

IN PARLIAMENT

SESSION 2010-12

THE ROOKERY SOUTH (RESOURCE RECOVERY FACILITY) ORDER 2011

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

MEMORIAL

of

COVANTA ROOKERY SOUTH LIMITED

**in respect of the petition of general objection of
Central Bedfordshire Council**

Objecting to the petition being certified as proper to be received.

- 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 Sharpe Pritchard.
- 2 The petition is presented as a petition of general objection.
- 3 The Order would grant development consent enabling your Memorialist, Covanta Rookery South Limited to construct and operate an EfW 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. Your Memorialist is a subsidiary of Covanta Energy Limited, the world's largest developer and operator of Energy from Waste (EfW) facilities. The facility would be one of five EfW facilities currently being developed by Covanta and its subsidiaries in the UK, a total £2 billion investment, which between them would contribute significantly to mandatory landfill diversion and renewable energy targets. The Order is therefore a very significant element in assisting the UK to comply with its international obligations.
- 4 As the proposed development is a nationally significant infrastructure project within the meaning of the Planning Act 2008 (the 2008 Act) the application for the Order was submitted to the Infrastructure Planning Commission (IPC) under the procedures provided for in that Act. In accordance with those procedures it was examined by a Panel of three Commissioners. The examination procedure included the submission of written representations and the attendance at issue specific hearings by the petitioner itself (or its representatives) amongst others.

5 Section 104(3) of the 2008 Act requires the Panel is to determine an application in accordance with any relevant national policy statement, except in limited circumstances, none of which apply in this case.

6 In its written determination dated 13 October 2011 the Panel concluded that:

- (a) the proposals accord with national policy statements, being the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement For Renewable Energy Infrastructure (EN-3), which were debated and approved by the House of Commons on 18 July 2011;
- (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) outweigh its benefits,

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

7 Where, as here, the applicant is not a local authority, statutory undertaker or other body specified in section 129, and

- (a) “the order involves the compulsory acquisition of land to which the section applies” i.e. land which is:
 - (i) the property of a local authority; or
 - (ii) has been acquired by statutory undertakers (other than a local authority) for the purposes of their undertaking; and
- (b) a representation in respect of the Order was made by the local authority or statutory undertaker whose land it is; and
- (c) the representation was not withdrawn;

section 128 of the 2008 Act makes the Order subject to special parliamentary procedure, but only “to the extent that” the Order involves compulsory acquisition of the land belonging to the local authority or statutory undertaker whose representation has not been withdrawn. For this purpose “land” includes any right over land (see section 159(2)).

8 In the present case, the Order would authorise the compulsory acquisition of rights to lay cables in land belonging to (which includes land in which an interest is held by) local authorities and a statutory undertaker whose representations were not withdrawn as follows:

- (a) Bedfordshire Borough Council
Plots nos. 3, 4, 7, 8, 9, 10, 11, 12, 13, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28 and 29
- (b) Central Bedfordshire Council
Plots nos. 36, 37 and 38

(c) Bedfordshire Borough Council and Central Bedfordshire Council

Plots nos. 41, 46, 53, 56, 59 and 63

(d) Eastern Power Networks plc

1, 5, 14, 15, 17 and 18

- 9 These plots (the SPP land) are strips of highway land and verge vested in Bedford Borough Council (BBC) and Central Bedfordshire Council (CBC) in their respective areas, private land comprising an electricity substation and access road belonging to Eastern Power Networks plc (EPN) and a length of highway in which EPN enjoys rights in respect of its apparatus.
- 10 The Order would not allow compulsory acquisition of any right or interest in the SPP land other than the rights mentioned in paragraph 8 above. As part of the application process under the 2008 Act BBC, CBC and EPN made representations objecting to the draft Order and their objections were not withdrawn. As and when your Memorialist becomes an electricity generator authorised under the Order it will be a statutory undertaker for the purposes of section 129 of the 2008 Act, but at present it does not enjoy that status. Section 128 of the 2008 Act accordingly applies to make the Order is subject to special parliamentary procedure, but only to the very limited extent of that limited proposed compulsory acquisition.
- 11 Your Memorialist objects that the petition is not proper to be received because the petitioner-
- (a) does not disclose in its petition that it, or its property or interests, are directly and specially affected by the Order, and it is not directly and specially affected; and
 - (b) seeks to challenge the Order on grounds that are beyond the scope of the limited referral of this Order to special parliamentary procedure.
- 12 The allegation in paragraph 11(a) above is made having regard to the following considerations in particular:
- (a) as particularised in paragraph 14 below, the allegations in the petition contradict statements made by the petitioner in published statements of common ground made in relation to the proceedings under the 2008 Act: the petitioner cannot be directly and specially affected by, or object to, matters with which it has stated it is in agreement; and
 - (b) the allegations made in the petition do not disclose grounds of complaint or demonstrate that the petitioner is directly and specially affected by the proposed acquisition and use of the rights over the SPP land.
- 13 The allegation in paragraph 11(b) is made having regard to the following considerations in particular:
- (a) the allegations in the petition do not relate to the matters which have rendered the Order subject to special parliamentary procedure;

- (b) the petitioner seeks through its petition to challenge the merits and application of national policy set by the government and endorsed by Parliament which the petitioner has no entitlement through this process to do.
- 14 As part of the proceedings on the draft Order under the 2008 Act the petitioner and your Memorialist made statements of common ground recording matters on which they were in agreement. Allegations in the petition are inconsistent with the statements of common ground made in respect of design, landscape and visual impact (24 February 2011); impact on the historic environment (23 February 2011); and increased use of the local highway network (9 May 2011).
- 15 If, contrary to your Memorialist's submissions, the Chairmen were minded to certify the petition as proper to be received, the admissible grounds of objection should be limited to the compulsory acquisition and use of rights in the SPP land, as this is the extent to which the order is subject to special parliamentary procedure. In this context the only possibly relevant grounds are in paragraph 4 of the petition so far as relating to possible effects on highway powers and responsibilities. However, as the petition merely states that the position regarding this matter is unclear, and does not make any allegation of adverse effect, your Memorialist submits that the petition does not contain any ground of objection in this regard.
- 16 The arguments in the petition are all ones which were all fully expressed by the petitioner and considered during the examination stage of the draft Order and were taken into account in the decision-making process under the 2008 Act. 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 petitioner, if the Order is made and it feels aggrieved by that decision, to challenge its legality in the courts. The application of special parliamentary procedure to this Order does not afford the petitioner an opportunity to query that process or the decision at large.

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

WINCKWORTH SHERWOOD LLP
Parliamentary Agents for
COVANTA ROOKERY SOUTH LIMITED

10 January 2012

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M E M O R I A L

of

**COVANTA ROOKERY SOUTH
LIMITED**

**in respect of the petition of general
objection of**

Central Bedfordshire Council

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Parliamentary Agents and Solicitors

Date 10 January 2012