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[REDACTED] MIEMA CEnv  
MBH Environmental Limited  
(By e-mail)

Your Ref:  
Our Ref:  
Date: 24 May 2018

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Dear [REDACTED]

**THE ELECTRICITY GENERATING STATIONS (VARIATION OF CONSENTS) (ENGLAND AND WALES) REGULATIONS 2013**

**THE ELECTRICITY WORKS (ENVIRONMENTAL IMPACT ASSESSMENT) (ENGLAND AND WALES) REGULATIONS 2017**

**APPLICATION BY THIRD ENERGY UK GAS LIMITED UNDER SECTION 36C OF THE ELECTRICITY ACT 1989 TO VARY THE CONSENT AND PLANNING PERMISSION FOR THE KNAPTON GENERATING STATION, NORTH YORKSHIRE**

**APPLICATION NORTHERN POWERGRID (NORTHEAST) LIMITED UNDER SECTION 37 OF THE ELECTRICITY ACT 1989 TO KEEP INSTALLED AN OVERHEAD POWER LINE AT KNAPTION GENERATING STATION, EAST KNAPTON, MALTON**

Thank you for your e-mails of 4 and 18 May 2018 with enclosed applications on behalf of Third Energy UK Gas Limited ("Third Energy") under section 36C for the Electricity Act 1989 for the Knapton Generating Station in North Yorkshire ("the variation application") and on behalf of Northern Powergrid (Northeast) Limited ("Northern Powergrid") to keep installed an overhead electric line ("OHL") at Knapton Generating Station, East Knapton, Malton ("the section 37 application"). It is noted that Third Energy is acting as agent for Northern Powergrid in regard to this application.

Section 36C Application

The Secretary of State has considered whether the variation application is suitable for publication in accordance with regulation 4 of the Electricity Generating Stations (Variation of Consents) (England and Wales Regulations 2013 ("the Variation Regulations") and

considers the following will need to be rectified before the variation application can be published:

- The Applicant is seeking an amendment to the planning permission approved by Ryedale District Council on 10 November 2006 under section 73 of the Town and Country Planning Act 1990. However, although it is appreciated that the variations sought are only to extending the life of the generating station, a variation application must include particulars of (a) the relevant section 36 consent, and, if that consent was not granted to the applicant, how the applicant has the benefit of that consent. It is noted that Third Energy has stated that this isn't applicable. However, the Secretary of State is not persuaded that this is correct. What is being applied for is a variation of the section 36 consent granted by the Secretary of State in 1993 and so it is appropriate to go back to that document in the first instance.

It is noted that the original 1993 consent for construction and operation of the generating station is subject to a planning condition that the use of the site for this purpose shall be discontinued 15 years from 25 March 1993. In accordance with paragraph 19 of the Department's '*Varying consents granted under section 36 of the Electricity Act 1989 for generating stations in England and Wales*' public guidance<sup>1</sup>, the Secretary of State considers he would need to issue a new deemed planning permission under section 90(2) of the Town and Country Planning Act 1990. This means that the Applicant will need to submit a fresh version of that document with an amended Condition (4) providing a new expiration date. Third Energy should also consider incorporating any variations that the subsequent S73 consent has given them and should also provide a draft Explanatory Memorandum for the variations being sought<sup>2</sup>;

- Regulation 3(1) of the 2013 Regulations states that a variation application must describe the location of the proposed development by reference to a map. Although both electronic version of two plans ZG-TE-KGS-01 RO appear to show the full extent of the 'red-line boundary' area, the hard copy versions Third Energy has provided in an application document folder (which presumably would also be the documents intended for public inspection) doesn't include the full extent of the red-line boundary (i.e. the left of the drawing where it meets the adjacent road is missing). It also has the Drawing Number is cut off from the bottom right corner of the drawing; and

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/252011/DECC\\_varying\\_consents.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252011/DECC_varying_consents.pdf)

<sup>2</sup> See the Drakelow varied consent on the Department's Energy Infrastructure Portal for an example of the Department's preferred method for showing changes sought and also for an example of an Explanatory Memorandum - <https://itportal.beis.gov.uk/EIP/pages/projects/Drakelow2018.htm>

- The hard copy of the application documents refers to copies of the Environmental Permit and Pre-Application Consultation Responses being appended. However, these documents don't appear to have been included at Appendices 3 and 4.

### Section 37 Application

The section 37 application will be considered by the Secretary of State in due course, and it is noted that the Form B has been submitted to the relevant local planning authorities, North Yorkshire County Council and Ryedale District Council for their consideration. It is the Secretary of State's intention to progress the section 37 application in tandem with any section 36C variation application that is considered suitable for publication. You are required under Regulation 5 of The Electricity (Applications for Consent) Regulations 1990<sup>3</sup> to publish notice of the application for two successive weeks in one or more local newspapers circulating in the locality over which the line passes is situated and in the London Gazette. Any objections made during the consultation period should be sent to The Secretary of State, c/o Rob Pridham, Department for Business, Energy and Industrial Strategy, Level 3, Orchard 2, 1 Victoria Street, London SW1H 0ET and these details should be included in your notice.

It is noted that you have requested payment details for the section 37 application. As the application has not been submitted via the Department's Energy Infrastructure Portal, a cheque to "BEIS" for £402.50 should be provided as soon as possible (unfortunately BACS transfers are not a payment method available for section 37 applications).

### EIA Development/Screening Decisions

As you are aware, separate EIA screening requests in respect of the generating station and overhead line previously submitted by Third Energy under the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2017 ("the 2017 Regulations") were subsequently withdrawn. Third Energy's position set out in the section 36C and section 37 applications that they do not comprise EIA Development is noted. The Secretary of State will be consulting the relevant planning authorities on the section 37 application shortly in accordance with Regulation 13 of the 2017 Regulations. However, in respect of the section 36C application, it is BEIS' screening policy to only to consult after the Secretary of State has confirmed suitability for publication.

### Public Inquiries

Finally, you may wish to be aware that under Schedule 8 to the Electricity Act 1989, in the event that a relevant planning authority notifies the Secretary of State that they object to the section 37 application and their objection is not withdrawn, the Secretary of State is obliged to hold a public inquiry to consider the objection and the report of the person who held the inquiry before determining whether to give his consent. The Secretary of State also has the discretionary power to hold a public inquiry in light of objections received from other persons. For section 36C applications, there is no mandatory obligation on the Secretary of State to

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<sup>3</sup> <http://www.legislation.gov.uk/ukxi/1990/455/regulation/5/made>

hold a public inquiry in the event of an objection being maintained by a relevant planning authority, but he has the discretionary power to hold one if considered appropriate having considered the representations received and all other material considerations.

Please do not hesitate to contact me if anything is unclear.

Yours sincerely,



**Case Manager, Energy Infrastructure Planning Team**