



# Willington C Gas Pipeline Explanatory Memorandum

Version 1, July 2013 – Approved for submission

Application Reference Number – EN060001

Document Number – WCGP 010.1

Explanatory Memorandum in support of the application for Development Consent of the Willington C Gas Pipeline under the Planning Act 2008, in compliance with Regulation 5 (2) (c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.



This Explanatory Memorandum has been prepared by:

**RWE Npower plc**

**RWE Npower plc Contact**

Adriana Gasparini  
Legal Department  
RWE npower  
Windmill Hill Business Park  
Whitehill Way  
Swindon, SN5 6PB  
Telephone - 01793 897777

Email: [Adriana.Gasparini@rwenpower.com](mailto:Adriana.Gasparini@rwenpower.com)

**Copyright © 2013 RWE npower**

**All pre-existing rights reserved.**

This document is supplied on the following terms and conditions:

**Confidentiality**

This document is unrestricted.

**Liability**

In preparation of this document RWE npower has made reasonable efforts to ensure that the content is accurate, up to date and complete. RWE npower makes no warranty as to the accuracy or completeness of material supplied by the client or their agent.

RWE npower shall have no liability for any loss, damage, injury, claim, expense, cost or other consequence arising as a result of use or reliance upon any information contained in or omitted from this document.

Any persons intending to use this document should satisfy themselves as to its applicability for their intended purpose.

## Willington C Gas Pipeline: Explanatory Memorandum

### Contents

1.	Summary and Introduction .....	4
2.	Nationally Significant Infrastructure Project.....	4
3.	Compulsory Acquisition.....	9
4.	Statutory Instrument.....	10
5.	Purpose of the Order.....	10
6.	Order.....	10
7.	Schedule 1 Part 1 – Authorised Development.....	27
8.	Schedule 1 Part 2 – Requirements.....	30
9.	Schedule 2 – Streets Subject to Street Works .....	38
10.	Schedule 3 – Access to Works.....	38
11.	Schedule 4 – Land in which surveys and investigations may be carried out.....	38
12.	Schedule 5 – Land in which only new rights etc. may be acquired .....	38
13.	Schedule 6 – Land over which Restrictive Covenants and right of support are required.	38
14.	Schedule 7 — Modification of compensation and compulsory purchase enactments for creation of new rights .....	38
15.	Schedule 8 – Land of which Temporary Possession may be taken .....	39
16.	Schedule 9 – Protective Provisions.....	39
17.	Appendix A - RWE npower PLC Electricity Generation Licence .....	40

## 1. Summary and Introduction

- 1.1 This Explanatory Memorandum ("**this Memorandum**") accompanies an application for development consent ("**the Application**") by RWE Npower plc ("**RWE**") to construct an up to 800mm diameter cross-country pipeline known as the Willington C Gas Pipeline ("**the WCGP**") from Yoxall to Willington.
- 1.2 The WCGP comprises the "Yoxall to Willington Pipe section" of pipeline and a spur pipeline from the National Transmission System (NTS) ("the NTS Spur Pipeline"), a block valve at Willington and various micro-tunnels, shafts and pipeline markers, as well as other associated works as part of the authorised development. The authorised development also includes the construction of an above ground installation (AGI) and a new permanent access to this site at Yoxall. All the works comprised in the authorised development are described in more detail as Works 1-14 in Schedule 1 of the Willington C Gas Pipeline Development Consent Order ("**the Order**").
- 1.3 The WCGP will supply gas from the NTS in Yoxall, in Staffordshire, to the proposed and section 36 consented Willington C combined and open cycle gas turbine station at Willington, in South Derbyshire ("**the Power Station**").
- 1.4 This Memorandum is written in accordance with Regulation 5 (2) (c) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("**the APFP Regulations**") and the Planning Inspectorate ("Secretary of State") Advice Note thirteen: Preparation of a draft order granting development consent and explanatory memorandum (republished April 2012) ("**Advice Note Thirteen**").
- 1.5 The Order has also been prepared having regard to Schedule 1 of The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, SI 2009/2265 ("**the Model Provisions**"). Although lapsed on the repeal of Section 38 of the Planning Act 2008 by the Localism Act 2011, the Model Provisions form the basis of this Order.
- 1.6 This Memorandum therefore explains any material departures from the Model Provisions and the reasons for those being included within the Order. It provides an explanation of the purpose and effect of each Article of and Schedule to the Order.
- 1.7 The terms used in this Memorandum should be interpreted in accordance with definitions given herein and, to the extent not inconsistent, those specified in the Order.

## 2. Nationally Significant Infrastructure Project

- 2.1 Pursuant to sections 14(1)(g) and 21(1)(a) of the Planning Act 2008 (the "**2008 Act**"), the construction of a cross-country pipe-line other than by a gas transporter is a nationally significant infrastructure project ("**NSIP**"). Section 31 of the 2008 Act provides that a development consent order is required under the Act where a development is or forms part of a NSIP.

2.2 Section 104 of the 2008 Act requires the Secretary of State to determine applications in accordance with relevant National Policy Statements ("NPSs") established under the 2008 Act. The two NPSs relevant to the WCGP are:

- The Overarching National Policy Statement for Energy (EN-1); and
- Gas Supply Infrastructure and Gas and Oil Pipelines NPS (EN-4).

### **EN-1: The Overarching National Policy Statement for Energy**

2.3 EN-1 sets out the Government's policy for the delivery of energy infrastructure. It is accompanied by five further technology specific NPSs, including EN-4.

2.4 Paragraph 1.1.1 of EN-1 makes clear that the NPSs are the primary basis for decision making by the Secretary of State. Consequently, applicants will have to demonstrate that their projects are consistent with the requirements of the NPSs.

2.5 EN-1 indicates that the Secretary of State should use EN-1 in conjunction with EN-4 for decision making on cross country gas pipeline projects (paragraph 1.4.2). Section 4 of EN-1 describes the key principles which the Secretary of State should adhere to when determining applications for energy infrastructure.

2.6 Paragraph 4.1.2 clearly states that given the level and urgency of the need for energy infrastructure the Secretary of State should start its decision making process with a presumption in favour of granting development consent for NSIPs.

2.7 Section 3 of EN-1 describes the need case for new energy infrastructure. Paragraphs 3.1.1 to 3.1.4 state that the United Kingdom needs a mix of all types of energy infrastructure to ensure security of supply and that it is for industry to propose new energy infrastructure projects within the strategic framework which has been set by Government. It is noted that planning policy should not set targets or limit the types of technology proposed for energy infrastructure. Critically, paragraph 3.1.3 states that:

*"The IPC (sic) should therefore assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part."*

2.8 Paragraph 3.1.4 goes on to state that:

*"The IPC (sic) should give substantial weight to the contribution which projects would make towards satisfying this urgent need when considering applications for development consent under the Planning Act 2008".*

2.9 Paragraph 3.3.1 recognises that electricity meets a significant proportion of the United Kingdom's overall energy needs and that our reliance on it is likely to increase.

- 2.10 Paragraphs 3.6.1 and 3.6.2 recognise that fossil fuels play a pivotal role in providing reliable electricity supply and that they contribute to security of energy supply by using fuel from a variety of sources. Paragraph 3.6.3 states that some of the new generating capacity required to meet future demand is likely to come from fossil fuel to maintain security of supply and as a back-up to intermittent renewable supplies.
- 2.11 Paragraph 3.8.19 of EN-1 states that gas is the cleanest and most reliable fossil fuel and that it is likely to be an essential part of the United Kingdom's energy mix whilst moving towards a low carbon economy. It is also acknowledged that gas demand for power generation could increase substantially because of the greater use of electricity for heat and transport.
- 2.12 In announcing its intention to publish a paper calling for evidence on the role of gas in the electricity market, the Secretary of State for Energy and Climate Change<sup>1</sup> stated:

*“Gas will continue to play a vital role in a low-carbon economy. Modern gas-fired power stations are relatively quick to build and twice as clean as many of the coal plant they’re replacing. Carbon capture and storage promises to give gas an even longer term future in the mix...”*

*Gas is a reliable, affordable source of energy. We need to recognise that gas will be a vital part of the mix in delivering affordable and secure low-carbon energy...*

*Gas-fired generation will have a very important role to play, even as the UK moves towards its legally binding carbon reduction targets. Modern, efficient gas-fired plant emits half the greenhouse gas emissions of coal while also providing a flexible energy source that can help balance the grid.”*

- 2.13 The paper calling for evidence on the role of gas in the electricity market<sup>2</sup> further reiterates the need for gas in the generation mix. In the scene setting, paragraph 1.4 states:

*“Over the next two decades, gas will continue to play a key role in our energy mix alongside other lower carbon electricity sources. We will need new gas generation capacity to ensure security of supply, as coal and nuclear power stations close, and to balance the electricity system as more low carbon technology become available. Coal, for example, currently provides a significant amount of generation; in 2011 it provisionally accounted for around 30% of electricity generated, and can account for a greater proportion in the winter months.”*

<sup>1</sup> DECC press notice 2012/025 ([http://www.decc.gov.uk/en/content/cms/news/pn12\\_025/pn12\\_025.aspx](http://www.decc.gov.uk/en/content/cms/news/pn12_025/pn12_025.aspx))

<sup>2</sup> DECC, May 2012, A call for evidence on the role of gas in the electricity market (<http://www.decc.gov.uk/assets/decc/11/consultation/role-gas-electricity-market/5183-call-evidence-gas-electricity-market.pdf>)

2.14 The Gas Generation Strategy<sup>3</sup> published by DECC in December 2012 goes further by clarifying that up to 26 GW of new gas plant could be actually required by 2030. As a result, the strategy sets up a number of measures to ensure, amongst other issues, that not only adequate gas generation capacity is available but also that *“the necessary gas supply infrastructure is in place to support the role of gas in generation”*<sup>4</sup>. WCGP is therefore in full accordance to meeting national needs.

#### **EN-4: Gas Supply Infrastructure and Gas and Oil Pipelines**

2.15 EN-4 is the technology specific NPS for gas supply infrastructure. EN-4, paragraph 1.8.1 clarifies that: “The infrastructure covered by this NPS is the nationally significant infrastructure caught by the relevant Planning Act thresholds (sections 17-21 of the Planning Act 2008), as follows: ... (iv) pipelines over 16.093 km (10 miles) long which would otherwise require consent under s.1 of the Pipe-lines Act 1962 together with diversions to such pipelines regardless of length. These pipelines are referred to in this NPS as cross-country pipelines.” EN-4 should be read in conjunction with EN-1, the Overarching Energy NPS, in determining applications for gas supply infrastructure like WCGP. These documents are the primary considerations in decision making on NSIPs.

2.16 Section 1 of EN-4 highlights the importance of new gas infrastructure to the United Kingdom by stating that:

*“the efficient import, storage and transmission of natural gas and oil products is crucial to meeting our energy needs during the transition to a low carbon economy. We cannot achieve national objectives relating to security of supply without enabling investment in new infrastructure”.*

2.17 EN-4 reiterates the Government's conclusion in EN-1 that there is a significant need for major energy infrastructure generally. Consequently, the Secretary of State in determining applications should act on the basis that the need for energy infrastructure has already been demonstrated.

2.18 EN-4 sets out the potential environmental effects that the Secretary of State should take into account in determining NSIPs for gas and oil infrastructure. Sections 2.19 and 2.23 specifically cover the requirements for gas pipelines. These sections re-iterate the need for environmental assessment of pipeline schemes using generic assessment criteria.

