to be prejudicial to health or a nuisance;*
- (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*
- (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*
- (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (e) any accumulation or deposit which is prejudicial to health or a nuisance;*
- (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*
- (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*
- (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;*
- (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;*
- (h) any other matter declared by any enactment to be a statutory nuisance;”*

2.2.2 For the purposes of Section 79(1) of the EPA 1990, “noise” includes vibration.

2.2.3 The nature of the Project is such that the statutory nuisances described by the sub-sections set out below will not be engaged and are therefore not discussed further in this Statement:

- 79(1)(b) – as no smoke will be emitted from the Project;
- 79(1)(c) – as section 79(1)(c) applies only to private dwellings;
- 79(1)(f) – as no animals will be kept at the Project Site; and

- 79(1)(fa) – as the Project will not give rise to processes which could cause infestation by insects.

2.2.4 The following sub-sections set out below are potentially relevant to the Project and are therefore discussed further in Section 3 of this statement:

- 79(1)(a) and 79(1)(e), relating to general conditions at the Project Site;
- 79(1)(d) relating to air emissions and effluvia;
- 79(1)(fb), relating to lighting; and
- 79(1)(g) and 79(1)(ga), relating to noise and vibration.

3 Assessment of Matters set out in Section 79 (1) of the EPA 1990

3.1 Introduction

3.1.1 The following section sets out potential impacts of the Project which may constitute a source of statutory nuisance, as defined by Section 79 (1) of the EPA 1990. To the extent that any potential impacts are considered to potentially engage any of the issues set out in Section 79(1) of the EPA 1990, proposed mitigation measures to limit such impacts are also described. This section has been prepared with reference to the ES (Document Reference: 6.1), the Outline Construction Environmental Management Plan (CEMP) (Document Reference 6.2, Appendix 3.1) and Outline Surface Water Management Plan (SWMP) (Document Reference 6.2, Appendix 3.2), which have been prepared to accompany the Application.

3.2 Section 79(1)(a) and Section 79(1)(e) – Condition of the Site

Construction and Decommissioning

3.2.1 Construction of the Project will comprise site preparation works (e.g. excavation of trenches for the Access Road, Gas Pipeline and the Electrical Connection), as well as excavation for foundations for the Generating Equipment. There will be a requirement for ‘earthworks’ which includes site levelling/re-profiling for the new section of Access Road and the Generating Equipment Site.

3.2.2 Briefly, this could result in:

- Disturbance of existing contamination and creation of pollution pathways; and
- Creation of pollution incidents from, for example, spillages.

3.2.3 During construction, the condition of the Project Site will be managed by implementation of an Outline CEMP, an outline of which can be found in ES Appendix 3.1 (Document Reference 6.2). Prior to decommissioning, a decommissioning plan will be established. The Outline CEMP will cover matters such as the management of construction materials and waste, dust management, pollution prevention and human health, by establishing a series of best practice working methods and embedded mitigation measures. An emergency response plan has been prepared (Section 4.2 of the Outline CEMP) which details the approach to contamination hotspots, flood risk management and accidental spillages. The SWMP (Document Reference 6.2, Appendix 3.2) encompasses the principles and procedures to be implemented throughout the construction period of the Project to ensure compliance with surface water protection legislative requirements, ES commitments and Environmental Permit conditions.

3.2.4 Compliance with the CEMP, SWMP and decommissioning plan will be secured by way of requirements in the DCO (see Document Reference 3.1).

3.2.5 These mitigation measures include:

- Construction workers will wear appropriate personal protective equipment (PPE) for the nature of works being undertaken;
- Any soils excavated which are considered to be potentially contaminated (e.g. visual or olfactory evidence) will be reported to site management and left alone until their appropriate treatment; and
- Measures should be taken to avoid/minimise the potential for fuel and chemical spills. A spill response procedure will also apply onsite.

