**IN PARLIAMENT**

**SESSION 2010-12**

# THE ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011

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**TO THE CHAIRMAN OF COMMITTEES OF THE HOUSE OF LORDS AND THE CHAIRMAN OF WAYS AND MEANS IN THE HOUSE OF COMMONS**

## MEMORIAL

**of**

**THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE**

**in respect of the petition for amendment of**

**(1) WASTE RECYCLING GROUP LIMITED**
**(2) WRG WASTE SERVICES LIMITED**
**(3) ANTI-WASTE LIMITED**

**Objecting to the petition being certified as proper to be received and objecting that the petition is presented as a petition for amendment but is a petition of general objection**

1 A petition has been deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons in respect of the above-named Order by Waste Recycling Group Limited, WRG Waste Services Limited, and Anti-Waste Limited.

2 The petition is presented as a petition for amendment.

3 The Order grants development consent within the meaning of the Planning Act 2008 for an energy from waste electricity generating station, with a capacity of 65 megawatts, at Rookery South Pit, near Stewartby in Bedfordshire, together with associated development including a materials recovery facility and other elements.

4 As a nationally significant infrastructure project within the meaning of the Planning Act 2008, the application for the development was submitted to the Infrastructure Planning Commission (IPC) under the procedures provided for in that Act. Prior to the passage of the Planning Act 2008, such a development would have needed to have been approved by way of an application to the Secretary of State for section 36

consent under the Electricity Act 1989 required for the construction of the generating station and a direction under section 90(2) of the Town and Country Planning Act 1990 that planning permission be deemed to be granted. Pursuant to the Planning Act 2008, it was examined by a Panel of three Commissioners appointed by the chair of the IPC, the examination procedure including the submission of written representations and the attendance at issue specific hearings by the petitioner amongst others. Details are set out in the IPC's statement of reasons for its decision, published on its website at: http://infrastructure.independent.gov.uk/projects/eastern/rookery-south-energy-from-waste-generating-station/. The Panel concluded that:

(a) a decision to grant development consent in respect of the proposed energy from waste generating station would be in accordance with relevant National Policy statements within the meaning of the Planning Act 2008, being the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3), which were designated by the Secretary of State for Energy and Climate Change under that Act on 19th July 2011 only after they had first been debated and approved by the House of Commons,

(b) none of the adverse impacts of the proposed development which the Panel had identified (and which included matters which the petitioner now raises again in its petition) would outweigh its benefits,

and that an Order granting development consent should therefore be made.

5 By virtue of section 128(2) of the Planning Act 2008, the Order is subject to special parliamentary procedure "to the extent that the order involves the compulsory acquisition of land to which this section applies" (referred to in this memorial as '**special land**') ie land which is:

(a) the property of a local authority, or

(b) has been acquired by statutory undertakers other than local authorities for the purposes of their undertaking,

if two conditions are met. The conditions are that a representation has been made by the local authority or statutory undertaker concerned about the application for the order granting development consent, and that the representation has not been withdrawn (see section 128(3)). Section 128 is disapplied by section 129, which applies if the applicant is a local authority, statutory undertaker or other body specified in section 129.

6 In the present case, whilst the majority of the development site is not special land, the Order does involve compulsory acquisition of rights in a strip of highway land and verge which is the property of Bedford Borough Council, Central Bedfordshire Council or both of them, and rights in other land acquired by Eastern Power Networks for the purposes of its statutory undertaking. This land is therefore special land. The Councils and Eastern Power Networks plc all made representations which they have

not withdrawn and the applicant is not, as yet, designated as a statutory undertaker in the UK or otherwise within section 129. It follows that special parliamentary procedure applies to the Order, but only to the extent that it confers compulsory acquisition rights in respect of the special land comprised in this strip of highway land and verge. In each case, the right to be acquired is a right to install and keep installed and to maintain an electricity transmission line, to connect the new generating station to the national grid.

7 By this memorial, the Secretary of State for Energy and Climate Change objects:

(a) to the petition being certified as proper to be received; and

(b) that the petition is presented as a petition for amendment when it is a petition of general objection.

8 The grounds of the Secretary of State's objection to the petition being proper to be received are that the petitioners do not disclose in their petition that they, or their property or interests, are directly and specially affected by the order and they are not directly and specially affected, having regard to the following considerations in particular:

(a) none of the petitioners is a body whose representations, if made and not withdrawn, give rise to special parliamentary procedure in this case; only local authorities or statutory undertakers whose land is subject to compulsory acquisition and who have made representations which have not been withdrawn fall into this category pursuant to section 128 of the Planning Act 2008;

(b) the allegations in the petitioners' petition do not relate to the acquisition of rights in the special land;

(c) those allegations do not disclose grounds of complaint against, or demonstrate that the petitioners are directly and specially affected by, the proposed acquisition and use of the special land; and

(d) the petitioners seek through their petition to challenge the merits and application of national policy set by the government and endorsed by Parliament which the petitioners have no entitlement through this process to do.

9 If the petitioners are to be granted a right to be heard on the petition at all, which for the reasons here stated it is argued they should not be, then this should be limited to the acquisition of rights in the special land.

10 The grounds of the Secretary of State's objection to the petition being treated as a petition for amendment rather than a petition of general objection are as follows:

(a) the petitioners' arguments all go to the principle of the Order being made;

(b) the amendments sought by the petition would exclude from compulsory acquisition, or extinguishment, interests or rights in land whose acquisition or extinguishment is essential if the development is to proceed and without which the Order would be ineffectual.

11 It is also observed that the core arguments sought to be made by the petitioners are all ones which were fully expressed and considered during the examination stage into the draft Order and were taken into account in the decision-making process under the Planning Act 2008. The decision to make the Order is the subject of a detailed statement of reasons dated 13 October 2011 and it will remain open to the petitioners, if the Order enters into force and the petitioners feel aggrieved by any provision of the Order, to challenge its legality in the courts.

YOUR MEMORIALIST therefore requests that it may be heard by its Agents and witnesses in support of the allegations contained in this Memorial.

BIRCHAM DYSON BELL LLP
Parliamentary Agents for
THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

10 January 2012

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**M E M O R I A L**

of

**THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE**

**in respect of the petition for amendment of**
**(1) WASTE RECYCLING GROUP LIMITED**

**(2) WRG WASTE SERVICES LIMITED**

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Date 10 January 2012