---

<sup>3</sup> DECC, December 2012, Gas Generation Strategy (<http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/oil-gas/7165-gas-generation-strategy.pdf>)

<sup>4</sup> Idem, page 8.

- 2.19 Section 2.19 also summarises requirements regarding health and safety and states that the Secretary of State should consult with the Health and Safety Executive about safety issues when considering applications. Section 2.19 also lists potential constraints to pipeline development which should be properly considered in developing route options including proximity to housing, schools, roads, railways, watercourse crossings, environmentally sensitive areas and below ground obstacles. All of these matters have been taken into consideration in the Environmental Statement and some matters will be further considered as part of the detailed design of the WCGP.
- 2.20 The remaining sections (2.20-2.23) summarise the potential impacts resulting from pipeline development which applicants should assess in formulating their proposals. The specific areas covered include noise and vibration, visual and landscape, water quality and resources and soil and geology. EN-4 states that the Secretary of State should be satisfied that the proposed development has been properly assessed against potential impacts in these areas and that sufficient mitigation is provided where negative impacts occur.
- 2.21 The Environmental Statement which accompanies the Application (document reference: WCGP 014.1 - 014.4) contains a full assessment of impacts across the areas identified in EN-4. The assessment is not, however, limited to the specific areas identified in Sections 2.19 to 2.23 of EN-4.
- 2.22 The Environmental Statement has been prepared in accordance with The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. A scoping opinion was requested from the Infrastructure Planning Commission (the consenting authority at the time) and all responses have been taken into account in preparing the Environmental Statement.
- 2.23 A summary of the impacts associated with the WCGP for the topic areas is contained within each Chapter of the Environmental Statement together with proposals for mitigation where required.
- 2.24 Natural England has been consulted on the Environmental Statement and on the mitigation proposals that are to be secured through the requirements of the Order. Natural England's response is contained in the document reference WCGP 014.8.2.16, where they have not raised any concerns about the likely impacts of the authorised development on ecology, hedgerows, geology, landscaping or agricultural land drainage. Natural England's final response in relation to an additional target consultation on the Environmental Statement can be found in document reference WCGP.R.120713.01 raises no further points, as summarised in the Consultation Report (WCGP 008.1).
- 2.25 A separate document has been prepared to summarise the environmental issues that are relevant to the decision maker. The document (Environmental Statement – Summary of Issues, document reference: WCGP 014.4.2) describes issues that have been assessed and mitigation measures that have been proposed and the requirement by which the mitigation is secured.



### 3. Compulsory Acquisition

- 3.1 The Order contains powers of compulsory acquisition of land required for the authorised development, or to facilitate it, or that is incidental to the project under section 122 of the 2008 Act. It authorises the compulsory acquisition of interests in land (i.e. the manorial rights over the Yoxall AGI Site) and rights in land in accordance with section 123 of the 2008 Act.
- 3.2 As is explained in more detail in the Statement of Reasons (Document WCGP 013.1) which accompanies the Application, RWE has already secured agreement in principle from the majority of landowners and occupiers along the route of the authorised development (approximately 82% of whom have now exchanged options to grant subterranean leases to RWE). This represents approximately 91% of the WCGP route.
- 3.3 Compulsory acquisition rights are therefore only being sought where RWE has been unable to secure the necessary option by private agreement. They comprise:
- (i) Where no private agreement is in place, rights to construct and, once the pipeline is laid, to use, inspect, repair, maintain and protect it as fully detailed in Schedules 5 and 6 of the Order. In addition surface rights are being sought giving RWE rights of access over land to carry out such works;
  - (ii) rights to interfere with, and if necessary, extinguish third party easements and other rights in land;
  - (iii) rights over unknown ownerships, such as tracks and mines and minerals;
  - (iv) rights to lay the actual pipeline under or, in some occasions, over third party apparatus (including statutory undertaker and other like bodies apparatus). In addition RWE is seeking the right to extinguish, vary, remove, reposition statutory undertaker's and other like bodies' apparatus as and when required, and requires the ability to deal with any unknown apparatus which may be in the ground and may only be discoverable either immediately prior to or during the course of construction.
- 3.4 Other rights which do not necessarily amount to the compulsory acquisition of interests in land or rights in land are also being sought by the Order. These "additional compulsory acquisition powers" reflect rights related to street works, access to works, rights under or over streets, discharge of water, public rights of way, surveys, felling and lopping of trees and shrubs, temporary use of land to enable the construction and maintenance of the authorised development, as well as powers to interfere with private rights of way and to override third party easements and rights.
- 3.5 The detailed justification for RWE's compulsory acquisition of interests and rights in land that is needed to enable the carrying out of the authorised development is set out in the Statement of Reasons which accompanies the Application.

#### 4. Statutory Instrument

- 4.1 As the Order applies, with modifications, certain statutory provisions in accordance with section 120(5) (a) of the 2008 Act, the Order has been drafted as a statutory instrument in accordance with section 117(4) of the 2008 Act.

#### 5. Purpose of the Order

- 5.1 The purpose of the Order is to seek authority for the construction of the authorised development which will include the laying, placing, use, inspection, maintenance, and diversion of a cross-country pipeline other than by a gas transporter which is a NSIP falling within section 14(1)(g) of the 2008 Act.
- 5.2 The main authorised development works are described in Part I of Schedule 1 to the Order as works numbered 1 to 6. These works are integral to the authorised development as RWE could not operate the pipeline without them. The associated works are also described as works numbered 7 to 14.
- 5.3 The majority of the pipeline will be constructed by open cut method. The rest will be laid using micro-tunnelling and/or horizontal directional drilling and/or other non-open cut methods at crossings such as roads, rivers, the canal and the railway lines.
- 5.4 A detailed description and explanation of the authorised development is set out in the Environmental Statement which accompanies the Application.

#### 6. Order

### PRELIMINARY

#### Article 1 – Citation and commencement

- 6.1 This provides for the commencement and citation of the Order.

#### Article 2 – Interpretation

- 6.2 This provides for the interpretation of words and phrases used in the Order. It follows the relevant Model Provisions save in the instances explained below.
- 6.3 A definition of the Hedgerow Regulations 1997 was inserted, which is also referred to in Article 3 of the Order (application and modification of legislative provisions). The reason for their inclusion is explained in the text below relating to Article 3.

- 6.4 There are no ancillary works to be authorised by the Order. The term "**authorised project**" has therefore not been used. Instead the Order uses the term "**authorised development**" throughout which description covers the development and associated development that is authorised by the Order. The term "**commence**" has been introduced to make clear which operations RWE would be able to carry out on the land without these constituting commencement of the authorised development; such operations are non-material in nature and comprise investigative, remedial and preparatory works which would be carried out at a stage where the detailed design of the authorised development is unlikely to have been carried out to enable the pre-commencement requirements to be discharged.
- 6.5 The term "**limits of deviation**" is adapted from the Model Provisions for railways. The proposed authorised development comprises a linear infrastructure project and the proposed limits of deviation to construct, install and divert the pipeline within such limits are needed for the reasons given below in relation to Article 7.
- 6.6 The definition of "**maintain**" is taken from the Model Provisions for railways (with amendments where appropriate). It will be necessary to provide for the maintenance of the pipeline (including pipe-line markers) for the duration of its existence. Under Regulation 13 of the Pipeline Safety Regulations 1996 the owner of a gas pipeline has a duty to maintain its safe operation for the public at all times and will therefore require the ability to carry out urgent, as well as general works of maintenance along the route. Such maintenance may involve post construction diversion of part or parts of the WCGP in order to remove blockages and carry out urgent repairs, works of maintenance and ensure a continuous gas supply for electricity generation at Willington Power station.
- 6.7 RWE therefore also requires the ability to divert the WCGP post construction should it be deemed necessary for maintenance purposes. The extent of the power to do this is limited by the limits of deviation wording set out in Articles 5 and 7 of the Order.
- 6.8 As part of the authorised development will comprise the construction, operation and use by National Grid Gas plc of a spur pipeline and part of the AGI, a definition of "**National Grid Gas**" ("NGG") and "**NG works**" has been inserted in the Order. The terms of the Order will apply to NGG in accordance with Article 9 (4).
- 6.9 The term "**Order land**" is described in the Order as land shown on the land plans and within the limits of land to be acquired or used. This includes land that will be subject to temporary possession for the construction of the authorised development.
- 6.10 The term "**Order limits**" means the limits (including the limits of deviation, the Works limits and the limits of any additional land to be used) shown on the works plans and within which the authorised development may be carried out. It also includes land where surveys may be carried out as part of the authorised development.
- 6.11 The term "**relevant planning authority**" has been amended from the Model Provisions so as to make reference to the planning authority in whose borough or district the Order is being sought and which authority will monitor and discharge the requirements. The term "**local highway authority**" has been similarly amended. Both amendments extend to include any successor bodies to their statutory functions.

- 6.12 The term “**requirement**” has been defined to make clear reference to the requirement(s) set out in Part 2 of Schedule 1 of the Order. A new paragraph (5) has been added to this Article 2 to clarify that the works referred to in the Order are the works numbered in Part 1 of Schedule 1. A new paragraph (4) also clarifies that all areas described in the Book of Reference are approximate.
- 6.13 Reference to “**rights plans**” has been removed from the order as the required information is shown on the works Plans.
- 6.14 The definition of “**undertaker**” is limited to RWE or a successor body or any other person to whom RWE shall transfer any or all of the benefit of the Order.
- 6.15 A definition of “**Works limits**” has been added to the Order which has been used to describe the limits of the area defined on the works plans where the authorised development is to be carried out and where it can be maintained. The Works limits generally extend 20 metres either side of the limits of deviation i.e. giving a total of 100 metres in some areas (this is further explained in paragraph 6.28 below). In other locations, however, the Works limits and corresponding limits of deviation are narrower because of the presence of constraints (usually those associated with environmental, amenity or land ownership issues). The Works limits also include land for temporary works compounds and accesses to the works as may be necessary.
- 6.16 Definitions of the “**Yoxall AGI Plan**” and the “**Yoxall AGI Site**” have been inserted in the Order to identify the extent of the land at Yoxall which is to be used for two secure compounds one of which will house NGG’s part of the AGI (which will be owned and operated by NGG) and the other will house RWE’s part of the AGI (which will be owned and operated by RWE).

### **Article 3 – Application and Modification of Legislative provisions**

- 6.17 There are three key sets of legislative provisions which are to be utilised, modified and applied by the Order, namely the Hedgerow Regulations 1997 (“**the 1997 Regulations**”), the Town and Country Planning Act 1990 (“**the 1990 Act**”) and the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (as amended).
- 6.18 By Article 3(1) of the Order, the 1997 Regulations are modified and applied so that no separate authorisation is needed under these Regulations for the carrying out of the authorised development. This has the effect of treating the development being authorised under the Order in the same way as development authorised by a grant of planning permission under the 1990 Act for the purposes of the 1997 Regulations.
- 6.19 By Articles 3(2)(a) and (b) the appeal provisions of section 78 and 79 of the 1990 Act are given effect in relation to decisions made by the relevant planning authority under the requirements imposed by the Order, and to decisions made under conditions that may be imposed on any approval granted under such requirements. The effect is that an appeal can be made to the Secretary of State in respect of such decisions in the same way as can be made in respect of decisions made under planning conditions imposed on a grant of a planning permission under the 1990 Act.