3.2.6 Further ground investigations will be undertaken prior to construction of the Project which will further define the nature of ground conditions at the Project Site. In particular, intrusive ground investigation will be carried out prior to construction and a ground investigation report will be submitted to the relevant planning authority (CCS) for approval. For more information on the ground conditions, see Chapter 10 of the ES (Document Reference 6.1).

3.2.7 The intrusive ground investigation will aim to identify ground conditions and potential contaminants, as will risk assessments including gas, control waters and human health. In addition, the following embedded mitigation will be undertaken:

- A detailed mining risk assessment will be required to establish the risk of untreated shallow underground workings beneath the Project Site;
- A mineral resources survey may be undertaken to establish the value of the sand, gravel and coal reserves

3.2.8 A foundations risk assessment is likely to be required to assess the risk of piling foundations to controlled waters; however, this will be confirmed by the ground investigation. This will be secured in requirements to the DCO (Document Reference 3.1). However, based on evidence to date (together with the embedded mitigation e.g. designing the Project to take into account the findings of further ground investigations), there are not anticipated to be any significant issues with contamination at the Project Site. For further information, see Chapter 10 of the ES (Document Reference 6.1).

3.2.9 It is therefore considered that with the embedded mitigation measures summarised above, construction and decommissioning activities of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(a) or (e).

Operation

3.2.10 During operation of the Project, there is the potential for incidences, e.g. spillages of fuels, that could impact the condition of the Generating Equipment Site.

3.2.11 During operation of the Project, an Environmental Management System (EMS) will be put in place by the operator to ensure that the site remains in a good condition. This will be a requirement of the Environmental Permit (EP). The EMS will be certified to ISO 14001 (environment), ISO 45001 (occupational health and safety) and ISO 9001 (quality) or other appropriate international standards. The EMS will encompass best practice methods for all operational procedures at the Project Site, including, but not limited to; spill reporting procedures and clean up methods; site speed limits; correct storage of fuel; and vehicle re-fuelling procedures.

3.2.12 It is therefore considered that with the implementation of the embedded mitigation measures, the operation of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(a) or (e) of the EPA 1990.

3.3 Section 79(1)(d) – Air Quality

Construction and Decommissioning

3.3.1 There is the potential for emissions of dust arising from construction and decommissioning activities carried out at the Project Site. A qualitative assessment of the impact of dust on the surrounding environment has been undertaken as part of the Environmental Impact Assessment (EIA) and is reported in Chapter 6 of the ES (Document Reference 6.1).

3.3.2 Following the Institute of Air Quality Management (IAQM) 2014 ‘Guidance on the assessment of dust from demolition and construction’, the screening distances to be used to assess the impacts of dust emissions for human and ecological receptors are:

- Human – within 350 m of the boundary of the site, or 50 m of the routes used by construction vehicles on the public highway, within 500 m of the site entrance; and
- Ecological – 50 m of the boundary of the site or 50 m of the routes used by construction vehicles on the public highway, within 500 m of the site entrance.

3.3.3 The guidance goes on to state that outside these areas *‘where the need for a more detailed assessment is screened out, it can be concluded that the level of risk is “negligible” and any effects will not be significant’*.

3.3.4 As there are residential receptors within these distances from the Project, there is the potential for statutory nuisance under Section 79(1)(d) of the EPA 1990 to occur.

3.3.5 The application of embedded mitigation measures will ensure that the impacts of dust during the construction and decommissioning of the Project are negligible/not significant and therefore will not give rise to statutory nuisance pursuant to Section 79(1)(d) of the EPA 1990.

