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To all Interested Parties

Your Ref:

Our Ref: EN010083

Date: 21 August 2020

The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 9 Application by WTI/EFW Holdings Ltd for an Order Granting Development Consent for the Wheelabrator Kemsley (K3) Generating Station and the Wheelabrator Kemsley North (WKN) waste to energy facility

I am writing to you following the close of Examination on 19 August 2020. The last deadline for submissions to be accepted into the Examination was at Deadline 8, Wednesday 12 August.

No further submissions have been made after this deadline by any Interested Party, save from the Applicant who on the last day of the Examination submitted 4 documents requesting them to be accepted. These were:

EN010083 - 8.5 - Post D8 - Working Draft of the HE SoCG

EN010083 - 17.1 - Post D8 - Applicant's Closing Statement on Waste Matters

EN010083 - 17.2 - Post D8 - Further Submission by the Applicant - No Time To Waste

EN010083 - 17.3 - Post D8 - Applicant's Position Statement on Highways Matters

I have made a Procedural Decision not to accept these documents into the Examination for the following reasons.

Regulation 10 of the Infrastructure Planning (Examination Procedure) Rules 2010 sets out the position regarding written representations. Regulation 10(1) states that an interested party (which includes the Applicant) must ensure that any written representation that party may wish to make is received by the Examining authority by the date specified in the timetable set under rule 8, or otherwise under this rule, by the Examining authority. The last relevant date specified in the Timetable under Rule 8 was as stated above, 12 August. No other later date was set by me under this rule.

Further, Regulation 10 (5) states that the Examining authority must provide all interested parties with the opportunity to comment in writing on any written representation relevant to the examination of the application. The reference to written representation is one I take to mean a representation that is duly made. It is critical that the examination process is undertaken in a way that achieves the objectives of the Examining Authority but is fair to all parties throughout.

Regulation 10 (6) states among other things that the Examining Authority may in writing request responses to questions posed by the Examining authority about the matters contained in any representation and such further information about the matters contained in any representation as the Examining authority may specify, and shall specify the date by which these must be received by it.

In my last round of questions issued on 15 July 2020 I requested the Applicant to submit by Deadline 7, ie 5 August, any outstanding SoCGs by D7. Q4.11.13 was specific as to the SoCG with HE and requested the Applicant to provide for D7 a SoCG with HE. I stated that the intention in requesting such documents was not that parties should hold back from submitting them until they have agreed matters, but to assist the Examining Authority by providing a continuous and candid explanation of exactly which matters are not agreed as well as well as those that are agreed.

As to the Working Draft of the HE SoCG, there are numerous tracked changes and comments in the side margin which are difficult to follow and it is unsigned by either party. I received no assurance from the Applicant or HE, as to whether HE was content for the document to be submitted in this form, whether it agreed with the last comments made by the Applicant or wished to make further comments thereon.

I note that one other IP elected to submit a closing submission but did so by the due date, ie D8 on 12 August.

Regulation 10 (8) states that the Examining authority may disregard any written representations, responses to questions or further information received after the date, or the expiry of the period, specified for their receipt.

The submissions may not seek to introduce new evidence rather than to summarise or corroborate the Applicant's case, but the purport of Regulation 10(5) is to provide equality of arms in respect of all representations duly made. The late documents were submitted by the Applicant by email at 16:48 on the last day of the Examination. They were submitted far too late to enable them to be published and for any meaningful opportunity to be given to other IPs to comment should they have wished to do so, before the close of the Examination.

If you have queries, please contact us on 0303 444 5000 or the project e-mail address, and a member of the case team will assist you. As a result of ongoing Government guidance relating to the Coronavirus (COVID-19), our office based at Temple Quay House is temporarily closed and any submissions sent by post will be subject to delay.

Yours faithfully,

Grahame Kean

Grahame Kean
Examining Authority

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