- 6.20 By Article 3(2) (c) provision has been made for charges to be applied to the discharge of requirements in accordance with the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (as amended by the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2008 and the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2010). This is because the fees relating to the Planning Act 2008 regime (as set out in the Infrastructure Planning (Fees) Regulations 2010) do not include a fee for the discharge of requirements.
- 6.21 By Article 3(2) (d) provision has been made for any rules and regulations which apply to applications to discharge conditions and appeals to similarly apply to any application and appeal process that may be necessary to deal with any requirements of the Order.
- 6.22 By Article 3(2) (e) provision has been made for RWE as undertaker to be treated as a Statutory Undertaker by virtue of the fact that it holds a licence under section 6 of the Electricity Act 1989.

## PRINCIPAL POWERS

### **Article 4 – Development Consent etc. granted by the Order**

- 6.23 Article 4 follows Model Provision 2, with changes to reflect the use of the term “authorised development” which has been explained above.

### **Article 5 – Maintenance and diversion of the authorised development**

- 6.24 Article 5 generally follows Model Provision 3. The original wording of Model Provision 3, which excepted contrary provisions made in the Order or in an agreement under the Order, has been deleted as unnecessary. The additional words relate to the diversion of the authorised development which may also be necessary to maintain the authorised development post its construction or to accommodate or facilitate the potential for redevelopment of the land by the landowner if necessary. It is not intended that any diversion would extend beyond the limits of deviation so as to bring it into conflict with the provisions of Section 21 of the 2008 Act. This is stated in Article 5.
- 6.25 Under the Pipe-lines Act 1962, it was normal practice for the undertaker to be given a power to divert a pipeline within the limits of deviation. Such power is consistent with Section 21 of the 2008 Act, which permits an authorised NSIP pipeline to be diverted (at any time) provided that such diversion is within the authorised limits of deviation. As an example, such powers may be essential for the prompt carrying out of urgent maintenance works as despite all due diligence it is possible that the pipe itself becomes damaged and it is quicker to provide a (temporary or permanent) short length of diversion to maintain a continuous supply of gas. Article 7 of the Order describes how the limits of deviation may be used in this case and sets out parameters for deviation as is explained in paragraphs 6.27 – 6.34 below.

## **Article 6 – Operation and use of the authorised development**

- 6.26 The wording in Article 6 does not follow any Model Provision. It authorises the undertaker to operate and use the authorised development.

## **Article 7 – Limits of Deviation**

- 6.27 The Order seeks both lateral and vertical limits of deviation. Article 7 adapts Model Provision 6 for Railways.
- 6.28 The lateral limits of deviation only define the corridor within which the authorised development can be constructed, maintained or diverted under the Order.
- 6.29 It is to be noted that the standard limits of deviation for pipeline construction authorisations for cross-country pipelines under the Pipe-lines Act 1962 is 200 metres either side of a pipeline, that is, a corridor of 400 metres wide overall. The limits of deviation for the WCGP in this case are thus significantly less.
- 6.30 The lateral limits of deviation in most places will extend to approximately 30m either side of the indicative pipeline route, as shown on the works plans. In effect this will provide a corridor of some 60 metres wide within which the works will be constructed.
- 6.31 The power to deviate from the indicative route and construct or later divert the pipeline within such a corridor is needed to give the undertaker sufficient allowance to take into account matters which may not be identifiable until the actual construction starts (such as physical obstacles, engineering, ecological, environmental, archaeological, design or construction methodology considerations or soil/ground conditions). It will also enable RWE to take into account the considerations and concerns of landowners and occupiers along the route.
- 6.32 The limits of deviation will not be a uniform corridor in all places. The limits have been reduced in certain locations due to constraints imposed by environmental, amenity or land ownership issues. They have been extended in some areas where major crossings are involved (such as under railways, disused railways, rivers, canals, or trunk roads) and different installation methodologies may be needed which may require different route alignments to be adopted.
- 6.33 In general the pipeline will be laid to contour at a depth of not less than 1.1 metres below the surface of the ground so as to avoid so far as possible interference with normal agricultural operations.
- 6.34 Vertical limits of deviation would not normally have been specified under a Pipe-lines Act 1962 authorisation. The pipeline will be laid at a depth of not less than 1.1m below the surface of the ground except in relation to the Yoxall AGI Site, where the pipeline cover may be reduced and some components of the AGI will extend above ground level (fencing and lighting to be provided as part of the works on the Yoxall AGI Site will also be above ground level). Works N<sup>o</sup> 3, 4, 5, and 6 may also be placed and/or extend above ground level as provided in Article 7 and Part 1 to Schedule 1 of the Order. This is further explained in the description of works in this Explanatory Memorandum.

### **Article 8 – Benefit of Order**

6.35 Article 8 provides that the Order shall have effect for the benefit of the undertaker. Article 8 is subject to Article 9, which must be read alongside it.

### **Article 9 – Consent to transfer benefit of Order**

6.36 Article 9 follows Model Provision 5 where it provides that, generally, the benefit of the provisions of the Order cannot be transferred to a third party without the consent of the Secretary of State.

6.37 RWE is only seeking powers to exempt such consent if the transfer is to a person who holds a licence under section 6 of the Electricity Act 1989 or under section 7 of the Gas Act 1986 (or who is otherwise exempt from holding such licences by an order given under those acts) as any such licensees or exempt bodies have already been fully approved by the Secretary of State.

6.38 This includes the ability to transfer the NG Works (defined within the Order) and those obligations and liabilities (including survey maintenance and diversion rights) which relate to the NG Works to NGG without having to refer the matter back to the Secretary of State for consent. This request is made because NGG holds a gas transporter licence granted under section 7 of the Gas Act 1986. In addition, by virtue of Schedule 4, paragraph (2) (1) (xxxi) of the Gas Act 1995, a public gas transporter such as National Grid is deemed a statutory undertaker for the purposes of the Acquisition of Land Act 1981, and by virtue of section 263(3) of the Town and Country Planning Act 1990, a public gas transporter is a deemed statutory undertaker for the purposes of Part 11 of that Act. NGG is therefore a statutory undertaker for the purposes of the 2008 Act, by virtue of sections 5(10), 53(11), 127(8), 128(5), 129(2) (a) and 137(7) of that Act.

6.39 NGG owns and operates the NTS and will own and operate the spur from the NTS to the Yoxall AGI. RWE has signed a commercial agreement with NGG for the purpose of connecting to the NTS. In addition, the land rights needed by NGG will be mainly given by a private easement to be signed between RWE and NGG, as fully explained in the Statement of Reasons that accompanies this Application.

## **STREETS**

### **Article 10 - Street works**

6.40 Article 10 accords with Model Provision 8 and would allow the undertaker to interfere with, access and execute works in certain streets. The pipeline will be installed by non-open cut means under streets at most of locations and it may be necessary to break open the surface of the road during construction to carry out future maintenance works.

6.41 A list showing the location of the relevant works is in Schedule 2 of the Order. Authority to lay parts of the pipeline under these streets is required in order to give the undertaker the necessary rights to construct the development without having to obtain street work licences from the relevant highways. In accordance with Model Provision 8, this Article does not relate to trunk roads.

## Article 11 – Public Rights of Way

- 6.42 Article 11 accords with Model Provision 10, with the addition of specific details relevant to the authorised development. A public footpath runs diagonally across the Yoxall AGI Site and it is necessary therefore to permanently divert this footpath in order to construct the development. The creation of an alternative right of way has been agreed with Staffordshire County Council, utilising a new route within the Yoxall AGI Site which is shown on the Yoxall AGI Plan.
- 6.43 The Yoxall AGI Site has been acquired by RWE through private agreement and the manorial rights which have been excepted from the title are to be acquired through the use of compulsory purchase powers. Therefore it is proposed that the diversion route can be provided through the Yoxall AGI Site. Requirements 8 (1) and (2) make further provision in respect of this proposed diversion.
- 6.44 The temporary closures of other footpaths required for pipeline construction activity are outside the scope of the proposed Order. A strategy for the management of public rights of way can be found in Appendix 13.1 of the Environmental Statement (WCGP 014.2.13.1) and has been agreed with both the relevant planning and highways authorities. Requirements 8 (3) and (4) provide for such strategy to be confirmed with those authorities prior to the commencement of the authorised development. Temporary closures are detailed on the schedule of additional consents (Appendix 1.5 of the Environmental Statement, WCGP 014.2.1.5) in accordance with the APFP Regulations. The definition of local highway authority has been deleted from Article 11 since the Order already contains such definition.

## Article 12 – Access to Works

- 6.45 Article 12 accords with Model Provision 12. Article 12 (1) confers power to provide new or improve existing means of access as described in Schedule 3 to the Order and shown on the works plans. This is to provide the necessary access for the construction of the works, and in a limited number of instances, for their future maintenance. Article 12 (2) confers power to provide new or improve existing means of access at other locations within the Works limits. Those new and improved accesses will be provided following consultation and the approval of the relevant planning authority after consultation with the highway authority and will be where such additional works are reasonably required for the purposes of the authorised development.
- 6.46 Temporary access is required at all locations where the pipeline crosses a road, with the exception of one trunk road (the A38 dual carriageway). Schedule 3 lists such accesses and has been modified to include a column to specify the type and use of the access, according to the suitability of the location. Most access locations are defined as "**Primary**", meaning that they are suitable for use by all types of construction traffic. Others are defined as "**Secondary**" as they are only suitable for light construction traffic. A small number are defined as "**Restricted**", meaning that they can be used only as a construction plant crossing. Access is also required to compounds.



- 6.47 The creation of new and improved means of access is also deemed to be “**works**”. Thus, in addition to being listed in Schedule 3, they have been described in Schedule 1 of the Order as works number 12 and are shown on the works plans. For the sake of clarity, in both Schedules the works are numbered the same.
- 6.48 Schedule 3 has also been modified to include a “**sheet number**” of the works plans because the works plans comprise 10 sheets.

### **Article 13 - Agreements with street authorities**

- 6.49 Article 13 is adapted from Model Provision 13, so as to omit Article 13(1)(a)-(c) (which are not necessary) and their substitution with Article 13 (1). Article 13 (1) provides that the undertaker and the street authority may enter into agreements permitting the carrying out the works referred to in Article 10 (Street works) in any non-trunk roads.
- 6.50 This provision is required because RWE has been asked by the relevant street authorities to enter into an agreement to cover the costs of necessary works or the undertaking of duties of the street authority. These include inspections of work, reinstatement work, provisions of temporary speed limits and signage schemes. The proposed section 106 agreement covering such works and associated costs can be found in document reference WCGP 023.2.

## **SUPPLEMENTAL POWERS**

### **Article 14 – Discharge of water**

- 6.51 Article 14 enables the undertaker to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the authorised development, subject to the consent and, if relevant, the approval of the person or body to whom it belongs. Article 14 accords with Model Provision 14 apart from paragraph (7) where references to the Water Resources Act 1991 have been replaced by the superseding provisions of the Environmental Permitting (England and Wales) Regulations 2010. Requirement 10 has been modified, following consultation with the Environment Agency, who will agree the details of any discharge made under this provision.

### **Article 15 – Authority to survey and investigate the land**

- 6.52 Article 15 confers power on the undertaker to enter for the purposes of the Order onto land within the Order limits and/or on land which may be affected by the authorised development, in order to survey or investigate the land (subject to giving 14 days’ notice to the landowner and providing written authority if required to do so). It also imposes a requirement for the consent of the highway authority or the street authority (as the case may be) to be obtained for the making of trial holes within the highway boundary or within a private street. Owners and occupiers of land who suffer loss or damage as a result of the exercise of the rights given under Article 15 have a right to claim compensation.