- 3.3.6 The embedded mitigation measures are set out in a Dust Management Plan within the Outline CEMP (Document Reference 6.2, Appendix 3.1). These are general good practice measures that will be implemented onsite to control dust and vehicle emissions, and include:
- Site Management;
 - Earthworks;
 - Material Handling;
 - Stockpiles;
 - Traffic Measures; and
 - Emissions Management.
- 3.3.7 Daily visual inspections of dust emissions (and weekly recording) will be made in conjunction with dust emissions monitoring at locations to be agreed with Natural Resources Wales (NRW). This data will be used to ensure that mitigation measures are appropriate and being applied rigorously and to provide early warning of increased dust emissions to inform the cessation or modification of activities prior to impacts occurring.
- 3.3.8 Real-time monitoring will also be undertaken in the vicinity of the Lletty-Morfil SINC. Trigger levels for the instrument, which would suggest increasing risk/emissions, will be agreed with NRW prior to the commencement of construction. The monitoring stations will be mobile and will be moved around the Project Site as the principal activities move.
- 3.3.9 Embedded mitigation measures will be set out in the Outline CEMP and decommissioning plan and secured by way of a requirement in the DCO (Document Reference 3.1). It is considered that with the application of embedded mitigation measures, construction and decommissioning activities of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(d) of the EPA 1990.

Operation

- 3.3.10 During operation, the Power Generation Plant will release NO_x during the combustion of natural gas. No other pollutants of concern will be released in quantities which have the potential for causing statutory nuisance. Atmospheric dispersion modelling has been undertaken as part of the EIA and the results are presented in Chapter 6 of the ES (Document Reference 6.1). The results of the dispersion modelling conclude that NO_x concentrations will be well below the relevant national air quality objectives at all receptors within the study area (10 km radius from the location of the stack). Therefore, the significance of effect of air quality emissions will be negligible. No mitigation is therefore proposed, other than the use of Best Available Techniques (BAT) for control of emissions which will be designed into the Power Generation Plant and required pursuant to the Environmental Permit.

3.3.11 The Environmental Permit will be applied for by APL shortly after submitting the DCO application so that these processes can run in parallel.

3.3.12 The Electrical Connection will not release any emissions to air during operation.

3.3.13 The Gas Connection will not release any emissions to air during normal operation.

3.3.14 The Project will operate using the combustion of natural gas, which results in the emissions of nitrous oxide (NO_x), carbon monoxide (CO) and water vapour. Under normal operating conditions, there is no odour associated with the combustion of natural gas, and there is no visible plume due to the velocity and temperature of dispersions.

3.3.15 It is therefore considered that with embedded mitigation measures operation of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(d) of the EPA 1990.

3.4 Section 79(1)(fb) – Artificial Lighting

3.4.1 The Project Site will require artificial lighting during construction and decommissioning and the Power Generation Plant and AGI will require artificial lighting during operation to provide a safe working site during hours of darkness.

3.4.2 An Outline Lighting Strategy and Outline CEMP have been proposed to support the Application (Document Reference 6.2, Appendices 3.5 and 3.1).

3.4.3 The LVIA determined that the impact of lighting during the construction, operation and decommissioning stages of the Project will be negligible. Embedded mitigation measures are set out in the Outline CEMP, and include the following measures:

- the use of tall hoardings to screen views during the construction activities, avoiding unnecessary removal of vegetation;
- retaining and protecting existing trees in accordance with BS 5837:2012;
- restricting the lighting of compounds and work sites to the agreed working hours; and
- Prompt reinstatement of areas that are no longer required following construction.

3.4.4 Compliance with the lighting strategy is secured by way of a requirement to the DCO (Document Reference 3.1).

3.4.5 It is therefore considered that with the application of embedded mitigation measures construction and decommissioning activities and the operation of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(fb) of the EPA 1990.

