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Sent: 05 June 2015 18:49
To: Port Talbot Power
Subject: EN010062 - Port Talbot - Tata Steel - written response of Associated British Ports (1003007)

Dear All,

With reference to the above, I am pleased to attach my client, Associated British Ports' written comments on the responses to the ExA's last round of questions.

With the response is one appendix – namely ABP's proposed protective provision.

Regards,

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**Application by Tata Steel UK Limited for the Port Talbot Steel Works
(Power Generation Enhancement Order)**

Associated British Ports (ABP) – Reference 1003007

Written comments on the responses to further questions raised by the ExA

1. Introduction

- 1.1 ABP has noted the responses submitted by the applicant to the ExA's further written questions, as set out in Section 4 of its response of 28 May 2015.
- 1.2 ABP is somewhat surprised to note, however, that even at this late stage in the process, with only two weeks to go before the end of the examination, the applicant's project team at Port Talbot still seem to be unaware of the full extent of the legal agreements that have been entered into by the applicant (and its predecessors) with ABP.
- 1.3 The ExA will understand that responses formulated on an incorrect basis do little to further progress towards a successful resolution of the issues between the two parties.
- 1.4 The actual position, as stated in ABP's responses to the ExA's questions dated 28 May 2015, is as follows:-

2. Question 4.4.1(a) – Legal Agreements

- 2.1 ***Dock Feeder Channel*** – at paragraph 4.4 of its response, the applicant refers to the July 1955 Agreement which permits abstraction from the feeder channel of water at a rate not exceeding 2000 gallons per minute.
- 2.2 At paragraph 4.5, however, the applicant then rather surprisingly, and incorrectly, states that - "*the applicant currently extracts water from the dock feeder channel at rates which exceed the limit set out in the pump house lease.*" The applicant continues to the effect that - "*ABP has full knowledge of this and has not sought to enforce the limit set out in the lease. Indeed ABP's preferred protective provisions which it submitted to the ExA on 23 April 2015 propose an increased limit of 27.4 megalitres per day on the applicant's abstraction from the Dock feeder channel.*"
- 2.3 As the ExA will appreciate, from ABP's own representations, this is a totally misleading and inaccurate statement and does simply underline the difficulties that ABP has experienced over the last few months in attempting to negotiate a satisfactory resolution of this issue.
- 2.4 As was pointed out in ABP's written response of 28 May, there are in fact two Dock feeder channel agreements, dated July 1955 and September 1959, copies of which were attached as Appendix 3 and Appendix 4 to ABP's written response.
- 2.5 These two agreements cumulatively permit the applicant, through its predecessors, to abstract water at a rate not exceeding 4,000 gallons per minute. That figure equates to the figure of 27.4 megalitres that ABP has inserted in its draft protective provision.
- 2.6 The ExA will appreciate, therefore, that far from the applicant abstracting water from the Dock feeder channel which exceeds the legally permitted limit with ABP's "*full knowledge*" – ABP has in fact entered into agreements with Tata's predecessors which allows the

applicant legally to abstract twice the amount of water that the Tata project team seem to believe to be the case.

- 2.7 If in fact the applicant is abstracting more than the permitted levels, then this would be a matter of some considerable concern to ABP. The ExA will understand that this is why ABP has inserted a paragraph within its draft protective provision which requires the applicant to provide ABP on a monthly basis with - “*detailed records of the levels of water abstracted from the River Afan (Dock feeder channel) and/or the Dock*”.

3. **Question 4.4.1(b) - Impounded Dock Level Management**

- 3.1 The applicant’s response to question (b) is difficult to understand in that the concerns expressed by it at paragraph 4.11 are in fact, as far as ABP is concerned, fully met by ABP’s proposed protective provision.
- 3.2 The applicant states that it - “*considers that a requirement to impound seawater which is triggered by reference to water levels within the Dock is the only appropriate mechanism which can ensure that during dry conditions, the operational requirements at the steel works and the Dock can both be met. This methodology has worked effectively for many decades and the applicant sees no reason why it would not work in the future.*”
- 3.3 As the ExA is aware, ABP’s proposed protective provision does in fact guarantee the applicant a minimum water level of 8 metres measured at the inner lock gate cill. This level of 8 metres equates to the applicant’s warning level, as noted at para 4.15 of its representations, namely +4.95m AOD.
- 3.4 In the context of water levels generally, the ExA will have noted that throughout the exchange of written representations and at the oral hearings, the applicant has failed to acknowledge or recognise the underlying concern of ABP - namely its overriding need to comply with its open port statutory obligations. These do not need to be rehearsed yet again in these representations but whilst the applicant continues to argue that it should be given the right to enter the Dock on such occasions as it requires to impound water for its own purposes, ABP simply is not in a position to grant such a right to the applicant – an independent third party. To do so would be a derogation from ABP’s own statutory duties and obligations

4 **Question 4.4.1(e) – Protective Provision**

- 4.1 As has been repeated on numerous occasions, however, ABP remains fully supportive of the applicant’s proposal and whilst it cannot and is unable to accede to an arrangement that would enable a third party to control water levels within the Dock, it has amended its proposed protective provision, which is attached as Appendix 1.
- 4.2 In brief – it has added a new paragraph 6 – which provides as follows -

“Should AB Ports at any time be unable to maintain the level of water set out in paragraph 5 above, then it will so inform the Undertaker in which event the Undertaker may, with the written consent of AB Ports (which consent is not to be unreasonably withheld or delayed and which may be given subject to such conditions as AB Ports may reasonably specify), temporarily access the Dock to enable it to carry out at its expense such impoundment of sea water as may be necessary to maintain a water level of not less than 8 metres at the inner lock gate cill.”