- 6.53 Except for few operational land, the powers of article 15 are sought over the entirety of the Order limits (even where RWE has secured land options or survey licences from the relevant landowner) in order to ensure that no difficulties or delays are encountered which might in some way prejudice the detailed design phase of the project and therefore delay the implementation and carrying out of the authorised development. Licences, for example, are not transferrable to successors in title and RWE has to consider that there is a considerable interval between the grant of such licences by some (not all) landowners and the time of the pre-construction environmental surveys.
- 6.54 RWE currently anticipates that some intrusive environmental and technical surveys may need to be repeated/carried out as part of the authorised development on areas which are within the Works limits and intends to carry out some non intrusive surveys on areas between the Works limits and Order Limits. The parties known to be affected by surveys are listed in the Book of Reference. Although RWE has made all reasonable efforts to identify all the likely survey areas, it is expected that the powers given by Article 15 may also be exercised if additional surveys become necessary prior to construction.
- 6.55 RWE is not applying under the Order to remove the requirement for consent for these surveys under Section 150 of the 2008 Act. The additional consents and licences required for this project can be found at Chapter 1, Appendix 1.5 (Schedule of Additional Consents) of the Environmental Statement (document reference: WCGP 014.2.1.5). The European Protected Species Licence is referred to at Chapter 8, Appendix 12 a-d (draft licence) of the Environmental Statement (document reference: WCGP 014.2.8.12a-d).

## POWERS OF ACQUISITION

### Article 16 – Compulsory acquisition of land

- 6.56 Article 16 empowers the undertaker to compulsorily acquire land (including subsoil) shown on the land plans and described in the Book of Reference which is required for the authorised development.
- 6.57 The only interests in land which RWE is intending to compulsorily acquire are the manorial rights over the Yoxall AGI Site and the compound land lying to the rear of that site. It is therefore very limited in scope in this Order and only affects three plots of land. Although RWE has obtained an option to purchase the freehold of both the Yoxall AGI Site and the compound land the manorial rights have been excepted from the freehold title. RWE therefore needs to acquire these interests in land (the ownership of which is unknown) in order to perfect its title.
- 6.58 The article as drafted further makes provision for the extinguishment of rights, trusts and incidents as well as making additional provision for the extinguishment of easements, liberties, privileges, advantages, restrictions and covenants to which the land that is being compulsorily acquired was previously subject. A person who suffers a loss of a private right of way under this article is entitled to compensation.
- 6.59 Reference to the subsection in Model Provision 18 (4) relating to the acquisition of land limited to subsoil lying more than 9 metres beneath surface has not been used.

### **Article 17 – Time limit for exercise of authority to acquire land compulsorily**

6.60 Article 17 provides that the powers of compulsory acquisition cannot be exercised (whether by service of notice to treat or the execution of a General Vesting Declaration) after the end of the period of 5 years beginning on the day on which the Order is made. This accords with Model Provision 20 and Regulation 3(2) of the APFP Regulations.

### **Article 18 – Compulsorily acquisition of rights**

- 6.61 As is explained in the Statement of Reasons, RWE has exchanged a number of Options with landowners along the WCGP route. In order to avoid the unnecessary compulsory acquisition of rights in land, RWE is applying for the compulsory acquisition of surface and subsoil rights for the pipeline only where it has failed to exchange a private agreement with the relevant landowner.
- 6.62 The standard private agreement that has been obtained from the majority of landowners comprises an option to grant a lease of a subterranean tube of land with surface rights for construction, maintenance and access purposes. In most cases the lease will be for a 999 year term and in some cases a 99 year or slightly lesser term.
- 6.63 Article 18 authorises the undertaker to acquire existing rights and create and acquire new rights over those parts of the Order land specified in Schedule 5 to the Order, namely land over which RWE requires rights for the authorised development but where it has not succeeded in obtaining such rights by private agreement.
- 6.64 The agreed form of lease attached to the option agreement contains an obligation on the landowner's part not to construct any building, carry out any excavation or plant any trees on the 7 metre strip of land under which the pipeline is laid without the consent of RWE; such a protective provision is essential to ensure the safety and integrity of the pipeline. In order to obtain similar protection where RWE is applying for compulsory rights over the stretches where it has not reached agreement with the landowner, RWE has included the right to impose restrictive covenants / obligations in connection with its compulsory acquisition of rights. These are described in Schedule 6 to the Order and are required to prevent any structures being built on top of a 7 metre strip of land within which the pipeline will sit (18.3 metres in the case of the land in which the NTS Spur Pipeline will sit that is to be owned and operated by National Grid). The reason why this is required is to prevent any possible damage to the pipe which in some cases will lie fairly close to the surface of the ground.
- 6.65 Article 18 (2) makes provision for land over which new rights are to be taken to be discharged from any former rights, trusts and incidents following a compulsory acquisition notice or date on which a new right is vested in the undertaker. In addition Article 18 (2) provides for the land to be discharged from any easements, liberties, privileges, advantages, restrictions and covenants to which it was subject to the extent that any of these matters would be inconsistent with the exercise of the new rights. This additional provision provides clarity and certainty that the exercise of the rights under this Order will not be interfered with.

- 6.66 Articles 18(3) confirms that compensation will be payable to any person who suffers loss as a result of the extinguishment or suspension of any private right of way pursuant to Article 18.
- 6.67 Article 18(4) provides that the enactments relating to compensation in the Compulsory Purchase Act 1965 are modified as set out in Schedule 7 to the Order.

### **Article 19 – Power to override easements and other rights**

- 6.68 This Article does not derive from the Model Provisions. It closely mirrors section 237 of the 1990 Act and its precedent is originally found in Article 18 of the Rookery South (Resource Recovery Facility) Order 2011. Sections 120(3) and (4) and item 2 of Part 1 of Schedule 5 of the 2008 Act provide that the Order may make such provision for the compulsory suspension, extinguishment or interference with interests in or rights over land affected by WCGP.
- 6.69 The main intention behind this Article is to protect RWE against any unknown third party landowners coming forward to prevent the carrying out of the authorised development; in particular during the course of its construction. It includes land where RWE has already obtained private agreements. It may for example include a third party right over land where RWE has managed to negotiate a release of known covenants and/or easements but other covenants or easements may exist on the title which have not been revealed through the usual title investigation and due diligence.
- 6.70 RWE is therefore seeking certainty that it will not be prevented from carrying out the authorised development because of the existence of some unknown third party right. Paragraphs 8.17 and 8.18 of the Statement of Reasons provide further information on Article 19.
- 6.71 This lack of clarity over such interests would not be a concern for a relevant planning authority promoting compulsory purchase powers to facilitate a development because under section 237 of the 1990 Act it is entitled to carry out works on land which it has acquired or appropriated for planning purposes, notwithstanding any interference with the items listed in that section. However, the undertaker in the Order is not a local planning authority, so it is necessary to apply section 237 in this Order in an amended form.

### **Article 20 – Private rights of way**

- 6.72 Article 20 follows Article 22 of the Model Provisions and would extinguish all private rights of way over land that is subject to compulsory acquisition under the Order. Private rights of way are suspended and unenforceable for so long as the undertaker under temporary possession provisions in the Order remains in lawful possession of the relevant land. The operation of this Article is intended to deal not only with any private rights of way over land that is being compulsorily acquired under Article 16 but also along the length of pipeline route that is covered by other landowner Options. The extinguishment of these rights of way will be required at different timescales during the course of the authorised development and some will only be for a temporary period to allow construction to take place.

6.73 This provision can be disapplied by a notice from the undertaker or by agreement with the owner of the right of way. It also makes provision for persons suffering loss as a result of the suspension or extinguishment of such private rights of way to be entitled to compensation.

#### **Article 21 – Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

6.74 Article 21 follows Model Provision 23 and provides for the application of the compulsory vesting declaration procedure in relation to the compulsory acquisition of land.

6.75 It is noted that the Order does not contain an express provision incorporating Part I of the Compulsory Purchase Act 1965 because section 125 of the 2008 Act already applies that Part to a development consent order authorising the compulsory acquisition of land.

#### **Article 22 - Acquisition of subsoil**

6.76 Due to the authorised development comprising a buried pipeline Model Provision 24 has been adapted so as to refer to the compulsorily acquisition of rights (as opposed to the compulsory acquisition of land) so that such rights shall include as much of the subsoil as may be required for the authorised development. In some instances the pipeline will be laid by open-cut method at a depth of not less than 1.1 metres. In other places for example under roads, railways, the canal and rivers it will be constructed by micro-tunnelling or by horizontal directional drilling ("HDD"). The "as laid" depth of these stretches will be considerably deeper and in some cases may reach up to 70 metres beneath the surface. In addition Article 22 provides that where the undertaker acquires any rights in the subsoil, it shall not be required to acquire an interest in any other part of the land. This provision will ensure that RWE is not required to acquire any more land than is required for the authorised development.

#### **Article 23 – Rights under or over streets**

6.77 Article 23 follows the wording of Model Provision 27 and gives the undertaker rights to enter upon and appropriate the subsoil under or the airspace over any street as may be required for the purposes of the authorised development and to use the subsoil or airspace for those purposes or purposes ancillary to the authorised development.

6.78 Part of the pipeline will cross under the A38 trunk road and Article 10 relates only to non-trunk roads (as required by Model Provision 8). In this location it will not be constructed using open cut methods. Instead it will be tunnelled under the road using either HDD, microtunnel, thrust or auger bore methods.

6.79 RWE has already obtained a "minded to approve" letter from the Highways Agency to these works. Following the grant of the Order and the appointment of a contractor, the contractor will apply for an Approval in Principle. RWE will then apply for a Section 50 Street Works Licence once the detailed design work has been completed.

## **Article 24 – Temporary use of land for carrying out the authorised development**

- 6.80 This follows Model Provision 28 and provides that the undertaker may, in connection with the carrying out of the authorised development, take temporary possession of land specified in Schedule 8 to the Order (land of which temporary possession may be taken). Such temporary use of land is required, along the length of the WCGP, to enable the construction works of the authorised development. For a long linear project of the size and scale of WCGP which crosses land of circa 88 different landowners and occupiers, there needs to be certainty over access and it is essential that RWE is able to take temporary possession as and if required, to ensure continuity of construction along the route. This is fully explained at paragraphs 8.20 - 8.24 in the Statement of Reasons that accompany the Application.
- 6.81 The initial temporary construction works for the pipeline are mainly described as Works no.11 in Part 1 of Schedule 1 to the Order. In summary it will be necessary to fence a construction strip adjacent to the route and create working areas and access for vehicles and workers. The majority of the pipeline will be constructed by the use of open cut method which will involve digging trenches along the route and stockpiling soil before installing the pipeline and backfilling. Any surplus material will be removed off-site. RWE will therefore need worksites, places for materials to be stored, the works accesses, and temporary works compounds along the route.
- 6.82 Such entry is subject to RWE giving the landowners fourteen days notice and provides for restoration of the land upon RWE giving up possession. Possession is limited to one year except for land subject to compulsory acquisition of rights under article 18 of the Order.

## **Article 25 – Temporary use of land for maintaining the authorised development**

- 6.83 Article 25 follows the Model Provision 29. It provides that the undertaker may take temporary possession of land within the Works limits for the purpose of maintaining the authorised development and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used.
- 6.84 Article 25 (1) includes a right to enter on any land within the Works limits for the purpose of gaining access where this is reasonably required to maintain the authorised development.
- 6.85 Article 25 (3) and (12) are a departure from Model Provision 29 authorising immediate entry in cases of emergency, where the safety of the authorised development (or part of it), the public and or the environment may be at risk. Provision is made for notice, restoration and compensation.

