

Rooney, Lauren

From: Peter, Lara <Lara.Peter@wsp.com>
Sent: 17 January 2019 11:52
To: Drax Re-power
Cc: Jim Doyle; Jenny Blyth; Oliver Baybut
Subject: Drax Repower - Letter in response to ClientEarth Letter dated 9 January 2019
Attachments: Drax Repower - Letter to ExA from Pinsent Masons (17 January 2019).pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Michele

Please find attached a letter, prepared by Pinsent Masons on behalf of Drax, in response to ClientEarth's letter dated 9 January 2019 addressed to the Examining Authority.

Kind regards
Lara

Lara Peter
Principal Consultant



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Pinsent Masons

BY E-MAIL

Mr Richard Allen
Lead Member of the Panel of Examining
Inspectors – Drax Repower Project
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol
BS1 6PN

Your Ref EN010091
Our Ref 101880046.1\rg7\631996.07098

17 January 2019

Dear Sir

APPLICATION BY DRAX POWER LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE DRAX REPOWER PROJECT

RESPONSE TO CLIENTEARTH LETTER DATED 9 JANUARY 2019

We write on behalf of Drax Power Limited (the "**Applicant**") in response to ClientEarth's letter addressed to you and dated 9 January 2019 (the "**CE Letter**"). The CE Letter states that the Applicant's Written Summary of its Oral Case put at ISH1 (REP4-012, the "**Written Summary**") is "*unsafe in its current form to be included in the examination's document library.*" The criticisms contained in the CE Letter that lead to this conclusion are frivolous for the following reasons:

1. The Written Summary, which was submitted at Deadline 4, is clearly titled in bold as the "*Written Summary of Drax Power Limited's Oral Case put at the Environmental Matters Issue Specific Hearing – 5 December 2018*". Further, in paragraph 1.2, the Written Summary states that "*The Applicant's substantive oral submissions commenced at item 2 of the Agenda, therefore this note does not cover item 1...*" There is no doubt that the Written Summary is of the Applicant's case, and is not intended to be a summary of all those participating in the Hearing.
2. ClientEarth complains that the Written Summary "*does not record other participants' submissions in equivalent detail*" and "*fails to record a number of points made by participants, including by the Examining Authority.*" As the title to the Written Summary makes perfectly clear, and as in accordance with the request of the Examining Authority for Deadline 4, the Written Summary is a summary of the Applicant's main oral case. It is not the role of the Applicant to write a summary of the oral case put forward by all participants. Other participants are expected to submit their own written submissions of their oral cases, as required by the Examining Authority at Deadline 4. For this reason the Written Summary is focused on the Applicant's case. Should other participants submit written summaries of their oral

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case, then we would expect those summaries to be focused on their case and not on the Applicant's.

3. However, in order for the Applicant's oral case to be properly summarised and, indeed, for it to make sense, it is sometimes necessary to summarise a participant's oral submission or a point raised by the Examining Authority. For this reason, the Written Summary does record some points raised by other participants and the Examining Authority, where it is necessary to do so to properly record the Applicant's submissions.
4. ClientEarth also complains that the Written Summary includes additional points to those advanced by the Applicant at the Hearing. With respect to ClientEarth, the request from the Examining Authority at Deadline 4, and as recorded in Item 13 of the Timetable, is for "*Post hearing submissions including written submissions of oral case.*" The Written Summary does just that. It is primarily a written summary of the oral case, but that oral case can be supplemented where necessary in the Written Summary in response to matters raised at the Hearing - indeed, often Examining Authorities make that specific request given the Examination is a primarily written process. For example, where documents are submitted with the written summary because they were referenced in the Hearing, then it may be necessary for the written summary to explain that document and refer to particular paragraphs for extra context.
5. There is, therefore, no justification for ClientEarth's request for the Written Summary to be excluded from the Examination Library. Not least, if ClientEarth disputes anything in that Written Summary, then ClientEarth has the opportunity to make comments as the Timetable allowed - Item 14, Deadline 5, refers to "*Comments on any additional information/submissions received by D4*".
6. Finally, there is only one objective record of Examination Hearings, and that is the audio recording that is made by the Planning Inspectorate. Indeed, the Examining Authority itself made it clear that the audio recording of the Examination Hearings is the only official account. Neither the Written Summary, nor the written summary of any other participant, can usurp the status of the audio recording.

Yours faithfully

A solid black rectangular box used to redact the signature of the sender.

Pinsent Masons LLP