3.5 Section 79(1)(g) and Section 79(1)(ga) - Noise and Vibration

Construction and Decommissioning

- 3.5.1 A construction noise assessment has been undertaken using guidance set out in BS 5228 'Noise and vibration control on construction and open sites' and a construction vibration assessment has been prepared using BS 7385 (1993) "Evaluation and Measurement for Vibration in Buildings". Both assessments are set out in detail in Chapter 7 of the ES (Document Reference 6.1).
- 3.5.2 The qualitative construction noise assessment was based on the worst-case assumption of activities occurring at the closest part of the relevant part of the Project Site to each receptor for each phase of construction. A further detailed qualitative assessment will be undertaken when a final construction contractor has been appointed, including site specific details on the construction activities, programme and number or type of construction plant.
- 3.5.3 The noise effects of all construction activities taking place simultaneously on each of the receptors have been assessed in Chapter 7 of the ES (Document Reference 6.1). This chapter confirms that due to the application of embedded mitigation (set out below), the significance of effects for the NSRs is predicted to be no more than minor adverse and therefore not significant during the various construction phases.
- 3.5.4 Embedded mitigation measures, which are set out in the Outline CEMP (Document Reference 6.2, Appendix 3.1), may include (but not limited to) the following:
- Working hours, which are likely to be between 08.00 and 18.00 on weekdays, and between 08.00 and 13.00 hours on Saturdays and public holidays unless otherwise agreed in writing with CCS. These limits will not apply during commissioning and testing of the Project, as set out in Chapter 3 of the ES (Document Reference 6.1). Local residents will be notified, as of any agreed changes to the working hours;
 - Plant and equipment being used for the works to be properly maintained, silenced where appropriate, operated to prevent excessive noise, and switched off when not in use;
 - Ensuring that all processes are in place to minimise noise before works begin and ensuring that best practicable measures (BPM) are being achieved throughout the construction programme, including the use of localised screening around significant noise producing plant and activities;
 - Appropriate routing of construction traffic on public roads and along access tracks;
 - Consultation with CCS and local residents to advise of potential noisy works that are due to take place; and
 - Monitoring of noise complaints, and reporting to the contractor for immediate investigation.

- 3.5.5 Any noise generated by construction traffic movements has been assessed as part of detailed noise modelling, presented in Chapter 7 of the ES (Document Reference 6.1), which has shown that effects will be neutral in all cases.
- 3.5.6 Construction and decommissioning activities of the Project would not give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(g) or section 79(1)(ga) of the EPA 1990. Compliance with the CEMP, construction hours and decommissioning plan is secured by way of a requirement to the DCO (Document Reference 3.1).

Operation

- 3.5.7 Noise modelling has been undertaken to estimate the contribution of the Project to noise levels at each NSR location, and has been created using representative sound power levels for key items of the Generating Equipment. The model estimates the contribution to noise levels at each NSR location.
- 3.5.8 An operational noise assessment has been undertaken using guidance set out in BS 4142 (2014) – *“Method for rating industrial noise affecting mixed residential and industrial areas”*.
- 3.5.9 The ES predicts that the operation of the Project will have negligible residual effects at NSRS 1 to 6, which are not significant. As such, the impact of operational noise from the Project on external noise levels at NSRs is not considered give rise to impacts which would be likely to constitute a statutory nuisance under section 79(1)(g) or section 79(1)(ga) of the EPA 1990.

4 Conclusions

4.1 Summary

- 4.1.1 This statement has been prepared to fulfil regulation 5(2)(f) of the AFFP Regulations, which requires any DCO application to be accompanied by a statement considering whether the proposal would engage one or more of the statutory nuisances set out in Section 79(1) of the EPA 1990.
- 4.1.2 Detailed assessments have been undertaken to assess: the condition of the site, potential air quality impacts, noise levels, and artificial lighting generated by the Project during construction, operation and decommissioning.
- 4.1.3 In all cases, the application of embedded mitigation measures will prevent impacts which are considered to have the potential to result in statutory nuisance under section 79(1) of the EPA 1990.
- 4.1.4 Construction of the Project will be managed by a CEMP (secured by a requirement of the DCO (see Document Reference 3.1) and operation of the Project will be managed by both an Environmental Permit and an EMS.

4.2 Statutory Defence

- 4.2.1 Whilst the conclusions of this statement indicate that no statutory nuisance is likely to occur, the Applicant has included within the draft DCO for the Project (Document Reference 3.1) a provision taken from the standard model provisions for DCOs which would provide a defence of statutory authority against cases of nuisance, such that this could be relied upon where, for example, the nuisance cannot reasonably be avoided.