### **Article 26 – No double recovery**

- 6.86 This provision is not contained within the Model Provisions but predominantly follows Article 44 of the Transport and Works Act Model Provisions. It would provide that compensation is not payable both under this Order and other compensation regimes for the same loss or damage.
- 6.87 The principle of equivalence, namely that a claimant in a compulsory purchase matter shall be compensated for no more and no less than his loss, is long established and no part of the compensation code conflicts with this principle. This article complies with section 126(2) of the 1990 Act and is a supplementary provision under section 120(5)(d) of the 2008 Act as well as a provision relating to the payment of compensation under sections 120(3) and (4) and item 36 of Part 1 of Schedule 5 of the 2008 Act.

### **Article 27 – Statutory undertakers**

- 6.88 RWE is applying to compulsorily acquire rights over land belonging to statutory undertakers. Article 27 adapts Model Provision 31, with the omission of 31(a) from the Model Provision which is not needed because there is no need to acquire any land belonging to statutory undertakers. However there is a need, subject to compliance with the relevant protective provisions, to:
- (i) compulsorily acquire new rights over land where the necessary option has not been obtained by private agreement;
  - (ii) compulsorily acquire the right to lay the pipeline under or over existing apparatus belonging to statutory undertakers and other like bodies as described in the Book of Reference and/or located within the Works limits;
  - (iii) in some instances if (ii) is not possible, RWE may need to extinguish or vary the rights of or remove or reposition such apparatus belonging to statutory undertakers and other like bodies as described in the Book of Reference and/or located within the Works limits; and
  - (iv) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) within the Yoxall AGI Site together with the right to maintain and or remove the same, and install such service media under and/or over such apparatus. The track and roadway is needed to access the two above ground compounds on the Yoxall AGI Site.
- 6.89 Whilst best endeavours have been used to ensure that all relevant rights and apparatus have been identified, and consents obtained, it is possible that new rights or apparatus of statutory undertakers will be discovered in the course of the construction of the proposed development. This is why the Order refers to crossing underneath, as well as extinguishing or varying the rights and removal or repositioning the apparatus of statutory undertakers and other like bodies within the Works limits within Article 27(3).

6.90 RWE may need to acquire rights over land belonging to the following Statutory undertakers: Network Rail, the Canal and River Trust and British Telecommunication's land. RWE has been in ongoing discussions with Network Rail and the Canal & River Trust to reach private agreements with both to respectively lay a section of the pipeline under the railway and the canal. RWE has signed a basic asset protection agreement with Network Rail dated 7 September 2010 for the provision of safety management to enable the authorised development to be carried out in close proximity to the operational railway. RWE has also been in negotiation with British Telecommunications in relation to a small area where BT has presumed rights in the subsoil under a highway. RWE continues its ongoing negotiations with these statutory undertakers and remains hopeful that agreement can be reached in each case.

6.91 RWE has also been negotiating with other statutory undertakers to agree a set of protective provisions with them which can be inserted into such private agreements and into the Order.

### **Certificates and consents under Sections 127, 137 and 138 of the PA**

6.92 Section 23 of the Growth and Infrastructure Act 2013 has removed the need for consent and certification requirements of Sections 127, 137 and 138 of the Planning Act 2008. The amendments made to the 2008 Act by section 23 will apply only to applications for development consent made on or after 25 June 2013, in accordance with SI 2013/1124. This is the case for WCGP.

6.93 As RWE is seeking to acquire new rights over land belonging to Statutory Undertakers, in the event of a representation being made and not withdrawn, the relevant Secretary of State will need to be satisfied that the matters in Section 127(6) of the 2008 Act have been met, namely:

(i) that the right can be purchased without serious detriment to the carrying out of the undertaking; or

(ii) that any detriment can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

This is fully justified in the Statement of Reasons.

6.94 The Growth and Infrastructure Act 2013 also repealed Section 137 (consent of statutory undertakers etc required to extinguishment of right of way over land on which they have apparatus) and removed certificate requirements from Section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc). The Statement of Reasons provides further information.



### **Deemed Statutory Undertaker Status**

- 6.95 The provisions of sections 128 and 129 of the 2008 Act (requiring that a development consent order containing compulsory acquisition provisions in relation to local authority or Statutory Undertaker land may be subject to special parliamentary procedure (if an objection is made and has not been withdrawn)) have been repealed by section 24 (1) of the Growth and Infrastructure Act 2013, with effect from 25 June 2013. Special parliamentary procedure will not therefore apply to WCGP.
- 6.96 It is nevertheless worth pointing out that RWE holds an electricity generation licence under section 6(1) (a) Electricity Act 1989. Paragraph 2(2) of Schedule 16 of the 1989 Act provides that a licence holder who is entitled to exercise any power conferred by Schedule 3 of the 1989 Act shall be deemed to be a statutory undertaker for the purposes of the 1981 Act. Planning Inspectorate Advice note three (EIA Consultation and Notification), version 4, May 2012, page 08, confirms that "Only certain electricity undertakings are deemed to be statutory undertakers for the purposes of the ALA. These are undertakings that are entitled by their licence to exercise any power conferred by schedule 3 to the Electricity Act 1989 (power of compulsory purchase)".
- 6.97 Standard Licence Condition 14 of RWE's licence provides for compulsory powers to be exercised and, as such, RWE is a deemed statutory undertaker for the purposes of the Acquisition of Land Act 1981. A copy of the licence is attached in Appendix A to this Memorandum for information purposes.

### **Article 28 Recovery of costs of new connections**

- 6.98 Article 28 provides for the recovery of compensation to owners or occupiers of property where apparatus is removed in accordance with Article 27. It follows Model Provision 33 save that Model Provision 33(3) is omitted. Model Provision 33(3) relates to apparatus and rights of statutory undertakers in stopped up streets and apparatus to which Part 3 of the New Roads and Street Works Act 1991 applies.

### **Article 29 Railway and navigation crossings**

- 6.99 Article 29 follows Model Provision 34. It provides that the undertaker will not break open a street under the control of the railway or navigation authority and includes level crossings without the consent of the railway or navigation authority. This is required to ensure that where any part of the authorised development is likely to affect a street controlled by the railway or navigation authority there are appropriate levels of consent in place to protect their equipment.

## MISCELLANEOUS AND GENERAL

### Article 30 – Defence to proceedings in respect of statutory nuisance

6.100 Article 30 provides the undertaker with a defence to statutory noise nuisance proceedings under section 82(1) of the Environmental Protection Act 1990 in circumstances that are provided for under Article 7 of the Model Provisions. This provision has been included because the temporary construction works required to install the pipeline under infrastructure such as railway lines, roads and rivers has the potential to produce short term elevated noise levels. The assessment of the potential nuisance will be presented in the Environmental Statement (Appendix 10.1, document reference: WCGP 014.2.10.1) to be submitted with the Application in compliance with the APFF Regulations, regulation 5(2)(f). There is no expected operational noise for the WCGP so Model Provision 7(1)(b)(i) and (ii) has not been used.

### Article 31 Operational land for purposes of the 1990 Act

6.101 Article 31 follows Model Provision 35 and provides that, for the purposes of section 264(3)(a) of the 1990 Act, the development consent granted by the Order shall be treated as a specific planning permission.

### Article 32 – Felling or lopping of trees

6.102 Article 32 gives the undertaker power at any time during the duration of the authorised development to fell or lop any tree or shrub within or overhanging land within the Works limits, or to cut back its root for the purposes of preventing obstruction or interference with the authorised development or apparatus used in connection with it. Provision is included for the payment of compensation for loss or damage. Article 32 follows Model Provision 39, with the omission of Model Provision 39(1)(b) which relates to danger to passengers of the authorised development and which has no relevance to the authorised development.

6.103 In the case of unnecessary damage, provision is included for the payment of compensation for loss or damage.

### Article 33 – Crown Rights

6.104 This provision is not contained in the Model Provisions. Part of the authorised development will cross land where the mines and minerals are vested in the Crown. Article 33 provides that nothing in the Order shall authorise any interference with this land without the written consent of the Crown Estate Commissioners.

### Article 34 – Certification of plans etc

6.105 This Article 34 relates to the certification of plans, and follows Model Provision 41. It would require the undertaker to submit copies of key documents referred to in the Order to the decision-maker for certification as true copies following the making of the Order. The Article departs from the Model Provision as specific document numbers have been given.

### **Article 35 – Arbitration**

6.106 Article 35 makes provision for any differences arising under the Order to be referred to and settled by arbitration, unless otherwise provided for under the Order. It follows Model Provision 42.

### **Article 36 – Protection of Interests**

6.107 This article derives from Model Provision 50 of the Model Provisions for Railways. It gives effect to Schedule 9, which will contain protective provisions for statutory undertakers.

### **Article 37 – Service of Notices**

6.108 This article does not derive from the Model Provisions. It governs the service and / or deemed service of notices under the Order. To facilitate the application of this Article, definitions of “address” and “electronic transmission” were added to Article 2 of the Order.

## **SCHEDULES**

### **7. Schedule 1 Part 1 – Authorised Development**

- 7.1 Schedule 1 Part I of the Order describes the authorised development including the associated development. The works are listed and identified by reference to the works plans and further described below.
- 7.2 The WCGP will run from the village of Yoxall, in Staffordshire, to the proposed and section 36 consented Willington C Power Station.
- 7.3 The pipeline to be constructed as part of the authorised development falls within the definition of a pipe-line, pursuant to section 235 of the 2008 Act. This section provides that the term “pipe-line” has the meaning given by section 65 of the Pipe-lines Act 1962. Section 65(2)(a) to (e) of this Act defines a pipeline to include key components of the Yoxall Above Ground Installation and the NTS Spur Pipeline.
- 7.4 The original CLG Guidance on associated development (Applications for major infrastructure projects under the Planning Act 2008) provided, in paragraph 10, that development should not be treated as associated if it is in fact an integral part of the NSIP. This Guidance, republished in 2013, further explains in its revised paragraph 12 that there is no intention that the examples given in its annexes should be treated as associated developments as a matter of course or that those examples could not in their own rights constitute an integral part of a project. As such, and in line with Section 65 of the Pipe-lines Act 1962 and RWE’s technical knowledge, Works No.s 1 to 6 as described in the Order are the main development works to be consented under the Order. They comprise the Yoxall – Willington pipe section, the NTS Spur Pipeline, the Yoxall AGI, the Willington Block Valve, micro-tunnels and shafts and pipeline markings. All these works are permanent in nature and form integral parts of the authorised development. Without all of these works the pipeline cannot be operated.

### **Works N° 1 – The Yoxall – Willington Pipe Section**

- 7.5 These works comprise a high pressure and mainly buried steel pipeline covering a distance of approximately 27 km in length that runs from the Yoxall AGI (located south of the village of Yoxall, in Staffordshire) to the Willington C Power Station, in Derbyshire. These works will only come above ground level within the Yoxall AGI Site.