- 4.3 As far as ABP is concerned, this additional paragraph effectively provides “*double indemnity*” for the applicant. Not only is ABP accepting an obligation to maintain adequate water levels for the applicant’s purposes (paragraph 5 of its proposed protective provision) but at the same time, should it be unable to do so, then subject to suitable arrangements

being made in terms of matters such as the timing of the applicant's access to the Dock, health and safety and security, it is prepared to give the applicant temporary access, albeit no legal right of access, to the Dock to enable it to impound water.

- 4.4 ABP can go no further in this respect. It cannot, in law, grant "step in" access rights to a third party to abstract water from the Dock - for the reasons already extensively rehearsed.
- 4.5 As to the question of the costs of impounding, however, to which reference is made in paragraph 7 of the draft protective provision, the ExA should understand that ABP does not require the applicant to cover all of the costs of impounding water so as to maintain an operational Dock water level of 8.6 metres.
- 4.6 ABP does, however, require the applicant to pay such costs as are incurred for impounding water to replace water that the applicant has itself abstracted.
- 4.7 On that basis, the ExA should be aware that ABP and the applicant are discussing a possible basis for apportionment of costs and the results of these discussions will be relayed to the ExA at the earliest opportunity.

5. Question 4.4.1(f) - National Policy Statement for Ports

- 5.1 ABP notes that the applicant does not consider the NPS to be "*directly relevant to the proposed development*". ABP does not agree. On the contrary, the NPS is of considerable relevance for this project bearing in mind the potential impact of the applicant's proposal on the Port.
- 5.2 The ExA, however, has seen ABP's response to the question it raised. Apart from repeating that if the project is allowed to proceed on the basis as currently proposed in terms of the applicant's draft protective provision, ABP's ability to meet and satisfy its statutory obligations and duties would be seriously constrained, no further comment is considered necessary.

Winckworth Sherwood
On behalf of

Associated British Ports

For the protection of Associated British Ports

1. Proposed Protective Provision

1. *In this Part of this Schedule:*

(1) *"AB Ports" means Associated British Ports in its capacity as the owner, operator and harbour authority for the Port of Port Talbot;*

"the Dock" means the main inner dock at the Port of Port Talbot;

"the existing abstraction licence" means the abstraction licence issued under the Water Resources Act 1991 with the reference number 21/58/61/0024 - Nant Ffrwdwyllt;

"the primary source" means the River Afan (Dock feeder channel); and

"the secondary sources" means the Nant Ffrwdwyllt and the Dock.

(2) *The provisions of this Part of this Schedule have effect for the protection of AB Ports unless otherwise agreed in writing between the undertaker and AB Ports and are without prejudice to the terms of any agreements in place between the Undertaker and ABP at the date of this Order.*

2. *The Undertaker must not abstract water from the primary or the secondary sources for the purpose of the authorised development at a rate which combined with abstraction of water from those sources for any other purpose exceeds the following levels:*

(a) *River Afan (Dock feeder channel) - 27.4 Megalitres per day;*

(b) *the Dock - 54.8 Megalitres per day as a net consumption;*

(c) *Nant Ffrwdwyllt: the maximum volume of water that is permitted to be extracted as set out in the existing abstraction licence;*

without the consent of AB Ports.

3. *The consent of AB Ports is not to be unreasonably withheld having regard to the need to maintain a satisfactory operational level of water in the Dock but may be given subject to reasonable conditions for this purpose.*

4. *The Undertaker must, on a monthly basis from commencement of operation, provide to AB Ports detailed records of the levels of water abstracted from the River Afan (Dock feeder channel) and/or the Dock for the purpose of the authorised development and the Port Talbot Steelworks identifying the time, point of abstraction and levels of water abstracted.*

5. *Subject to the Undertaker complying with paragraphs 2, 4 and 7 and to the effect of any events which cannot reasonably be foreseen, AB Ports will use reasonable endeavours to ensure that the water level in the Dock is maintained at all times at a level of 8.6 metres or such level as is required to maintain a satisfactory operational level of water in the Dock being not less than 8 metres at the inner lock gate cill subject always to ABP and the Undertaker agreeing that a level in the Dock of less than 8 metres would be acceptable at any given time and for any agreed period.*

6. *Should AB Ports at any time be unable to maintain the level of water set out in paragraph 5 above, then it will so inform the Undertaker in which event the Undertaker may, with the prior written consent of AB Ports, (which consent is not to be unreasonably withheld or delayed and which may be given subject to such conditions as AB ports may reasonably specify), temporarily access the Dock to enable it to carry out at its expense such impoundment of sea water as may be necessary to maintain a water level of not less than 8 metres at the inner lock gate cill.*
7. *The Undertaker must pay AB Ports the costs reasonably incurred by AB Ports in:*
 - (a) *Pumping water into the Dock;*
 - (b) *Maintaining, repairing and cleansing the Dock and taking such other actions as in the opinion of AB Ports may be necessary to prevent the creation of a nuisance or danger; and*
 - (c) *Supplying, maintaining, repairing and renewing any plant or equipment used by AB Ports*
 - *so as to enable AB Ports to maintain the level of water in the Dock in accordance with paragraph 5 above.*