### **Works N° 2 and 3 – The NTS Spur Pipeline and the Yoxall AGI**

- 7.6 These works comprise a high pressure and mainly buried steel spur pipeline (with buried underground valves and control cables) covering a distance of approximately 120 metres in length which itself will connect the NTS to the start of Works N° 1 at the Yoxall AGI Site. These works will only come above ground level within the Yoxall AGI Site.
- 7.7 The Yoxall AGI Site is adjacent to the A515 highway and a new permanent access will be required to provide access the Yoxall AGI Site.
- 7.8 The Yoxall AGI Site will comprise Works N° 3 (the Yoxall AGI): two secure compounds with a combined area approximately 60m x 60m constructed side by side and bounded by a security fence. One compound will house NGG's part of the AGI (into which the NTS Spur Pipeline will run). This will be constructed, owned and operated by NGG as is common with projects of this nature. Such works will however, be carried out at RWE's expense and with RWE having obtained for NGG the necessary land and land rights. The other compound will house RWE's part of the AGI (out of which the Yoxall to Willington pipeline section will run). This will be constructed, owned and operated by RWE. Both NGG's and RWE's compounds will contain control valves, metering, monitoring and inspection apparatus.
- 7.9 The Yoxall AGI is the most prominent permanent above ground feature of the authorised development. The extent to which any parts of the Yoxall AGI will project from the ground is prescribed by Article 7 and the description of works in Schedule 1 of the Order. It is expected that the highest structure in the Yoxall AGI will be its lighting columns which may have a maximum height of 5 metres. This is in accordance with the assessment carried out in the Environmental Statement.

### **Works N° 4 – The Willington Block Valve**

- 7.10 The pipeline will terminate at the so called "Willington AGI" at the Power Station site. The pipeline will end at a block valve inside that AGI and cannot be considered complete without such block valve and all relevant associated equipment. The purpose of the block valve is to control the flow of gas from the pipeline into the Power Station. Even though the Willington AGI has already received consent with the Power Station, RWE needs to retain the block valve as a work to be consented within the Order as it is integral to the construction and operation of the pipeline. The phasing of construction works may require the pipeline to be fully constructed and operational prior to the Power Station being completed. This therefore requires the block valve to be authorised under the Order so that it can be tested and become fully operational as required.

7.11 The block valve is a valve attached to the end of the buried pipeline to control the flow of gas. The valve also has parts that protrude above the ground level, where the operating mechanism will be located. The above ground parts include the valve stem and the means of operating the valve remotely, being an electric motor (known as the actuator), or compressed gas bottles, associated telemetry, controls and power supply and also a hand wheel to allow manual operation. These parts may extend above ground level to a maximum height of 2 metres.

### **Works N° 5 – Micro-tunnels and Shafts**

7.12 Micro-tunnels and shafts may be required if the method of construction under infrastructure such as railways, major roads, a canal and a major river is to be by the use of a micro-tunnel. Where micro-tunnelling is used, horizontal tunnels and vertical shafts will be installed in advance of the installation of the pipeline. These structures provide the tunnels for the pipeline and will remain part of the pipeline throughout its existence as permanent features. These works are therefore integral to the authorised development and are not associated development.

7.13 An alternative method of construction may include the use of HDD, where the pipeline would be installed by drilling from an entry point to an exit point both at / or close to existing ground levels, with minimal disturbance to the site in between. In comparison to micro-tunnelling, the HDD methodology does not require the creation of any permanent structures described as works No.5 prior to the installation of the pipeline. The HDD works are therefore described as works No. 11, item (f).

### **Works N° 6 – Pipeline marking**

7.14 The Pipeline Safety Regulations 1996 (Regulation 16) require pipelines to be marked on the ground following the completion of the construction activities. The WCGP will be marked on both sides of every crossing and at all field boundaries by concrete or plastic posts. Pipeline marking is therefore an integral part of the authorised development as a statutory requirement to indicate the presence of underground pipelines to the public and to reduce the chance of any interference with the pipeline. Pipeline markings may deviate above ground level to a maximum height of 2 metres.

### **Works N° 7 to N° 14**

7.15 Works 7 to 14 are works which are mainly temporary in nature and although these are necessary, do not form part of the main development. Such works are classified as associated development within the meaning of section 115(1)(b) of the 2008 Act and Annex A of the CLG Guidance on Associated Development (as republished in 2013).

7.16 In addition to the WCGP and pursuant to section 115 of the 2008 Act, the Order also seeks development consent for associated development including:

- (i) the creation and use of temporary building and working sites for construction of the authorised development;
- (ii) construction of temporary structures to allow access across watercourses;

- (iii) general construction and maintenance works comprising fencing, stripping of the soil, boring and drilling operations, etc;
- (iv) new temporary means of access and associated works, which are identified as Works n° 12. These are temporary works to create construction accesses to various parts of the authorised development along its route. Although the position of these are identified on the works plans it should be noted that these locations are indicative at this stage and establish the broad locations where temporary construction access may be taken to support the works;
- (v) street works – which will include any activity within the boundaries of the highway such as the installation of the pipeline, by non open cut or open cut means, the creation of the access arrangements, including the removal of the road verge, signing, guarding and traffic control during the works, reinstatement of the road and verges and erection of marker posts in the road verges, post installation excavation within the road or verge if required for maintenance; and
- (vi) the creation of temporary car parking to the west of the River Dove (its indicative location being shown on Sheet 8 of the Works plan), where part of the pipeline passes under the embankment of a disused railway line. At this location, it is proposed that access is not taken across the embankment, but a temporary track is created around the embankment, crossing it at an extended crossing point. During the construction period RWE will create a temporary car park for the benefit of a local angling club with fishing rights on the River Dove. Following construction, the area will be reinstated and the temporary facility removed. The exact location of this car park will depend on the final layout of the access arrangements, as established by the detailed design assessment.

7.17 The Order also incorporates reference to any associated works which may be required in relation to the above works as are indicated on the works plans and referred to in the requirements below. In addition, the Order makes reference to further associated and incidental works that may be required to carry out the authorised development and to comply with all the requirements imposed by the Order; all of those works also to fall within the scope of the Environmental Statement's assessment.

## 8. Schedule 1 Part 2 – Requirements

### The Requirements

- 8.1 The requirements set out in part 2 of Schedule 1 to the Order have been either adopted and/or modified from those in Schedule 4 of the lapsed Model Provisions ("**the Model Requirements**").
- 8.2 All requirements have been modified from the Model Requirements with respect to the statutory body responsible for the monitoring and discharge of each requirement. In all cases, this is now the "**relevant planning authority**", meaning East Staffordshire Borough Council for those development consent works falling in Staffordshire, and South Derbyshire District Council for those development works falling within Derbyshire.

- 8.3 In circumstances where the requirements relate to matters to be approved by the relevant planning authority, the requirements have been drafted so as to make it expressly clear that development must be carried out in accordance with those approved details unless otherwise approved by the relevant planning authority.
- 8.4 The definition of a "**stage**" of a development from the Model Requirements has been retained. It is likely that certain "**stages**" will be undertaken in advance of the main construction program and the requirements for these stages will be discharged first.
- 8.5 Some of the Model Requirements have been amended to make a further body (such as the Environmental Agency ("**EA**"), Natural England ("**NE**"), or the local highway authority) a consultee in the approval process set out in the relevant requirement in the Order.
- 8.6 A number of Model Requirements have not been included because the proposed development will not produce the kinds of impact which such requirement seeks to control. Other Model Requirements have been amended to make them applicable to the nature of the development, namely a cross-country linear construction project. Several have been combined and others made specific to "**temporary**" matters so that it is clear that they relate to the construction phase of the authorised development.
- 8.7 The Model Requirement relating to construction hours has been replaced by a condition similar to the condition agreed for the Willington C Power Station Section 36 consent granted by the Secretary of State to RWE under the Electricity Act 1989 on 4 March 2011 (document reference WCGP 013.4), to bring both developments in line with each other.
- 8.8 The Order does not contain requirements which are not necessary for the authorised development. Common requirements which are not necessary for the authorised development include controls on operational noise (since there is virtually no operational noise anticipated to be generated by the development), controls on odour emissions (there is no potential for odour emissions from the development), and the control of accumulations and deposits (since the requirements in respect of soil handling and restoration will address the potential for any accumulations or deposits that will arise).

### **Interpretation**

- 8.9 This refers to the definitions in the requirements which are in addition to defined terms within the Order:
- 8.10 "The code of construction practice" has been deleted as there is no obvious code that would apply to the authorised development.
- 8.11 Definition of "County Council" has been added to refer to Staffordshire County Council or Derbyshire County Council as the case may be.
- 8.12 Definition of "European protected species" has been added to cover the species in Part 3 of the Conservation of Habitats and Species Regulations 2010.
- 8.13 "Flood risk area" has been included because of specific requirements requested by the EA.

- 8.14 The EA has confirmed that methodologies for working at rivers and within flood risk areas must be contained in the applications for the necessary licenses and therefore do not need to be the subject of these requirements.
- 8.15 "Willington C Gas Pipeline Flood Risk Assessment" has been inserted to define the document referred to in the requirements requested by the EA.
- 8.16 The definition of "stage" has been amended from the Model Requirement definitions to refer to approval by the relevant planning authority and includes maintenance.

### **Requirement 1 – Time Limits**

- 8.17 Five years has been inserted in accordance with the prescribed period under Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. In accordance with section 154 (1) (b) of the 2008 Act, provisions have also been made for the Secretary of State to extend such period as he may direct in writing. This is in line with the Section 36 consent issued for the Willington C Power Station, which allows for commencement of development to take place within a certain timeframe or within such longer period as the Secretary of State may specify in writing.

### **Requirement 2 – Stages of authorised development**

- 8.18 Requirement 2 follows Model Requirement 3. In the present case it is likely that some stages of the authorised development such as the AGI compounds will be carried out in advance of the main pipeline construction program. Details for such stages would be discharged as separate discrete items.

### **Requirement 3 – Detailed design approval**

- 8.19 Requirement 3 requires details of particular stages of the development to be approved before work on that stage can commence. It is adapted from Model Requirements 4, 5 and 6. The EA has been included as a consultee for works within a flood risk area and the County Council has been included as a consultee in relation to the area of Works No. 7. Requirement 3(2) makes provision for variations to be approved by the relevant planning authority, in line with Model Requirement 37.

### **Requirements 4 and 5 – Provision, implementation and maintenance of landscaping**

- 8.20 Requirements 4 and 5 provide for the provision, implementation and maintenance of a landscaping scheme. These apply only to the Yoxall AGI Site since these above ground works are the only part of the scheme where landscaping is proposed. At all other locations, land will be reinstated like for like. Following consultation with planning authorities, requirement 4 makes direct reference to the draft landscaping proposals contained in the Environmental Statement. Requirement 5 makes provision for any variations of this scheme to be approved by the relevant planning authority, in line with Model Requirement 37.



### **Requirement 6 – Hedgerows**

- 8.21 Requirement 6 is adapted from Model Requirement 9. It applies only to the removal and restoration of hedgerows instead of trees. Although some tree planting is proposed as part of the development, this will be carried out either as part of the landscaping or as part of the reinstatement of hedgerows. The development involves the creation of temporary gaps in approximately 150 hedgerows.
- 8.22 A Hedgerow Management Strategy Document is included at Appendix 8.10 of the Environmental Statement (WCGP 014.2.8.10). This requirement requires the undertaker to obtain approval for a written plan regarding the removal and reinstatement of the hedges in accordance with that plan. Natural England has seen the Environmental Statement and has confirmed that it trusts the approval of the Hedgerow Management Strategy under requirement 6 to the local planning authority. This is shown in document reference WCGP.R.120713.01 which is appendix B3 of the draft Statement of Common Ground with Natural England (WCGP 023.3, Appendix 7).

### **Requirement 7 – Construction Traffic and Highway Accesses**

- 8.23 Requirement 7 combines Model Requirements 10 (highway accesses), 22 (construction traffic) and 33 (travel plan). It provides for written details of construction traffic and new temporary and permanent highway accesses and alterations to existing accesses to be obtained, and for construction traffic and access works to be implemented in accordance with the details so approved and any subsequently approved variations to it. It makes reference to the Transport Statement of the Environmental Statement. The highway authority has been added as a consultee for the purpose of approval to these works. Details of construction of the car parking arrangements are included but a Travel Plan is not required as this was not considered necessary for a linear construction project.
- 8.24 Requirement 7 (4) requires approval of the routing of construction traffic and the use of appropriate signage. The requirement is similar to Model Requirement 22 except that the routing and signage scheme will be contained in a Construction Traffic Signage Plan which is subject to the views of the highway authority as a consultee. This development does not relate to a conventional "site" as such. The reason for a specific signage plan is that this is a linear project comprising some 38 access locations and eight delivery routes. Signage will be required at all access locations and on all routes and the requirement for a formal plan to deal with this is therefore considered necessary as part of the authorised development. Requirement 7 (5) provides for wheel washing facilities to be provided at the Yoxall and Carriers Road sites and, pursuant to requirement 7 (1), for all construction vehicle wheels to be washed before leaving the site.

### **Requirement 8 - Public Rights of way**

- 8.25 Requirements 8 (1) and (2) concern the procedure for providing the permanent diversion of public footpath Yoxall 59. These provisions follow Model Requirement 11 save for the addition of the local highway authority as a consultee on the application to approve the implementation plan for the alternative right of way. This approach has been discussed with the local highway authority, which has agreed that final approvals will be given by the relevant planning authority.

8.26 Requirements 8 (3) and (4) deal with the temporary closure of footpaths during the construction period. Temporary closure has been agreed with the relevant authorities as the appropriate means to protect users during the construction period. A strategy document has been prepared (Environmental Statement, Appendix 13.1 - WCGP 014.2.13.1) and the temporary closure orders appear in the schedule of additional consents and licences (Appendix 1.5 - WCGP 014.2.1.5).

### **Requirement 9 – Temporary Fencing and other means of enclosure**

8.27 Requirement 9 is adapted from Model Requirement 13. It relates only to temporary construction fencing because permanent fencing is included in the details to be submitted under requirement 3. Requirement 9 (3) provides that any temporary fencing must be removed on completion of the authorised development, unless otherwise agreed in writing with the relevant planning authority.

### **Requirement 10 – Surface water drainage and water discharge**

8.28 This requirement requires approval of details for surface water drainage in respect of each stage of the development. The words “and water discharge” have been added to the title of this requirement to make it clear that it applies to discharges as well as drainage, and the EA has been added as a consultee. Requirement 10(3) has been added, following consultation with the EA, to relate to discharges authorised by the Order. The development does not include any foul drainage connections or septic tanks and the reference to this has been deleted.

### **Requirement 11 – Contaminated Land and groundwater**

8.29 Requirement 11 requires the approval of a scheme to address contaminated land and groundwater. It follows Model Requirement 15, with the addition of the EA as a consultee and provisions for the variation of the approved scheme in accordance with Model Requirement 37. The requirement has been retained because part of the pipeline passes through a former landfill site to which this requirement will be relevant.

### **Requirement 12 – Soil handling and Restoration**

8.30 This requirement imposes an obligation to obtain approval of a scheme for soil handling. This is a bespoke requirement for the development as there is no equivalent model requirement. Soil handling and restoration is an important feature of the development and this requirement has been agreed with Natural England to ensure that the correct mitigation measures are applied. Natural England has also agreed that this requirement should be solely discharged by the relevant planning authority. This is shown in document reference WCGP.R.120713.01, which is appendix B3 of the draft Statement of Common Ground with Natural England (WCGP 023.3, Appendix 7).

### **Requirement 13 – Agricultural Land Drainage**

- 8.31 This requirement imposes an obligation to obtain approval of a scheme dealing with the restoration of the drainage of land within the Works limits. This is a bespoke requirement to prevent water-logging of land and damage to soil and crops. The development will impact upon land drainage systems which will require reinstatement. This requirement has been agreed with Natural England who also agreed that the requirement should be discharged solely by the relevant planning authority. This is shown in document reference WCGP.R.120713.01, which is appendix B3 of the draft Statement of Common Ground with Natural England (WCGP 023.3, Appendix 7).

### **Requirement 14 – Archaeology**

- 8.32 This requirement relates to the investigation, protection, recording and preservation of archaeological remains. It follows Model Requirement 16, save that the County Council and English Heritage are identified as consultees on the application for approval and variation of the Written Scheme of Investigation ("WSI"). A draft WSI is included in the Environmental Statement. The requirement for the planning authority to approve the consultant has been removed at the request of the relevant planning authority.

### **Requirement 15 – Ecological management plan**

- 8.33 Requirement 15 relates to the approval of an ecological management plan for each stage of the development. It follows Model Requirement 17. Natural England has confirmed that the requirement should be discharged solely by the relevant planning authority. This is shown in document reference WCGP.R.120713.01, which is appendix B3 of the draft Statement of Common Ground with Natural England (WCGP 023.3, Appendix 7).

### **Requirement 16 – Temporary Flood defence measures**

- 8.34 Requirement 16 is a bespoke requirement relating to the possible need for flood defence measures within the River Dove floodplain in the village of Egginton. This requirement is needed as a result of modelling carried out of the effects of the temporary soil bunds (required during the construction period) in a 1:100 year flood. Mitigation measures have been developed to prevent any risk of the bund increasing flood risk at residential properties. The implementation of these measures will be confirmed through the approval of the detailed design (Requirement 3) and the approval of appropriate methodologies with the EA.
- 8.35 However, the modelling shows an apparent increase in flood water levels in a small part of the village of Egginton. This could be an error in the model, and refinement of the model may demonstrate that there is no such increase in risk of flooding. In any event, new flood defences are proposed for the potentially affected area in 2012, which would raise the level of the defence above the levels predicted in the model. Alternately, the risk could be safeguarded against by a temporary flood defence.
- 8.36 If the flood defence work is completed before consent is granted for the authorised development, RWE may (with the agreement of the EA) remove this requirement from the Order if it is no longer necessary.

- 8.37 The requirement has been agreed with the EA to ensure that "one way or another" there will be no increased flood risk to residential properties in Egginton.

#### **Requirement 17 – Temporary External lighting**

- 8.38 Requirement 17 follows Model Requirement 21 in relation to construction lighting and requires consultation with both the highway and planning authority. The relevant planning authority will give the final approval for the lighting that will be used for the duration of the construction period only. Permanent lighting of the AGI will be dealt with under requirement 3. Model Requirement 27 also refers to lighting but is not considered necessary.

#### **Requirement 18 – Control of noise during construction and maintenance**

- 8.39 Requirement 18 follows Model Requirement 23, and requires a scheme for noise management during construction and maintenance works. A reference to the assessment and mitigation measures described in the Environmental Statement and also the relevant British Standard for construction noise has been added.

#### **Requirement 19 – Construction Hours**

- 8.40 Requirement 19 has been adapted from a condition from the Power Station section 36 consent. This has been done because the equivalent condition in the section 36 consent is more comprehensive.
- 8.41 Part of the construction takes place within the Power Station site and therefore identical conditions are proposed. Moreover, it would not be acceptable for works or works traffic for one part of project to be permitted at a time when works or works traffic were not allowed for the other part. Such conflicts and inconsistencies would lead to uncertainty and related difficulties with compliance and enforcement. Using the condition from the section 36 consent thus brings the two developments "in line". The requirement allows night time working under certain circumstances, emergency works, works approved by the relevant planning authority and works that do not lead to night time noise limits to be exceeded. There are few special crossing locations where night time working is allowed and others where this may be required if HDD is the adopted construction methodology, in which case the agreement of the relevant planning authority will be sought.
- 8.42 Requirement 19 (1) relates to construction work. Requirement 19 (2) relates to hours for HGV delivery vehicles.

#### **Requirement 20 – Control of dust emissions**

- 8.43 Requirement 20 follows entirely from Model Requirement 28 and relates to the need for a scheme for the management and mitigation of dust emissions.

### **Requirement 21 – European Protected Species**

- 8.44 Requirement 21 is to ensure that the authorised development avoids adverse impacts upon European Protected Species and their habitats within the Order limits. Natural England has been consulted on the authorised development and has confirmed by letter dated 16 May 2012 that on the basis of the species information and proposals provided by RWE that it is satisfied that no outstanding issues remain which would prevent the grant of a newt mitigation licence to enable the carrying out of the authorised development. The letter can be found in Appendix 8.12 of the Environmental Statement (document reference: WCGP 014.2.8.12d). Natural England provided additional comments in reply to a target consultation on 12<sup>th</sup> of July 2013, when it did not raise any further concerns. Natural England also requested that this requirement should be discharged directly by the relevant planning authority. This is shown in document reference WCGP.R.120713.01, which is appendix B3 of the draft Statement of Common Ground with Natural England (WCGP 023.3, Appendix 7).
- 8.45 The requirement to carry out "further survey work" which is suggested in Model Requirement 34 has been removed following advice from Natural England who has advised that sufficient surveys will in any event need to be carried out in advance of the construction works in order to determine the application for the scheme of protection and mitigation measures.
- 8.46 Requirement 21(2) refers expressly to Great Crested Newts and their breeding habitats, bats and bat roosts because survey work has also identified these as being potentially affected by the authorised development.

### **Requirement 22 – Restoration of land used temporarily for construction**

- 8.47 This requirement relates to the restoration of land temporarily used for construction. It follows Model Requirement 35. A provision was added to allow for variations to be subsequently approved, which accords with Model Requirement 37.

### **Requirement 23 – Written approval not be unreasonably withheld**

- 8.48 This requirement relates to the requirement for written approvals. It is a departure from Model Requirement 37 to clarify that where any approval or agreement is required must not be unreasonably withheld by the relevant authority.

### **Requirement 24 – Amendments to approved details**

- 8.49 This relates to amendments to approved details. It follows the wording of Model Requirement 37, with additional words to make it clear that the power to approve includes a power to amend that approval.

## 9. **Schedule 2 – Streets Subject to Street Works**

Schedule 2 specifies the streets subject to street works, which are identified by reference to the works plans and to which Article 10 relates. In addition to the suggested wording in the Model Provisions, this schedule also specifies the number of the works as shown in the works plans and the respective works plans sheet number.

## 10. **Schedule 3 – Access to Works**

Schedule 3 identifies the accesses referred to in Article 12 and specifies the permanent and temporary access works and the nature of the use restrictions to be placed upon them. The area and the access sought are identified by reference to the works plans (including the number of the works as shown in the plans and sheet number). In addition to the suggested wording for Schedule E in the Model Provisions, the works are also identified by reference to the type of access sought (temporary or permanent) and their use restrictions, as explained under Article 12 above.

## 11. **Schedule 4 – Land in which surveys and investigations may be carried out**

Schedule 4 identifies the land referred to in Article 15 by reference to the plot references on the Land Plans. In addition, Schedule 4 specifies the survey and investigation rights required by reference to each plot.

## 12. **Schedule 5 – Land in which only new rights etc. may be acquired**

Schedule 5 contains details of the new rights etc. that RWE requires over land affected by the Order as referred to in Article 18(1) and Article 27(1). Both the land affected and details of the rights etc. required are set out in Schedule 5 by reference to each plot, as identified on the Land Plans.

## 13. **Schedule 6 – Land over which Restrictive Covenants and right of support are required**

Schedule 6 contains details of the restrictive covenants and right of support that RWE requires over land affected by the Order. These are described in Schedule 6 and are required to protect the future integrity of the pipeline.

## 14. **Schedule 7 — Modification of compensation and compulsory purchase enactments for creation of new rights**

Schedule 7 sets out the proposed modifications to the existing compensation regime for the compulsory purchase of land. The Schedule clarifies that the existing compensation regime applies, with the necessary modifications to extend the compensation provisions concerning the compulsory purchase of land and interests in land generally to compulsory acquisition by the creation of a new right under this Order.

## **15. Schedule 8 – Land of which Temporary Possession may be taken**

Schedule 8 relates to Article 24 and follows from Schedule G of the Model Provisions apart from column 4 which has not been used. It describes land of which temporary possession may be taken, which is identified by reference to the land plans. This includes land along the length of the route where temporary possession may be needed for the purposes of carrying out general construction works for the authorised development as well as land where temporary possession may be needed for the purpose of constructing temporary construction compounds. Land within the order limits that will be used solely for the purposes of carrying out environmental surveys (named “S” plots in the Book of Reference) have been excluded from this Schedule as well as plot 115 which refer to land where possession of the subsoil and construction works will proceed based on a Section 50 licence. All other land has been included.

## **16. Schedule 9 – Protective Provisions**

Proposed protective provisions appropriate to protect Statutory Undertakers who may be potentially affected by the WCGP have been inserted into Schedule 9 of the Order. These provisions are still subject to final agreement with such Statutory Undertakers.

17. Appendix A - RWE npower PLC Electricity Generation Licence

K5434

**SCHEME MADE PURSUANT TO PARAGRAPH 18 OF SCHEDULE 7 TO THE UTILITIES ACT  
2000 IN RESPECT OF THE ELECTRICITY GENERATION LICENCE OF INNOGY PLC**

**MADE ON 28<sup>TH</sup> SEPTEMBER 2001**



Clause	Subject matter	Page
1.	Interpretation.....	1
2.	Amendment and restatement .....	2
3.	New standard conditions .....	2
4.	Continuing effect .....	2
Annex	The Electricity Generation Licence .....	3
	Part I: The Terms of the licence.....	4
	Part II: The Standard Conditions .....	5
	Part III: Amendments to the Standard Conditions .....	6
	Part IV: The Special Conditions .....	7
	Schedule 1: Specified Area.....	8
	Schedule 2: Revocation.....	9

## THE SCHEME

Pursuant to paragraph 18 of Schedule 7 to the Utilities Act 2000 (“the 2000 Act”), the Secretary of State hereby makes the following Scheme:

### RECITALS

#### WHEREAS:

1. Innogy Plc (company registered no. 03892782)(the “Company”) holds an electricity generation licence under section 6(1)(a) of the Electricity Act 1989 (the “Existing Generation Licence”).
2. Paragraph 18 of Schedule 7 to the Utilities Act 2000 (“Schedule 7”) applies to the Company as the holder of the licence referred to in recital 1 above.
3. The purpose of this Scheme which is made by the Secretary of State pursuant to paragraph 18 of Schedule 7 is to provide for the Existing Generation Licence to be amended and as so amended to have effect on and after the determination day as an electricity generation licence granted under section 6(1)(a) of the Electricity Act 1989 on the terms of this Scheme held by the Company (“the Electricity Generation Licence”).

### 1. INTERPRETATION

- 1.1 In this Scheme, unless the context otherwise requires, the following expressions shall bear the meanings ascribed to them below:

“the Authority” means the Gas and Electricity Markets Authority established pursuant to section 1 of the 2000 Act;

“determination day” means the date on which the standard conditions of electricity generation licences (determined by virtue of section 33(1) of the 2000 Act) take effect.

- 1.2 Without prejudice to sections 11 and 23(1) of the Interpretation Act 1978, this Scheme shall be interpreted and construed in like manner as an Act of Parliament passed after the commencement of the Interpretation Act 1978.
- 1.3 Unless the context otherwise requires, words and expressions used in Part I of the Electricity Act 1989 (as in force immediately before the determination day, or as the context requires, as in force from the determination day) shall bear the same meaning in this Scheme.

**2. AMENDMENT AND RESTATEMENT**

On the determination day, the Existing Generation Licence shall be amended and restated as set out in the Annex hereto.

**3. NEW STANDARD CONDITIONS**

Each condition of the standard conditions determined and published by the Secretary of State under section 33(1) of the 2000 Act as standard conditions for the purposes of electricity generation licences under section 6(1)(a) of the Electricity Act 1989 shall on the determination day be incorporated in Part II of the Electricity Generation Licence in substitution for the licence conditions in the Existing Generation Licence immediately prior to the determination day.

**4. CONTINUING EFFECT**

4.1 Anything done under or by virtue of the Existing Generation Licence which is in effect immediately before the determination day shall have continuing effect under or by virtue of the Electricity Generation Licence in so far as it is permitted by or in pursuance of the new standard conditions.

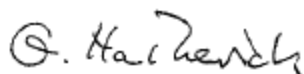
4.2 Without prejudice to the generality of sub-clause 4.1 above,

- (a) every statement, code or other document prepared pursuant to an obligation in the Existing Generation Licence; and
- (b) every direction, consent, determination or other instrument made by the Authority in relation to the Existing Generation Licence,

which in each case is in effect immediately before the determination day, shall have continuing effect pursuant to or under the Electricity Generation Licence in so far as it is permitted by or in pursuance of the new standard conditions.

4.3 For the purpose of paragraph 1 of standard condition 14 (Compulsory Acquisition of Land etc) of electricity generation licences, as incorporated and in effect in the Electricity Generation Licence, the specified date shall be the date the Electricity Generation Licence expires or is revoked.

On this the 28th day of September 2001



.....  
An official of the Department of Trade and Industry authorised to act on behalf of the Secretary of State.

GEOFFREY  
HATHERICK

**ANNEX**

**ELECTRICITY ACT 1989  
SECTION 6(1)(a)**

**ELECTRICITY GENERATION LICENCE**

**FOR**

**INNOGY PLC**

**PART I. TERMS OF THE LICENCE**

1. This licence, treated as granted under section 6(1)(a) of the Electricity Act 1989 ("the Act"), authorises Innogy Plc (a company registered in England and Wales under company number 03892782) ("the licensee") whose registered office is situated at Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB to generate electricity for the purpose of giving a supply to any premises in the area specified in Schedule 1 or enabling a supply to be so given during the period specified in paragraph 3 below, subject to -
  - (a) the standard conditions of electricity generation licences referred to in -
    - (i) paragraph 1 of Part II below, which shall have effect in the licence; and
    - (ii) paragraph 2 of Part II below which shall only have effect in the licence if brought into effect in accordance with the provisions of the standard conditions,  
  
subject to such amendments to those conditions, if any, as are set out in Part III below (together "the conditions");
  - (b) the special conditions, if any, set out in Part IV below ("the special conditions");
  - (c) such Schedules hereto, if any, as may be referenced in the conditions, the special conditions or the terms of the licence.
2. This licence is subject to transfer, modification or amendment in accordance with the provisions of the Act, the special conditions or the conditions.
3. This licence, unless revoked in accordance with the terms of Schedule 2, shall continue until determined by not less than 25 years' notice in writing given by the Authority to the licensee, such notice not to be served earlier than a date being 10 years after the 9<sup>th</sup> March 2000.
4. The provisions of section 109(1) of the Act (Service of documents) shall have effect as if set out herein and as if for the words "this Act" there were substituted the words "this licence".
5. Without prejudice to sections 11 and 23(1) of the Interpretation Act 1978, Parts I to IV inclusive of, and the Schedule to this licence shall be interpreted and construed in like manner as an Act of Parliament passed after the commencement of the Interpretation Act 1978.
6. References in this licence to a provision of any enactment, where after the date of this licence -
  - (a) the enactment has been replaced or supplemented by another enactment, and
  - (b) such enactment incorporates a corresponding provision in relation to fundamentally the same subject matter,shall be construed, so far as the context permits, as including a reference to the corresponding provision of that other enactment.

This licence was amended and restated by a licensing scheme made by the Secretary of State on 28<sup>th</sup> September 2001.

**PART II. THE STANDARD CONDITIONS**

**1. Standard conditions in effect in this licence**

<b>Section A</b>	<b>Section B</b>
Standard condition 1	Standard condition 5
Standard condition 2	Standard condition 6
Standard condition 3	Standard condition 7
Standard condition 4	Standard condition 8
	Standard condition 9
	Standard condition 10
	Standard condition 11
	Standard condition 12
	Standard condition 13
	Standard condition 14
	Standard condition 15
	Standard condition 16
	Standard condition 16A
	Standard condition 17
	Standard condition 17A
	Standard condition 18
	Standard condition 19

**2. Standard conditions not in effect in this licence**

<b>Section C</b>	<b>Section D</b>
Standard condition C1	Standard condition D1
Standard condition C2	Standard condition D2
Standard condition C3	Standard condition D3
Standard condition C4	Standard condition D4
	Standard condition D5

Note: A copy of the current standard conditions of electricity generation licences can be inspected at the principal office of the Authority. The above lists are correct at the date of this licence but may be changed by subsequent amendments or modifications to the licence. The authoritative up-to-date version of this licence is available for public inspection at the principal office of the Authority.

**PART III. AMENDED STANDARD CONDITIONS**

There are no amendments to the standard conditions

**PART IV. SPECIAL CONDITIONS**

There are no special conditions



**SCHEDULE 1**  
**SPECIFIED AREA**  
Great Britain

**SCHEDULE 2****REVOCATION**

1. The Authority may at any time revoke the licence by giving no less than 30 days' notice (24 hours' notice, in the case of a revocation under sub-paragraph 1(f)) in writing to the licensee:
  - (a) if the licensee agrees in writing with the Authority that the licence should be revoked;
  - (b) if any amount payable under standard condition 4 (Payments by the Licensee to the Authority) is unpaid 30 days after it has become due and remains unpaid for a period of 14 days after the Authority has given the licensee notice that the payment is overdue - provided that no such notice shall be given earlier than the sixteenth day after the day on which the amount payable became due;
  - (c) if the licensee fails:
    - (i) to comply with a final order (within the meaning of section 25 of the Act) or with a provisional order (within the meaning of that section) which has been confirmed under that section and (in either case) such failure is not rectified to the satisfaction of the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27 of the Act could be made questioning the validity of the final or provisional order or before the proceedings relating to any such application are finally determined; or
    - (ii) to pay any financial penalty (within the meaning of section 27A of the Act) by the due date for such payment and such payment is not made to the Authority within three months after the Authority has given notice in writing of such failure to the licensee - provided that no such notice shall be given by the Authority before the expiration of the period within which an application under section 27E of the Act could be made questioning the validity or effect of the financial penalty or before the proceedings relating to any such application are finally determined;
  - (d) if the licensee fails to comply with:
    - (i) an order made by the Secretary of State under section 56, 73, 74 or 89 of the Fair Trading Act 1973; or
    - (ii) an order made by the court under section 34 of the Competition Act 1998.
  - (e) if the licensee:
    - (i) has ceased to carry on the generation business;
    - (ii) has not commenced carrying on the generation business within 5 years of the date on which the licence comes into force;

- (f) if the licensee:
    - (i) is unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to paragraphs 2 and 3 of this schedule) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Authority);
    - (ii) has a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
    - (iii) has an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
    - (iv) passes any resolution for winding-up other than a resolution previously approved in writing by the Authority; or
    - (v) becomes subject to an order for winding-up by a court of competent jurisdiction; or
  - (g) if the licensee is convicted of having committed an offence under section 59 of the Act in making its application for the licence.
2. For the purposes of sub-paragraph 1(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the Authority may from time to time determine by notice in writing to the licensee.
  3. The licensee shall not be deemed to be unable to pay its debts for the purposes of sub-paragraph 1(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Authority under paragraph 1.

1c